

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	APPROVED IN PART; DENIED IN PART	Appeal Number:	2155539
Decision Date:	11/23/2021	Hearing Date:	09/08/2021
Hearing Officer:	Christopher Taffe	Record Closed:	11/15/2021

Appearance for Appellant:
Appellant (by phone)

Appearance for MassHealth:
Cassandra Horne, Appeals & Grievance
Supervisor, Commonwealth Care Alliance
(by phone)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	APPROVED IN PART; DENIED IN PART	Issue:	MCO – Prior Authorization – Dental Implant and Related Services
Decision Date:	11/23/2021	Hearing Date:	09/08/2021
MassHealth’s Rep.:	C. Horne	Appellant’s Rep.:	Appellant, pro se
Hearing Location:	HarborSouth Tower, Quincy	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated June 10, 2021 titled “*Notice of Adverse Action - Denial of Level 1 Appeal*”, the Medicare-Medicaid Plan of Commonwealth Care Alliance (“CCA”), an Integrated Care Organization (“ICO”), informed Appellant that it was denying her Level I appeal for Prior Authorization (PA) request # A0210527123010. This PA request sought approval of the following six dental services:

- Cone Beam – Both Jaws (under Service Code D0383);
- Abutment Supported Porcelain Fused to Metal (D6059, on tooth #11);
- Prefabricated Abutment (D6056 on tooth #11);
- Surgical Placement of Implant Body (D6010 on tooth #11);
- Guided Tissue Generation (D4266 on tooth # 11); and
- Bone Replacement Graft (D7953 on tooth #11)

See Exhibits 5 and 8. On July 20, 2021, Appellant filed a timely request for a Fair Hearing before the Board of Hearings as to this adverse action. See Exhibit 1; 130 CMR 610.015(B)(7)(a).

The Board of Hearings (BOH) has limited jurisdiction over denials given to certain MassHealth members when those denials involve requests for assistance related to covered benefits from a

Managed Care Contractor (including an ICO like CCA), with which the member is enrolled. See 130 CMR 610.032(B); 130 CMR 508.008 (discussing the role of ICO's in the MassHealth program); 130 CMR 508.011.

On July 22, 2021, the Board of Hearings initially dismissed this appeal without prejudice due to the need to verify the specifics of the appealable action. See Exhibit 2 and 130 CMR 610.035(A). Appellant attempted to vacate this with two filings on July 23, 2021 and July 26, 2021, but neither of these filings contain the complete or correct appealable action notice. See Exhibits 3 and 4.¹ Subsequently, the Board of Hearings requested on Appellant's behalf and received from CCA a copy of the appealable action on or around August 6, 2021, and the dismissal was vacated. See Exhibit 5.

A hearing was eventually scheduled for and held on September 8, 2021. See Exhibit 6. The record was left open at the end of the hearing until September 17, 2021 to allow Appellant to submit additional evidence not present at hearing. See 130 CMR 610.081 and Exhibit 9. Appellant submitted such material timely on September 10, 2021. See Exhibit 9.

The record was further left open to allow CCA time to review and respond to Appellant's submission. A copy of the Appellant's submission was forwarded to CCA for review on September 10, 2021. See Exhibit 10. Despite repeated inquiries from the Board of Hearings during the months of September, October and November,² CCA did not fully respond until November 15, 2021, at which time the record was closed. See Exhibits 11 through 15.

Action Taken by MassHealth/CCA

CCA denied the Appellant's request for a series of dental procedures constituting a dental implant.

¹ At other points after the initial filing, Appellant filed paperwork with the Board of Hearings related to a Medicare prescription denial. See Exhibit 7 (containing documents from 8/10/21, 8/12/21, 8/24/21, and 9/8/21, all of which are for an action not appealable to the Board of Hearings). Administrative staff contacted Appellant by phone in August and September 2021 as to the fact that this issue could not be addressed by this Fair Hearing or by the Board of Hearings.

² After the initial request of September 10, 2021, the Hearing Officer and/or administrative staff members of the Board of Hearings made outreaches for the CCA response on the following dates: September 23, 2021, October 5, 2021; October 13, 2021; November 1, 2021; November 2, 2021; November 10, 2021, and November 12, 2021. The eventual response from CCA came in on Saturday November 13th and thus the record was not officially closed till the next business day of Monday, November 15, 2021. See 130 CMR 610.015(C). Any delay in the issuance of this hearing decision may thus be attributed to the MassHealth agency's failure during this two-plus-month period to promptly respond and comply with 130 CMR 610.062. In this case, such delays are "*other issues beyond the control of BOH*" which made the rendering of a timelier decision impossible and serve as cause for an appropriate extension of the decision issuance timelines. See 130 CMR 610.015(D)(4)(b).

Issue

Is there any entitlement under the MassHealth program to the requested service? Relatedly if there is no standard or requirement, was the CCA administrative decision made logically and consistently with regard to CCA's standards as well as the relevant evidence and regulations?

Summary of Evidence

Appellant is an adult MassHealth member, over the age of 21, who receives dental benefits as an enrollee in CCA's Medicare-Medicaid Plan, a plan which is sometimes referred to as a "OneCare Plan". For this matter, CCA is an ICO, and an ICO is a specific type of Managed Care Contractor (MCC) that offers benefits to individual enrollees who have both Medicare and Medicaid benefits; the ICO will generally deliver a member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member available through his or her health insurance benefits.

Appellant represented herself at hearing. CCA was represented at hearing by Ms. Horne, who is the Appeals & Grievances Supervisor for the CCA's Operations Department.³

An initial PA request (PA # A0210527123010) was submitted by Appellant's dentist on or around May 27, 2021 for six procedures. The six services are as follows:

1. Cone Beam – Both Jaws (under Service Code D0383);
2. Abutment Supported Porcelain Fused to Metal (D6059, on tooth #11);
3. Prefabricated Abutment (D6056 on tooth #11);
4. Surgical Placement of Implant Body (D6010 on tooth #11);
5. Guided Tissue Generation (D4266 on tooth # 11); and
6. Bone Replacement Graft (D7953 on tooth #11).

The five requested services for tooth # 11 were described as all being related to a dental implant service for tooth #11, one of the cuspids in the upper jaw. The request was denied in full on June 1, 2021.

The June 1, 2021 denial notice, found in Exhibit 8, stated in part as to "Cone Beam (D0383)" and "Bone Replacement Graft (D7953)": *"This request is denied. This code is not a covered code"*.

As to the other four services of D6059, D6056, D6010, and D4266, the June 1, 2021 denial notice stated as the reason for the denial: *"This service is denied. The request is not medically necessary. This implant service can be covered if x-rays sent by your provider show that there is only one (1) missing front tooth in the arch. The records sent show other teeth are missing in your arch. The*

³ The cover to the CCA submission found in Exhibit 8 indicated that at hearing, in addition to Ms. Horne, CCA was to also be represented by Ms. Jessica Medeiros the "Director of Dental" for CCA. Neither Ms. Medeiros nor any other dentist from CCA was available or appeared at hearing.

criteria used for review can be found in the Clinical Criteria section of the Commonwealth Care Alliance Dental Provider Manual.”⁴

On June 3, 2021, Appellant requested by phone a Level I, or internal appeal, to CCA. Per the notes in Exhibit 8 on the internal appeal action, a CCA representative wrote in part that this condition for Appellant *“is causing difficulties eating since she has to eat on her left side, regardless of which side she eats on sticks to eating on it (sic) causes her significant pain after a while.”*

The review of the Level 1 internal appeal was finalized on June 10, 2021, when a decision notice issued to Appellant denying the requested treatment. Per the June 10, 2021 letter found in full in Exhibit 7, which is the appealable action, the denial notice states the following as to the basis for the denial:

“We denied the Level 1 Appeal above because: “the appeal for requested services is denied as the treatment proposed is beyond the scope of coverage and does not meet the criteria for medical necessity. According to the Member Handbook Chapter 3, Section B and Chapter 4, Section C the services (including medical care, behavioral health care, long-term services and supports, other services, supplies and equipment) must be medically necessary. Medically necessary means you reasonably need the services to prevent, diagnose, or treat a medical condition. It also means there is no other similar, less expensive service that is suitable for you.”

At hearing, CCA verified that it potentially covered the limited implant services for members,⁵ even though MassHealth does not.

At hearing, CCA confirmed that they do cover bridges for member

Appellant indicated that the reason for her request for the implant was because she felt many of her upper front teeth were shifting towards the gap in tooth # 11, which has been missing for at least three years. She had a flipper in place of tooth #11, but she can’t eat with it, and she can’t sleep with it. As to the CCA contention that she was missing more than one front tooth in the upper arch, the Appellant didn’t understand that as she believed she only lost one such upper front tooth, which was # 11, the cuspid in question for which an implant was being requested.

CCA did not include any x-rays or other documentation in its submission as to what led to the claim, and the CCA Representative had no information available to her on what additional upper

⁴ Despite submitting 66 pages in its hearing submission in Exhibit 8, not one page of the CCA submission appears to contain any pages or relevant portion from this CCA dental manual cited in the denial letter. Instead, Exhibit 8 consists predominantly of correspondence and duplicate notices sent to Appellant.

⁵ As discussed *infra*, the MassHealth program does not cover implant-related dental services for member it directly insures. However, CCA, like any MCC, is free to offer additional services and benefits that go above and beyond those required by the state Medicaid programs. There was no specific discussion on the “Cone Beam” or “Bone Replacement Graft” services but the initial denial notice text will be accepted at face value that these services are not covered by CCA. The focus of the discussion at the hearing was on the four other services that generally make up basic implant services. As to the non-covered services, while bone grafting in an area of jaw may be done to help or in conjunction with some plans for a dental implant, it is not necessary to always have bone grafting procedure done as part of all implant procedure. A cone beam is a specific type of dental x-ray, usually producing 3D images. This lack of coverage or for these procedures will be briefly discussed in the Analysis, *infra*.

teeth, if any, were missing in the front part of her mouth. Appellant provided testimony about her upper teeth suggesting that she was not missing any other front or anterior teeth,⁶ and at the end of the hearing it was decided that she have her dentist submit verification or appropriate records of which teeth existed in the upper jaw.

During the Record Open period, Appellant submitted a letter along with a full mouth x-ray verifying what teeth were missing. See Exhibit 9. Appellant's dentist letter states (consistently with the submitted x-rays), that:

- *[Appellant] has a bridge from tooth #12-14.*
- *The patient is missing tooth #3 in the back (however there is no space due to shifting).*
- *The patient is also missing tooth # 11 in the front (hence the need for an implant).*

During the Record Open period, MassHealth/CCA was asked for a response multiple times between September 10, 2021 and November 12, 2021. See Exhibits 10 through 14 and fn. 2, *supra*. CCA finally responded with a submission accepted on November 15, 2021. See Exhibit 15. The response is from an anonymous "dental MD" and states in part the following:

"I attest to reviewing the appeal for member [Appellant] and all procedure are denied as non covered (sic) services and lack of medical necessity as defined by MA Health guidelines. Implants are covered if they are needed to support a full denture. The services requested are beyond the scope of coverage..."

The response in Exhibit 15 then concludes with repeating, verbatim, the *"The appeal is denied as the treatment proposed ..."* paragraph found in the June 10, 2021 letter of Exhibit 7 (cited earlier in this Summary).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant is an adult MassHealth member over the age of 21 who submitted to CCA a PA (PA # A0210527123010) for six dental codes. The codes included a request for implant work on tooth # 11 and included the following:
 - a. Cone Beam – Both Jaws (under Service Code D0383);
 - b. Abutment Supported Porcelain Fused to Metal (D6059, on tooth #11);
 - c. Prefabricated Abutment (D6056 on tooth #11);
 - d. Surgical Placement of Implant Body (D6010 on tooth #11);

⁶ In the upper jaw, an adult will usually have 16 teeth if the wisdom teeth, or 3rd molars, come in. In American dentistry, those 16 teeth are typically identified by number, from # 1 (upper right 3rd molar) to #16 (upper left 3rd molar). [Teeth # 17 to 32 are the lower jaw teeth.] In both jaws, the cuspids (also known as canines) and the incisors are considered the front or anterior teeth, while bicuspids and molars are considered back or posterior teeth. In the upper jaw, teeth #6 through 11 are the upper anterior.

- e. Guided Tissue Generation (D4266 on tooth # 11); and
 - f. Bone Replacement Graft (D7953 on tooth #11).
(Testimony and Exhibit 8)
2. The June 1, 2021 denial notice from CCA stated in part as to the requests for “Cone Beam (D0383)” and “Bone Replacement Graft (D7953)”: *“This request is denied. This code is not a covered code”*. (Exhibit 8)
 3. The June 1, 2021 denial notice from CCA stated in part as to the other four codes related to implant services the following: *“This service is denied. The request is not medically necessary. This implant service can be covered if x-rays sent by your provider show that there is only one (1) missing front tooth in the arch. The records sent show other teeth are missing in your arch. The criteria used for review can be found in the Clinical Criteria section of the Commonwealth Care Alliance Dental Provider Manual.”* (Testimony and Exhibit 8)
 4. After a Level 1 appeal to CCA, CCA upheld the denial on the grounds of the medical necessity. (Testimony and Exhibit 5 and 8)
 5. Appellant is only missing one anterior tooth in her upper arch, and that is the cuspid/canine tooth # 11, which is the tooth for which an implant is requested. (Testimony and Exhibit 9)
 6. When presented with information about Appellant missing only one upper anterior tooth, CCA responded in part by stating that *“...Implants are covered if they are needed to support a full denture...”* (Exhibit 15)

Analysis and Conclusions of Law

Massachusetts’s Secretary of Health and Human Services is authorized to participate in a demonstration program to integrate care for individuals, aged 21 to 64 at the time of enrollment, who are dually eligible for benefits under MassHealth Standard or CommonHealth and Medicare and do not have any additional comprehensive health coverage. MGL ch. 118E, § 9F(a). This particular waiver program allows MassHealth to contract jointly with the Centers for Medicare and Medicaid Services (“CMS”) and Integrated Care Organizations (“ICOs”) to provide integrated, comprehensive Medicaid and Medicare services, including medical, behavioral health and long-term support services for a prospective blended payment from the executive office and the Centers for Medicare and Medicaid Services. Id. Such medical services include dental benefits, and CCA is one such ICO. Whenever an ICO like CCA makes an adverse benefit decision, it must provide notice to the affected member. 130 CMR 508.011. An ICO has 30 days to resolve any internal appeals, and the member then has 120 days to request a “Level II” Fair Hearing from the Board of Hearings, which is what happened here. See 130 CMR 508.012; 130 CMR 610.015(B)(7). As to any prior authorization or PA request, the MassHealth program is generally required to cover services and treatments that are *“medically necessary”*. The MassHealth regulation at 130 CMR 450.204 in the “All Provider” regulatory manual speaks to that term as follows:

450.204: Medical Necessity

...

(A) A service is “medically necessary” if:

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

Furthermore, additional guidance “about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.” See 130 CMR 450.204(D).

Regarding covered dental services, MassHealth’s own dental regulations specifically indicate that implant work, which encompasses most of the service codes requested in the PA here, are only covered for members who are younger than age 21. See 130 CMR 420.421(B)(5). Moreover, the only dental x-rays covered by MassHealth are two-dimensional types. See 130 CMR 420.423. Thus, if this request was directly made of MassHealth, none of the services would be considered or covered. However, even though no implant services are required of the MassHealth dental program,⁷ the denial notice indicates that CCA has agreed to potentially cover some of the requested service codes for its enrollees on a limited basis. The record in this appeal indicates that CCA is making its decision on a prior authorization based in one part on a “noncoverage” argument for two of the six items, and a “medical necessity” argument as to the remaining four services.

So in looking at the six services, this analysis will start first with the two services that CCA deemed would not be noncovered: (1) the Cone Beam x-ray (D0383) and (2) the Bone Graft (D7953). First these services and specific codes do not appear in MassHealth’s own Dental Program Office Reference Manual,⁸ even for members under the age of 21. Thus, they are certainly neither covered nor required by the MassHealth program, so CCA is in its right to not cover these services. This appeal is thus DENIED IN PART as to those two services.

In contrast, as to the four other basic-implant-related service codes, CCA indicated that its initial

⁷ See fn. 5, *infra*.

⁸ 130 CMR 420.410(C) references and incorporates the MassHealth Dental Program Office Reference Manual publication as a source of additional explanatory guidance beyond the regulations. See <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on October 25, 2021) for the Manual.

denial and steadfast position during the record open period were based medical necessity. In reviewing this, CCA must consistently and fairly apply the medical necessity regulation of 130 CMR 450.204 in a logical manner. Based on the record before me, I conclude that CCA did not so apply the medical necessity regulation in a fair and appropriate manner and the denial of these codes should be overturned.

Specifically, in its initial denial, CCA indicated that the implant treatment was potentially coverable; the CCA June 1, 2021 notice states that *“This implant service can be covered if x-rays sent by your provider show that there is only one (1) missing front tooth in the arch. The records sent show other teeth are missing in your arch.”* See Exhibit 7.

Appellant expressed understandable surprise at this, stating at hearing that she was missing only one front anterior tooth. This has been confirmed by the records provided by the Appellant after hearing. See Exhibit 9. CCA provided nothing to refute this fact or explain the basis for the statement on the CCA written notice. CCA did not include any of the *“submitted records”* in its submission, nor did it try to refute this fact during the hearing; there was no dentist at hearing or anyone else with knowledge of the alleged *“submitted records”* who could explain this factual inaccuracy. Furthermore, nothing was submitted from the Commonwealth Care Alliance Dental Provider Manual showing from where this or any other dental standard of CCA came. Instead, during the Record Open period, CCA eventually retreated to another position which is difficult to understand, stating in relevant part that *“Implants are covered if they are needed to support a full denture.”* See Exhibit 15. On its face this sentence is very unclear. A full upper denture is usually when there are no original dentition or teeth remaining in the upper jaw; in which case the whole set of upper teeth has been effectively replaced by one removable full denture appliance. In contrast, a partial denture usually replaces some missing teeth in a jaw but needs other original teeth to remain for fit and support. It is thus confusing to understand CCA’s position that implants are only allowed when the implants are supposed to work with a full denture. Considering this unclear, shifting, and slightly illogical series of positions from CCA, I conclude that the CCA decision to deny this request is arbitrary and neither supported by the record or any relevant regulations. This appeal is therefore APPROVED IN PART as to these four codes [D6059, D6056, D6010, and D4266] only.

In conclusion this appeal is APPROVED IN PART and DENIED IN PART. As it is only a partial approval of what was requested, Appellant should talk to her dentist to figure out if it makes sense to go forward knowing that only four of the service codes -- the only codes covered by CCA -- can and have been approved.

Order for MassHealth/CCA

Within no later than 30 days of the date of this decision and as soon as possible, CCA must send an approval notice to both Appellant and the dental provider for PA # A0210527123010 which gives prior approval for the following four implant-related services on tooth # 11:

- Abutment Supported Porcelain Fused to Metal (D6059);
- Prefabricated Abutment (D6056);
- Surgical Placement of Implant Body (D6010); and
- Guided Tissue Generation (D4266).

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact Commonwealth Care Alliance – Member Services at 1-866-610-2273.⁹ If you experience problems after 30 days with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: ICO Commonwealth Care Alliance
Attn: Cassandra Horne
30 Winter Street
Boston, MA 02108

⁹ This contact information is from the June 10, 2021 adverse appealable action notice in Exhibit 5 which states this number may be in service from 8AM to 8PM seven days a week. The same notice also suggests that other places to potentially get help with implementation and/or ICO issues may include (1) the "My Ombudsman" office (1-855-781-9898, Monday through Friday, 9AM to 4 PM) or (2) MassHealth Customer Service (1-800-841-2900, Monday through Friday, 8AM to 5PM).