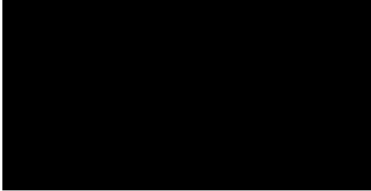


Office of Medicaid BOARD OF HEARINGS

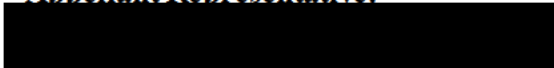
Appellant Name and Address:



Appeal Decision: Approved
Decision Date: 5/19/22
Hearing Officer: Paul C. Moore

Appeal Number: 2201264
Hearing Date: 05/09/2022

Appellant Representative:



MassHealth Representative:

Carl Perlmutter, D.M.D., DentaQuest (by 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

Appeal Decision:	Approved	Issue:	Prior Authorization
Decision Date:	5/19/22	Hearing Date:	05/09/2022
MassHealth Rep.:	Dr. Perlmutter	Appellant Rep.:	Mother
Hearing Location:	Board of Hearings (remote)		

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 December 15, 2021, MassHealth denied the appellant's prior authorization (PA) request for replacement of a lost or broken retainer on both the upper and lower arches (130 CMR 420.431; Exh. 1). The appellant requested this appeal in a timely manner on February 17, 2022 (Exh. 2).¹ A PA denial is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for replacement of a lost or broken upper and lower retainer.

¹ MassHealth Eligibility Operations Memo 20-09, "MassHealth Response to Coronavirus Disease 2019 (COVID-19)," issued April 7, 2020, states in relevant part: "In response to the current Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth is implementing the following protocols to support the public health efforts to expedite medical care and maintain care for both new MassHealth applicants and existing members. Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends: All appeal hearings will be telephonic; and **Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.**"

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that the appellant's PA request for replacement of a lost or broken upper retainer and lower retainer was not a covered service.

Summary of Evidence

The appellant is a [REDACTED] MassHealth member who was represented at hearing by her mother, who testified telephonically. The MassHealth representative, an orthodontist consultant with DentaQuest (the contracted agent of MassHealth that makes the dental prior authorization determinations), testified by telephone that the appellant's orthodontist, Dr. Joseph Cardarelli, submitted a PA request to MassHealth on December 14, 2021 on behalf of the appellant for replacement of a lost or broken upper retainer and lower retainer (dental codes D8703 and D8704, respectively) (Exh. 3).

On December 15, 2021, MassHealth sent a notice to the appellant's mother denying the appellant's request, because "retainers are only allowed within the two-year time frame after the removal of braces" (Exh. 1).

The appellant's mother testified by telephone that the appellant previously received comprehensive orthodontic treatment, the cost of which was covered by MassHealth. She testified that the appellant's orthodontist removed the appellant's braces, or "debanded" her, in 2019. The appellant subsequently received retainers, and eventually cracked both her upper and lower retainers because she grinds her teeth, according to her mother. MassHealth paid for a mouthguard for the appellant to address her teeth-grinding (Testimony).

The appellant's mother testified that the appellant's orthodontist told her that she needs replacement upper and lower retainers in order to prevent her teeth from shifting back to how they appeared prior to her undergoing comprehensive orthodontic treatment (Testimony).

The appellant's mother testified that she was informed that the appellant's replacement retainers would cost approximately \$600.00 out of pocket (Testimony).

Findings of Fact

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

1. The appellant is a [REDACTED] MassHealth member (Exh. 3).
2. The appellant was previously approved by MassHealth for comprehensive orthodontic treatment (Testimony).

3. The appellant's orthodontist, Dr. Cardarelli, submitted a PA request to MassHealth on December 14, 2021 on behalf of the appellant for replacement of a lost or broken upper retainer and lower retainer (dental codes D8703 and D8704, respectively) (Exh. 3).
4. On December 15, 2021, MassHealth sent a notice to the appellant's mother denying the appellant's request, because "retainers are only allowed within the two-year time frame after the removal of braces" (Exh. 1).
5. The appellant filed a timely appeal of this denial (Exh. 2).
6. The appellant cracked her upper and lower retainers due to grinding her teeth (Testimony).
7. The appellant was debanded in 2019 (Testimony).

Analysis and Conclusions of Law

130 CMR 420.431 contains the relevant MassHealth regulation addressing how a MassHealth member may receive approval on a prior authorization request for comprehensive orthodontic treatment. The regulation reads as follows:

Service Descriptions and Limitations: Orthodontic Services

(A) General Conditions. The MassHealth agency pays for orthodontic treatment, subject to prior authorization, service descriptions and limitations as described in 130 CMR 420.431. The provider must seek prior authorization for orthodontic treatment and begin initial placement and insertion of orthodontic appliances and partial banding or full banding and brackets prior to the member's 21st birthday.

(B) Definitions.

(1) Pre-orthodontic Treatment Examination. Includes the periodic observation of the member's dentition at intervals established by the orthodontist to determine when orthodontic treatment should begin.

(2) Interceptive Orthodontic Treatment. Includes treatment of the primary and transitional dentition to prevent or minimize the development of a handicapping malocclusion and therefore, minimize or preclude the need for comprehensive orthodontic treatment.

(3) Comprehensive Orthodontic Treatment. Includes a coordinated diagnosis and treatment leading to the improvement of a member's craniofacial dysfunction and/or dentofacial deformity which may include anatomical and/or functional relationship. Treatment may utilize fixed and/or removable orthodontic appliances and may also include functional and/or orthopedic appliances. Comprehensive orthodontics may incorporate treatment phases, including adjunctive procedures to facilitate care focusing on specific objectives at various stages of dentofacial development.

(4) Orthodontic Treatment Visits. Periodic visits which may include, but are not limited to, updating wiring, tightening ligatures or otherwise evaluating and updating care while undergoing comprehensive orthodontic treatment.

(C) Service Limitations and Requirements.

(1) Pre-orthodontic Treatment Examination. The MassHealth agency pays for a pre-orthodontic treatment examination for members younger than 21 years old, once per six months per member, and only for the purpose of determining whether orthodontic treatment is medically necessary, and can be initiated before the member's 21st birthday. The MassHealth agency pays for a pre-orthodontic treatment examination as a separate procedure (see 130 CMR 420.413). The MassHealth agency does not pay for a pre-orthodontic treatment examination as a separate procedure in conjunction with pre-authorized ongoing or planned orthodontic treatment.

(2) Interceptive Orthodontics.

(a) The MassHealth agency pays for interceptive orthodontic treatment once per member per lifetime. The MassHealth agency determines whether the treatment will prevent or minimize a handicapping malocclusion based on the clinical standards described in Appendix F of the Dental Manual.

(b) The MassHealth agency limits coverage of interceptive orthodontic treatment to primary and transitional dentition with at least one of the following conditions: constricted palate, deep impinging overbite, Class III malocclusion, including skeletal Class III cases as defined in Appendix F of the Dental Manual when a protraction facemask/reverse pull headgear is necessary at a young age, craniofacial anomalies, anterior cross bite, or dentition exhibiting results of harmful habits or traumatic interferences between erupting teeth.

(c) When initiated during the early stages of a developing problem, interceptive orthodontics may reduce the severity of the malformation and mitigate its causes. Complicating factors such as skeletal disharmonies, overall space deficiency, or other conditions may require subsequent comprehensive orthodontic treatment. Prior authorization for comprehensive orthodontic treatment may be sought for Class III malocclusions as defined in Appendix F of the Dental Manual requiring facemask treatment at the same time that authorization for interceptive orthodontic treatment is sought. For members with craniofacial anomalies, prior authorization may separately be sought for the cost of appliances, including installation.

(3) Comprehensive Orthodontics. The MassHealth agency pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime for a member younger than 21 years old and only when the member has a handicapping malocclusion. The MassHealth agency determines whether a malocclusion is handicapping based on clinical standards for medical necessity as described in Appendix D of the Dental Manual. Upon the completion of orthodontic treatment, the provider must take post treatment photographic prints and maintain them in the member's dental record. The MassHealth agency pays for the office visit, radiographs and a record fee of the pre-orthodontic treatment examination (alternative billing to a contract fee) when the MassHealth agency denies a request for prior authorization for comprehensive orthodontic treatment or when the member terminates the planned treatment. The payment for a pre-orthodontic treatment consultation as a separate procedure does not include models or photographic prints. The MassHealth agency may request additional consultation for any orthodontic procedure. Payment for comprehensive orthodontic treatment is inclusive of initial placement, and insertion of the orthodontic fixed and removable appliances (for example: rapid palatal expansion (RPE) or head gear), and records. Comprehensive orthodontic treatment may occur in phases, with the anticipation that full banding must occur during the treatment period. The payment for comprehensive orthodontic treatment covers a maximum period of three calendar years. The MassHealth agency pays for orthodontic treatment as long as the member

remains eligible for MassHealth, if initial placement and insertion of fixed or removable orthodontic appliances begins before the member reaches 21 years of age. Comprehensive orthodontic care should commence when the first premolars and first permanent molars have erupted. It should only include the transitional dentition in cases with craniofacial anomalies such as cleft lip or cleft palate. Comprehensive treatment may commence with second deciduous molars present. Subject to prior authorization, the MassHealth agency will pay for more than one comprehensive orthodontic treatment for members with cleft lip, cleft palate, cleft lip and palate, and other craniofacial anomalies to the extent treatment cannot be completed within three years.

(4) Orthodontic Treatment Visits. The MassHealth agency pays for orthodontic treatment visits on a quarterly (90-day) basis for ongoing orthodontic maintenance and treatment beginning after the initial placement, and insertion of the orthodontic fixed and removable appliances. If a member becomes inactive for any period of time, prior authorization is not required to resume orthodontic treatment visits and subsequent billing, unless the prior authorization time limit has expired. The provider must document the number and dates of orthodontic treatment visits in the member's orthodontic record.

(5) Orthodontic Case Completion. The MassHealth agency pays for orthodontic case completion for comprehensive orthodontic treatment which includes the removal of appliances, construction and placement of retainers and follow-up visits. The MassHealth agency pays for a maximum of five visits for members whose orthodontic treatment begins before their 21st birthday, consistent with 130 CMR 420.431(A). **The MassHealth agency pays for the replacement of lost or broken retainers with prior authorization.**

(6) Orthodontic Transfer Cases. The MassHealth agency pays for members who transfer from one orthodontic provider to another for orthodontic services subject to prior authorization to determine the number of treatment visits remaining. Payment for transfer cases is limited to the number of treatment visits approved. Providers must submit requests using the form specified by MassHealth.

(7) Orthodontic Terminations. The MassHealth agency requires providers to make all efforts to complete the active phase of treatment before requesting payment for removal of brackets and bands of a noncompliant member. If the provider determines that continued orthodontic treatment is not indicated because of lack of member's cooperation and has obtained the member's consent, the provider must submit a written treatment narrative on office letterhead with supporting documentation, including the case prior authorization number.

(8) Radiographs. Payment for Cephalometric and radiographs used in conjunction with orthodontic diagnosis is included in the payment for comprehensive orthodontic treatment (see 130 CMR 420.423(D)). The MassHealth agency pays for radiographs as a separate procedure for orthodontic diagnostic purposes only for members younger than 21 years old if requested by the MassHealth agency.

(9) Oral/Facial Photographic Images. The MassHealth agency pays for digital or photographic prints, not slides, only to support prior-authorization requests for comprehensive orthodontic treatment. Payment for digital or photographic prints is included in the payment for comprehensive orthodontic treatment or orthognathic treatment. The MassHealth agency does not pay for digital or photographic prints as a separate procedure (see 130 CMR 420.413). Payment for orthodontic treatment includes payment for services provided as part of the pre-orthodontic treatment examination, unless the MassHealth agency denies the prior authorization

request for interceptive or comprehensive orthodontic treatment. The MassHealth agency pays for the pre-orthodontic treatment examination if prior authorization is denied for interceptive or comprehensive orthodontic treatment.

(Emphasis added)

Here, the evidence reflects that the appellant previously underwent comprehensive orthodontic treatment, and after removal of her braces, she received retainers. Subsequently, she cracked both retainers.

She now seeks coverage for replacement of both upper and lower retainers.

The regulation cited above, 130 CMR 420.431(C)(5), states that retainers may be replaced with prior authorization, but is silent as to the timing of such a PA request.

Turning to subregulatory guidance located in the MassHealth Dental Manual (“Manual”), effective October 15, 2021, with regard to dental codes D8703 and D8704, the Manual reflects that these codes are covered with PA for members under age 21, and in addition, states the following:

130 CMR 420.431(C)(5). † Payable only to a dental provider who is a specialist in orthodontics in accordance with 130 CMR 420.405(A)(6)

(MassHealth Transmittal Letter DEN-111, October 15, 2021, page 6-22)

There was nothing in the regulation in effect in December, 2021, nor in the MassHealth Dental Manual at that time, reflecting a limitation on the timing of a request for replacement of broken retainers.

Further, I conclude that replacement of the appellant’s upper and lower retainers is medically necessary under 130 CMR 450.204(A), which states:

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: *Potential Sources of Health Care*, or

503.007: Utilization of Potential Benefits, or 517.007: Potential Sources of Health Care.

MassHealth's decision to deny coverage of replacement of the appellant's upper and lower retainers was incorrect.

This appeal is APPROVED.

Order for MassHealth

Rescind denial notice of December 15, 2021. Issue a written notice of approval for codes D8703 and D8704 to the appellant and to her treating orthodontist.

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 Acting Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: DentaQuest appeals representative