

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2200007
<b>Decision Date:</b>	5/24/2022	<b>Hearing Date:</b>	04/22/2022
<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 – Dentures
<b>Decision Date:</b>	5/24/2022	<b>Hearing Date:</b>	04/22/2022
<b>MassHealth’s Rep.:</b>	Dr. Sheldon Sullaway	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	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 decision dated October 29, 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 December 30, 2021.<sup>1</sup> (Exhibit 3; 130 CMR 610.015(B); EOM 20-09; EOM 21-17.) 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 his dentures within the past 84 months.

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<sup>1</sup> This matter was originally scheduled for hearing on February 4, 2022. The appellant did not answer when called for the hearing, and it was dismissed. The appellant’s request to reschedule the hearing, received March 17, 2022, was granted and this hearing was scheduled. (Exhibit 4.)

## **Summary of Evidence**

Dr. Sullaway is a licensed dentist who works for DentaQuest, a company contracted by MassHealth to administer dental benefits. He testified that the appellant's October 29, 2021 request for dentures was denied because MassHealth had paid another dentist for complete upper and lower dentures within the past seven years, in October 2017. He testified that MassHealth only pays for dentures once every 84 months (seven years). There are exceptions, but the prior authorization request did not include a narrative that explained why the dentures needed to be replaced within seven years.

The appellant testified that he had non-Hodgkin's lymphoma in his throat and a mass was removed. Due to this he has a significant difficulty with swallowing food, and he needs his dentures to fully chew food to be able to swallow. He even has difficulty swallowing with the dentures; his doctor told him that having dentures is medically necessary for him to eat food and maintain his weight. Dr. Sullaway agreed that proper dentition is medically necessary for appropriate nutrition, but he argued that "medical necessity" is only an exception to the program limitations for individuals under 21.

The appellant testified that he lost his dentures in a hospital following a psychiatric emergency arising from depression and anxiety. He recalls having his dentures in the hospital, and he believes he took them out and put them on his tray after he completed a meal. He fell asleep and someone came into his room and cleared his tray. He let the hospital know what happened, but they did not do anything. He testified that he called back after he was discharged to ask that they put in writing that they lost his dentures, but they would not accept responsibility.

## **Findings of Fact**

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

1. On or around October 29, 2021, a prior authorization request was submitted on the appellant's behalf, seeking coverage for complete upper and lower dentures. (Exhibit 5.)
2. MassHealth denied this request on the same day because it had paid for dentures in October 2017, within the past seven years. (Exhibit 2; Exhibit 5; testimony by Dr. Sullaway.)
3. The appellant lost his dentures while admitted to a hospital during a psychiatric emergency. He left them on a food tray in a hospital and fell asleep. When he awoke, the tray was gone. (Testimony by the appellant.)

## **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>2</sup> (130 CMR 450.204.) MassHealth’s dental contractor also publishes additional guidance in the Dental Program Office Reference Manual (“ORM”).<sup>3</sup>

Regarding dentures, the agency has ruled that 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;
- (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

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<sup>2</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 May 13, 2022).)

<sup>3</sup> The Office Reference Manual is available at <https://masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last visited May 16, 2022).

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) allows replacements that are "necessary," and the remaining language indicates that replacements will be allowed within seven years in some circumstances.<sup>4</sup> 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." (Emphasis added.) Given the available guidance, I am persuaded that MassHealth allows the replacement of lost, stolen, or broken dentures within fewer than seven years if there are "extraordinary circumstances such as a fire in the home."

The question, therefore, is whether the appellant's dentures were lost due to extraordinary circumstances. The example of a house fire implies emergency circumstance in which there is no chance to ensure the safety of the member's dentures. Here, the appellant was having an acute psychiatric crisis, resulting in his hospitalization. The fact that the appellant's dentures were lost through an accident does not completely override the fact that the accident occurred within the context of an acute crisis. Therefore, this appeal is APPROVED.

## **Order for MassHealth**

Authorize the appellant's prior authorization request for upper and lower dentures.

## **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

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<sup>4</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. It would be clearer if the triple negative structure of this regulation were rephrased.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: DentaQuest 1, MA