

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2178533
<b>Decision Date:</b>	02/03/2022	<b>Hearing Date:</b>	12/17/2021
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**  
Pro se



**Appearance for MassHealth:**  
Dr. Sheldon Sullaway



*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>	Prior Authorization – Dental
<b>Decision Date:</b>	02/03/2022	<b>Hearing Date:</b>	12/17/2021
<b>MassHealth’s Rep.:</b>	Dr. Sheldon Sullaway	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Chelsea – Remote	<b>Aid Pending:</b>	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 October 28, 2021, MassHealth denied the appellant’s prior authorization request for complete upper and lower dentures. Exhibit 2; 130 CMR 420.428(D). The appellant filed this appeal in a timely manner on November 10, 2021. Exhibit 2; 130 CMR 610.015(B). Limitation of assistance is valid grounds for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied the appellant’s prior authorization request for dentures because the agency had paid for dentures for the appellant within the past seven years.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.428(D), in determining that the appellant was ineligible for replacement dentures at this time because the agency had replaced her dentures within the past 84 months.

## Summary of Evidence

Dr. Sullaway is a licensed dentist who works for DentaQuest, the dental benefits administrator for MassHealth. He testified that the appellant’s provider submitted a prior authorization request for complete upper and lower dentures on or around October 28, 2021. This request was denied because

MassHealth had paid another dentist for a complete upper denture for the appellant in 2018. Dr. Sullaway agreed that teeth are generally medically necessary for eating food and getting proper nutrition but testified that the coverage limitation only allows the agency to pay for dentures once every seven years. He testified that there are exceptions to this general rule, but that there was no narrative from the prescribing dentist explaining why the dentures would need to be replaced early.

The appellant's representative explained that the appellant was homeless and has a substance abuse disorder. He was living on the street and actively using drugs when his teeth were lost. She testified that the appellant has been participating in a residential treatment program and has been doing well for seven months. He is trying to get his health back so that he can move forward to finding a job and a degree of independence. One of the exceptions to the seven-year time limit is when the dentures are lost due to extraordinary circumstances "such as a fire in the home." The appellant responded that this is not exactly a scenario he could cite living on the street. However, he testified he lost his dentures when he was beat up on the street and his assailants stole his jacket. When saw several men coming toward him, he took his dentures out and put them in his coat pocket so they would not get broken if he was hit in the face.

It was pointed out that another aspect of the replacement requirement is the member's obligation to be able to cooperate with the creation of the dentures and then a responsibility for maintaining the dentures. The appellant's representative explained that the residential program in which the member is enrolled will not evict him. He is welcome to remain at the housing facility even after his treatment has finished. Otherwise, it will help him transition into stable housing where he would be in a better position to maintain his dental health than living on the streets.

## **Findings of Fact**

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

1. On or around October 28, 2021, the appellant's provider submitted a prior authorization request seeking complete upper and lower dentures. This submission included all necessary diagnostic imagery, but it did not include a medical necessity narrative. Exhibit 3.
2. MassHealth denied this request because the appellant had received complete upper and lower dentures in 2018, which is less than seven years. Exhibit 3; testimony by Dr. Sullaway.
3. The appellant lost his dentures when he was living on the streets. He was beat up and his coat was stolen. His dentures were in his coat pocket. Testimony by the appellant.
4. The appellant is living in a residential recovery program. He has been doing well, and his housing situation is stable and is not anticipated to change. Testimony by appellant's rep.

## Analysis and Conclusions of Law

MassHealth pays for dental services that are medically necessary. 130 CMR 420.421(A). Medical necessity for dental and orthodontic treatment must be shown in accordance with the regulations governing dental treatment, 130 CMR 420.000, and the MassHealth Dental Manual.<sup>1</sup> 130 CMR 450.204. MassHealth's dental contractor also publishes additional guidance in the Dental Program Office Reference Manual ("ORM").<sup>2</sup> The ORM sets out requirements for how prior authorizations must be submitting, including radiographs and narratives. See ORM, § 3.2; see also § 15.6 (documentation needed for partial dentures includes "Appropriate pre-operative diagnostic quality radiographs are required"). "Additional narrative information is recommended when there may be a special situation." ORM, § 15.00.

With regard to dentures, the agency has defined when they are medically necessary as follows:

420.428: Service Descriptions and Limitations: Prosthodontic Services (Removable)

(A) General Conditions. The MassHealth agency pays for dentures services **once per seven calendar years per member**, subject to the age limitations specified in 130 CMR 420.428(B). MassHealth payment includes all services associated with the fabrication and delivery process, including all adjustments necessary in the six months following insertion. The member is responsible for all denture care and maintenance following insertion. **The MassHealth agency does not pay for complete dentures when the member's medical record indicates material limitations to the member's ability to cooperate during the fabrication of the denture or to accept or function with the denture, or indications that the member does not intend to utilize the denture.**

...

(F) Replacement of Dentures. The MassHealth agency **pays for the necessary replacement of dentures**. The member is responsible for denture care and maintenance. The member, or persons responsible for the member's custodial care, must take all possible steps to prevent the loss of the member's dentures. The provider must inform the member of the MassHealth agency's policy on replacing dentures and the member's responsibility for denture care. **The MassHealth agency does not pay for the replacement of dentures if the member's denture history reveals any of the following:**

- (1) repair or reline will make the existing denture usable;

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<sup>1</sup> The Dental Manual is available on MassHealth's website, in the MassHealth Provider Library. Available at <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last visited August 2, 2021).

<sup>2</sup> The Office Reference Manual is available at <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last visited August 2, 2021).

(2) any of the dentures made previously have been unsatisfactory due to physiological causes that cannot be remedied;

(3) a clinical evaluation suggests that the member will not adapt satisfactorily to the new denture;

(4) no medical or surgical condition in the member necessitates a change in the denture or a requirement for a new denture;

**(5) the existing denture is less than seven years old and no other condition in this list applies;**

(6) the denture has been relined within the previous two years, unless the existing denture is at least seven years old;

(7) there has been marked physiological change in the member's oral cavity, any further reline has a poor prognosis for success; or

(8) the loss of the denture was not due to extraordinary circumstances such as a fire in the home.

130 CMR 420.028 (emphasis added).

Breaking this regulation down, subsection (A) clearly limits payment for dentures to once every seven years. However, subsection (F) also clearly allows replacements that "medically necessary," and the remaining language indicates that in some circumstances replacements will be allowed within seven years.<sup>3</sup> It is particularly difficult to comprehend the linguistic meaning of paragraph (5). Paragraph (5) requires that one of the other conditions must **not** be met to replace dentures before seven years. The regulation is clearer if paragraph (5) is read into the preamble, the two negatives in the preamble would then allow for replacement if none of the remaining conditions were met.

The question, therefore, is whether the loss of the appellant's dentures were due to extraordinary circumstances. I find that they were, and this appeal is APPROVED. The appellant lost his dentures when he was assaulted and robbed while he was homeless and living on the street. These are tragic circumstances, the specifics of which were out of the appellant's control. I also note that, while this story was not given to DentaQuest in a provider's medical necessity narrative, that does not prevent it from being relied upon at hearing. The ORM indicates that "narrative information is recommended when there may be a special situation," but it does not identify a medical necessity narrative as required documentation. See §§ 15.00, 15.6. Therefore, the absence of the narrative itself is insufficient basis to deny the appeal, particularly where the information that would have been included was information given to the provider by the member themselves.

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<sup>3</sup> Some additional guidance exists in section 15.6 of the ORM. Under the "Criteria for Replacement Prosthodontics," it states: "If there is a pre-existing prosthesis, it must be at least seven years old and unserviceable to qualify for replacement"; but it also states, "Replacement of lost, stolen, or broken dentures less than seven years of age **usually will not** meet criteria for pre-authorization of a new denture."

## **Order for MassHealth**

Approve the appellant's requested treatment.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth 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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: DentaQuest 1, MA