

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2176674
<b>Decision Date:</b>	11/22/2021	<b>Hearing Date:</b>	10/07/2021
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	10/15/2021

Appearance for Appellant:



Appearance for Fallon:

Kay George, RN (Fallon representative) *via*  
telephone  
Michelle Malkoski (ICT representative) *via*  
telephone



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Program of All Inclusive Care for the Elderly (PACE)/Dental
<b>Decision Date:</b>	11/22/2021	<b>Hearing Date:</b>	10/07/2021
<b>Fallon's Rep.:</b>	Kay George, RN; Michelle Malkoski	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 April 30, 2021 Fallon Health<sup>1</sup> upheld a partial denial of the appellant's request for crowns for tooth 5 and tooth 9.<sup>2</sup> (See 130 CMR 450.204 and Exhibit 5B, p. 9). The appellant filed this appeal in a timely manner on August 17, 2021. (See 130 CMR 610.015(B), EOM 20-09, and Ex. 1). Denial of a request for service by is valid grounds for appeal. (See 130 CMR 610.032).

At the appellant's representative's request, the record was left open for seven days to allow for the arrival of documentation she mailed to the Board of Hearings. No documentation arrived at the Board after seven days and the record closed.

## Action Taken by Fallon

Fallon denied the appellant's request for a crown for tooth 5 because it determined that it was not medically necessary.

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<sup>1</sup> Fallon Health administers a PACE plan for MassHealth members. In its role as a managed care PACE provider, Fallon made the administrative determination that was appealed here.

<sup>2</sup> On April 5, 2021, Fallon sent the appellant a notice partially denying this request for service. This first notice was subject to an internal appeal. The notice at issue in this appeal is the second level appeal in this case. (See, Ex. 5B, p. 7, 9).

## Issue

The appeal issue is whether Fallon was correct in denying the request for a crown for tooth 5.

## Summary of Evidence

The appellant is an individual over the age of 65, who is a participant in PACE. On April 1, 2021, the appellant's dental provider submitted an American Dental Association Dental Claim form (ADA form). (Ex. 6, pp. 4-5). The ADA form requested restoration of the crowns for the teeth numbered 9 and 5 under procedure code D2750. (Id.). The procedure would place a crown cap over each tooth to restore their normal shape, size, and function. Using 130 CMR 450.204, the Interdisciplinary Care Team (ICT) at the appellant's PACE program determined that the procedure was medically necessary for tooth number 9 and approved the request regarding this tooth. (Ex. 5B, pp. 7, 24). Fallon's representative explained that tooth 9, the upper left anterior incisor was in the front of the appellant's mouth. (Ex. 5B, p. 24). It is visible when speaking and important for breaking off and biting food. (Id.). The Interdisciplinary Unit determined that the procedure was not medically necessary for tooth 5 and denied the procedure for that tooth. (Ex. 5B, pp. 7, 24). The Fallon representative explained that tooth 5 is the first right upper pre-molar and is in the posterior of the mouth. These teeth are behind the anterior teeth and are for pulverization of food. The Fallon representative stated that tooth 5 is not visible and extraction of the tooth (rather than restoration) would not significantly affect the appellant's ability to chew food. Additionally, extraction would not impact "cosmetics and dignity." (Ex. 5B p. 24).

The Fallon representative stated that the appellant is living with her step-granddaughter, who is her primary caretaker. (Ex. 5B, p. 14). The appellant has been a participant in PACE since 2019. (Id.). Prior to the COVID emergency, the appellant attended an adult day health center for five days per week. (Id.). The appellant requires assistance with one activity of daily living (ADL). The appellant ambulates independently. The appellant has been diagnosed with peripheral vascular disease, dementia of Alzheimer's type, hypovitamin D, cataracts in both eyes, hyperactive bladder, and age-related osteoporosis. (Ex. 5B, pp. 15-16).

The Fallon representative stated that there were two ways the appellant could have the crown installed. The first would be a one visit procedure involving removal of the decayed tooth, creation of the crown in the office, and cementing the crown in place. This would take a total of four to five hours. The second would be a two-visit procedure. In the first visit, the decayed tooth would be removed, measurements would be made for the permanent crown, and a temporary crown would be placed. In the second visit, which would be two weeks later, the permanent crown would be cemented in place. This would still be four or five hours total but spread between two visits.

The Fallon representative referred to a nutrition progress note dated April 2, 2021, which stated that the appellant has a good complement of teeth with exception of 5 and 9, which are in poor shape due to decay and damage. (Ex. 5B, p. 13). The note further states that the appellant tends to prefer eating soft food and avoids using the two decayed teeth but otherwise there was no loss of function. (Id.). The Fallon representative stated that the note says that the appellant has not undergone unintentional weight loss. (Id.).

The Fallon representative referred back to the definition of medical necessity definition in 130 CMR 450.204, which states that a service “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...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.” Providing a crown for tooth 9 meets this definition because tooth 9 is causing pain in its current state and placing a crown will protect the appellant’s dignity since it is a visible tooth. Providing a crown for tooth 5 is not medically necessary, however. There is a medical service that is comparable in effect and less costly, which is extraction of the tooth. Tooth 5 is a posterior tooth and it is not visible.

The appellant's representative testified that the appellant’s dentals provider has informed her that removal of tooth 5 will impact the appellant’s bite. The appellant's representative stated that the dental provider informed her that the appellant will not be able to chew on that side. The appellant's representative also stated that the appellant’s does not show a preference for soft foods. She eats all kinds of foods. Fallon’s second packet includes a page of notes from the appellant’s dental provider, who wrote the following on July 19, 2021:

The second packet from Fallon contains a page of notes from appellant’s dental provider. (Ex. 6, p. 5). The appellant’s dental provider states the following in a note dated July 19, 2021:

...The question has been asked about the necessity of retaining tooth #5. Let it be noted that #5, the patients [sic] right premolar, functions as an adjunct for mastication in combination with the patient’s canines. Loss of this tooth leads to improper mastication, shifting of the occlusion and possible muscular distress leading to TMJ problems. Is advisable to retain this tooth as any other replacement for its loss can be extremely costly. (Ex. 6, p. 5).

The appellant's representative stated that she wanted to resolve the issue concerning tooth number 5 and has held off on bring the appellant to the dentist. The dentist suggested that both crowns be placed at the same time and the appellant's representative did not want to overly stress the appellant by making multiple trips to the dentist. The IDT representative stated that the appellant could have the crown place for tooth 9, since placement of one crown was not dependent on placement of the other. The Fallon representative stated the procedure would not be painful and chided the appellant's representative for not bringing the appellant to have the approved crown installed. The appellant's representative stated that she was following what the dentist advised and did not know that the appeal would take as long as it did to schedule.

The appellant's representative asked whether the Board had received documents she mailed overnight. When she learned that the Board had not received these documents, she requested that the record remain open for seven days. At the end of seven days, the documents had not been received at which time the record closed.

## Findings of Fact

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

1. The appellant is an individual over the age of 65. (Testimony the appellant's representative; Testimony of Fallon representative).
2. The appellant has been a participant in PACE since 2019. (Testimony of Fallon Representative; Ex. 5B, p. 14).
3. The appellant has been diagnosed with peripheral vascular disease, dementia of Alzheimer's type, hypo vitamin D, cataracts in both eyes, hyperactive bladder, and age-related osteoporosis. (Ex. 5B, pp. 15-16).
4. On April 1, 2021, the appellant's dental provider submitted an ADA form requesting restoration of the crowns for the teeth numbered 9 and 5 under procedure code D2750. (Ex. 6, pp. 4-5).
5. The procedure would place a crown cap over each tooth to restore their normal shape, size, and function. (Testimony of Fallon Representative).
6. Using 130 CMR 450.204, the ICT at the appellant's PACE program determined that the procedure was medically necessary for tooth number 9 and approved the request regarding this tooth. (Ex. 5B, pp. 7, 24).
7. Tooth 9 is the upper left anterior incisor, which means it is in the front of the appellant's mouth, is visible when speaking and is important for breaking off and biting food. (Testimony of Fallon representative).
8. The ICT determined that the procedure was not medically necessary for tooth 5 and denied the procedure for that tooth. (Ex. 5B, pp. 7, 24).
9. Tooth 5 is the first right upper pre-molar and is in the posterior of the mouth, behind the anterior teeth and is for pulverization of food. (Testimony of Fallon representative).
10. Tooth 5 is not visible, extraction of the tooth (rather than restoration) would not significantly affect the appellant's ability to chew food. (Ex. 5B p. 24).
11. The appellant's dental provider states the following in a note dated July 19, 2021:

...The question has been asked about the necessity of retaining tooth #5. Let it be noted that #5, the patients [sic] right premolar, functions as an adjunct for mastication in combination with the patient's canines. Loss of this tooth leads to improper mastication, shifting of the occlusion and possible muscular distress leading to TMJ problems. Is advisable to retain this tooth as any other replacement for its loss can be extremely costly. (Ex. 6, p. 5).

## Analysis and Conclusions of Law

The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. (130 CMR 519.007(C)(1)). Under PACE a complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals. (130 CMR 519.007(C)(1)(a)). MassHealth administers the program in Massachusetts as the Elder Service Plan (ESP). ((130 CMR 519.007(C)(1)(b)). Persons enrolled in PACE have services delivered through managed care in day-health centers; at home; and in specialty or inpatient settings, if needed. (130 CMR 519.007(C)(1)(c)).

If a MassHealth member chooses to enroll in a PACE program, the following conditions apply: (a) Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost-sharing do not apply; and (b) the member, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization. (42 CFR 460.94). The PACE benefit package for all participants, regardless of the source of payment, must include the following: (a) all Medicare-covered items and services; (b) all Medicaid-covered items and services, as specified in the State's approved Medicaid plan; and (c) other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status. (42 CFR 460.92). Any service that is not authorized by the interdisciplinary team is an excluded service, even if it is a required service, unless it is an emergency service. (42 CFR 460.96).

To make its determination, the PACE ICT turned to the MassHealth's regulations governing Dental Services, which require prior authorization and establishment of medical necessity of the service requested. (See 130 CMR 420.410). Pursuant to 130 CMR 450.204(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.

Based on the above-cited medical necessity regulation, a preponderance of the evidence supports the medical necessity of providing a crown for tooth 5 as well as tooth 9. While Fallon repeatedly cited the medical necessity regulation throughout their presentation, Fallon's decision making in the record did not seem to reflect the language or spirit of the regulation at all. Instead, Fallon's determination of whether to approve a crown turned only on whether loss of the tooth (rather than placement of a crown) would affect the appellant's dignity and whether it would be cosmetically attractive. Thus, Fallon approved the crown for tooth 9 (a frontal tooth) but not tooth 5 (a tooth more to the rear). Citing to a

statement from a Fallon nutritionist, Fallon determined that loss of tooth 5 would not affect the function of the appellant's bite. This is plainly contradicted by the statement of the appellant's dentist which was that the loss of tooth 5 would lead to "improper mastication, shifting of the occlusion and possible muscular distress leading to TMJ problems" and that it was "advisable to retain this tooth as any other replacement for its loss [could] be extremely costly." This statement plainly indicates that the crowning of tooth 5 was medically necessary and no evidence in the record of similar weight was presented which contradicted this statement.

For the above stated reasons, the appeal is APPROVED.

## **Order for Fallon**

Approved placement of the crowns for the teeth numbered 9 and 5 under procedure code D2750.

## **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 your Fallon Enrollment Center. If you experience problems 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608