Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved in Part; Dismissed in Part; and Denied in Part.	**Appeal Number:**	2201575
Decision Date:	6/22/2023	**Hearing Date:**	03/30/2023
Hearing Officer:	Alexis Demirjian	**Record Open to:**	05/22/2023

Appearance for Appellant:

[redacted]

[redacted]

Appearance for MassHealth:
Cheryl A. Ellis, MD, UHC SCO Medical Director

Trevor Smith, DMD, Associate Medical Director for UHC Specialty Benefits,

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; Dismissed in Part; and Denied in Part.	**Issue:**	Denial of Prior Authorization for Dental Work
Decision Date:	6/22/2023	**Hearing Date:**	03/30/2023
MassHealth's Rep.:	Dr. Ellis Dr. Smith	**Appellant's Rep.:**	[redacted]
Hearing Location:	Telephonic	**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 July 28, 2022, United Healthcare Community Plan, Senior Care Options, denied the Appellant's Level 1 appeal of a denial for prior authorization for approval of dental codes D4266 (Guided Tissue Generation-Resorbable Barrier for Tooth #9, and D4263 (Bone Replacement Graft-First Site in Quadrant, Tooth #9. (Exhibit 3). The Appellant filed this Level 2 appeal in a timely manner on November 24, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medically necessity, appropriateness, setting, or effectiveness of a covered benefits by an MCO are valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032 (B) (2)).

Action Taken by United Healthcare, Senior Care Option

UHC denied the appellant's request for prior authorization for dental codes D4266 (Guided Tissue Generation – Resorbable Barrier for Tooth #9 and D4263 (Bone Replacement Graft-First Site in Quadrant, Tooth #9).

Issues on Appeal

Whether UHC was correct in denying the prior authorization of dental codes D4266 (Guided Tissue Generation – Resorbable Barrier for Tooth #9) and D42623 (Bone Replacement Graft-First Site in Quadrant, Tooth #9).

Whether UHC should be ordered to cover the costs of the Appellant's out-of-pocket costs for dental procedure D0366 (3-Dimensional X-rays) and D7953 (Bone Graft Treatment).

Procedural History

The Appellant is enrolled in United Healthcare, Senior Care Options, hereinafter referred to as "UHC." UHC is a MassHealth Managed Care Provider. MassHealth members who are 65 years of age or older may enroll in a Senior Care Organization ("SCO") pursuant to 130 CMR 508.008 (A).

On January 31, 2022, UHC denied a prior request authorization for requested service dental codes D4266 and D4263 for Tooth #9.

The reason listed in the January 31, 2022 denial of D4266 is:

> **This request is not medically necessary. This service is denied. Bone surgery to treat gum disease can be covered if x-rays sent show a bone defect. Records sent do not show bone defects. Skygen USA criteria used for review.**

The reason listed in the January 31, 2022 denial of D4253 is:

> **This request is not medically necessary. This service is denied. Bone surgery to treat gum disease can be covered if x-rays sent show a bone defect. Records sent do not show bone defects. Skygen USA criteria used for review.**

See Exhibit 4, p. 302

The rationale for the January 31, 2022 notice is solely based on the lack of evidence of a bone defect on x-rays. There is no reference to a lack of perio charting and/or a medical narrative as a reason for denial of dental code D4266 or D4253.

On or about July 19, 2022, the Appellant filed an internal appeal with UHC contesting the January 31, 2022 denial. This internal appeal is known as a Level 1 appeal.

On July 28, 2022, UHC issued a denial of the Level 1 appeal.

The Level 1 appeal decision simply states:

Our plan will not cover Guided Tissue Generation-Resorbable Barrier, Per Site, Tooth #9 (D4266), and Bone Replacement Graft-First Site in Quadrant, Tooth #9 (D4263)

See Exhibit 4, p. 291

The denial again asserts that the decision was made because the records do not show bone defects. The denial does not include who conducted the appeal review or how the appeal review was conducted.

On November 24, 2022, the Appellant filed a request for a Level 2 appeal before the Board of Hearings. The Board of Hearings scheduled the Level 2 appeal to take place on January 5, 2023. After several requests for postponements by the Appellant and through his counsel, a hearing took place on March 30, 2023.

See Exhibits 2 and Exhibits 3

Prior to the originally scheduled hearing, on or about December 16, 2022, UHC submitted a packet of documentation to the Board of Hearings, the packet was incorporated into the hearing record as Exhibit 4. The packet consisted of the following:

1) Letter from Dr. Ellis, Medical Director, UnitedHealthcare, Senior Care Options, dated December 16, 2022;
2) UHC's MA Dental Provider Manual;
3) UHC Evidence of coverage for UnitedHealthcare SCO;
4) Denial of Appellant's level one appeal to UHC, dated July 28, 2022;
5) A copy of the Appellant's BOH Fair Hearing Request Form, dated March 1, 2022;
6) A Notice of Approval Medical Coverage, dated January 28, 2022;
7) A Notice of Adverse Action, dated January 31, 2022;
8) Copy of Appellant's Electronic Health Record, provider note dated October 20, 2021
9) X-Rays, created September 27, 2021;
10) X-Rays, created October 22, 2021.

The cover letter from Dr. Ellis, stated the reason for the denial of the Level 1 appeal was:

UnitedHealthcare Senior Care Options (UHC SCO) denied the Guided Tissue Generation-Resorbable Barrier, Per Site, Tooth #9 (D4266), and Bone Replacement Graft-First Site In Quadrant, Tooth #9 (D4263) because this request is not medically necessary. Bone surgery to treat gum disease can be covered if x-rays sent show a bone defect. Records sent do not show bone defects. Skygen USA criteria used for review. The provider has not submitted any narrative documentation to support use of code or indicated why

code is medically necessary. See Exhibit 4, p. 1.[1]

The materials submitted by UHC make consistent references to "Skygen USA criteria." Skygen USA is a third-party vendor that reviews initial prior authorization requests for UHC. Testimony from Dr. Smith indicated that a provider uploads their prior authorization request the Skygen portal and Skygen USA then determines whether the prior authorization request fits the required criteria and is medically necessary. UHC did not supplement their original filing prior to the hearing on March 30, 2023.

On March 29, 2023, the day before the scheduled hearing, counsel for the Appellant submitted a packet of information to the Board of Hearings. This packet was incorporated into the record as Exhibit 5, and consisted of the following:

1) UHC Denial of Service, dated 1/31/2022;
2) UHC Denial of Level 1 Appeal, dated 7/28/2022;
3) Medical Letter from Dr. Chen (Appellant's Provider), dated November 10, 2022;
4) Affidavit of Mr. Pitruzzello;
5) 130 CMR 420.430;
6) Screenshot of X-rays, taken November 1, 2022.

The Appellant's submission includes a medical narrative and X-rays taken well after the initial prior authorization was submitted to UHC for review. Nonetheless, these documents were incorporated into the record, were reviewed, and considered by the hearing officer.

The Appellant's counsel did not serve a copy of their submission to UHC representatives prior to the hearing. To facilitate a review and allow for additional information to be submitted by the Appellant, a record open period was allowed. Immediately following the hearing, the hearing officer exchanged the documents on behalf of Appellant's counsel post-hearing with an instruction from the hearing officer for UHC to review and respond to Appellant's March 29, 2022 submission by May 8, 2022. Appellant's counsel subsequently asked for an extension of the record open period, which was allowed. The Appellant submitted a final brief and UHC submitted a response to the Appellant's submission. The record closed in this matter on May 22, 2023.

Summary of Evidence

[1] The Appellant's counsel noted that this cover letter raised a new reason for denial at hearing and that at no point prior to the hearing had the Appellant or Appellant's counsel been aware that UHC was relying on a purported absence of a narrative from the Appellant's provider. As noted in this decision, UHC was in possession of a provider's narrative during the appeal process and submitted a copy of a medical note/narrative in their initial filing with the Board of Hearings on December 16, 2022.

Denial of Dental Codes Under Appeal for Tooth #9

The January 31, 2022 denial notice, which is the subject of this appeal, concerns dental codes D4266 (Guided Tissue Generation – Resorbable Barrier, Per Site) and D4263 (Bone Replacement Graft-First Site in Quadrant). These services were requested for Tooth #9.

UHC's member benefits cover dental code D4266, once per 36 months. Appendix B of the member benefits/exclusions and limitations specifies the clinical documentation that must accompany a prior authorization request for dental code D4266. The clinical documentation for this procedure includes a pre-op X-ray of the tooth/are, Complete 6 point perio chart, narrative. See Exhibit 4, p. 28.

UHC's member benefits cover dental code D4263, once per 36 months. Appendix B of the member benefits/exclusions and limitations specifies the clinical documentation that must accompany a prior authorization request for dental code D4266. The clinical documentation for this procedure includes pre-op x-rays of the tooth area and Completed 6-point perio chart. See Exhibit 4, p. 31. Notably, the clinical documentation for D4266 does not include a requirement that a narrative be included with the prior authorization. Id.

Appellant's Testimony and Argument

At hearing, the Appellant testified that he had tried numerous times to resolve any deficiency with the prior authorization request under appeal. The Appellant testified and reiterated in an affidavit that he had spoken with UHC customer service representatives. The Appellant testified that in those conversations, UHC representatives conveyed, as part of the Level 1 appeal process, UHC would reach out to his provider and attempt to cure any deficiencies in order to facilitate approval of the prior authorization request. Only after those efforts were unsuccessful, and several months had passed, did the Appellant file a Level 2 appeal with the Board of Hearings.

In addition to testimony offered at the hearing, the Appellant submitted an affidavit in which he asserts that in June of 2022, his provider ordered 3-dimensional x-rays, known as dental code D0366) to help facilitate the approval of the prior authorization under appeal. The Appellant's provider did not submit a prior authorization for dental code D0366.

The Appellant reports that his dentist did not submit the prior authorization because "she was aware that that UHC denies the code then patients must either pay out-of-pocket or engage in protracted appeals." See Exhibit 5, p. 7 ¶ 8. The Appellant went on to state that his provider "convinced me to pay out-of-pocket for the 3-dimensional x-rays to assess the damage to the tooth and bone, and to help in the appealing of the 2 denied codes D4266 and D4263." Id. at ¶ 13. The Appellant asserts that he paid $255 out-of-pocket for the 3-dimensional x-rays. The Appellant did not submit a receipt corroborating that he paid $255 for this procedure.

In addition to the affidavit, the Appellant submitted a separate prior authorization, requested on April 22, 2022, into the hearing record. This prior authorization is not under appeal, nor has any appeal been filed related to this prior authorization. The April 22, 2022 prior authorization is for different dental procedures for Tooth #9 than the prior authorization requested in January 2022.

The April 22, 2022, authorization shows that the Appellant's provider requested D7140 (Extraction, Erupted Tooth or Exposed Root) for Tooth #9 and this prior authorization was authorized by UHC. Further, this procedure authorization shows that the Appellant's provider requested dental code D7953 (Bone Replacement Graft for Ridge Preservation) for Tooth #9. The prior authorization for dental code D7953 was denied because this service is not covered under the member's benefit package.

On June 29, 2022, the Appellant's Tooth #9 was extracted by his provider. See Exhibit 5, p. 8 at ¶ 14. Following the extraction of Tooth #9, the Appellant's provider performed a bone graft to preserve bone with known as dental code D7953. Id. According to the Appellant's affidavit, "Dr. Chen told me that given all the delays, it was imperative - medically necessary- to proceed on the same date with D7953 (bone graft to preserve bone width), instead of D4263." Id. at ¶ 15. The Appellant reportedly paid $389 for this service. Id. The Appellant did not submit a receipt corroborating that he paid $389 for this service.

In support of this appeal, the Appellant provided a letter of medical necessity letter authored by his provider on November 10, 2022. See Exhibit 5, p. 4-5. The letter references peri-apical x-ray taken on May 4, 2022, and a cone beam computed tompography ("CBCT") scan taken on June 14, 2022. Id. Notably, these images and scans were conducted months after the Level 1 appeal denial and the Appellant's provider does not elaborate on why these scans were ordered or necessary at that point in time nor does it address the original prior authorization request at the heart of this appeal.

The November 2022 provider letter explains that on June 29, 2022, Tooth #9 was extracted and to preserve the bone to proceed with dental implant therapy in the future. Id. The Appellant's provider opines that it was necessary to rebuild bone at the time of the extraction. Id. Thus, D7953 (bone graft to preserve the bone width) and D4266 (resorbable membrane to contain the graft) were planned as treatment by the Appellant's provider. The letter does not state or offer any opinion that procedure D7953 was necessary as a result of UHC's January 31, 2022 denial of the originally requested procedures. The Appellant's provider does not address the allegations made in the Appellant's affidavit that UHC was non-responsive and failed to engage in a peer-to-peer review to resolve the January 31, 2022 prior authorization denial.

Appellant's counsel did not submit an affidavit from the Appellant's provider or Harvard Dental Center's management attesting to the providers conversations or lack thereof with UHC. Nor was any documentation submitted from Harvard Dental Center confirming the fees for the services that the Appellant paid for out-of-pocket.

Appellant's Request for Reimbursement for Codes Not Under Appeal

The Appellant through his attorneys argue that the Appellant should be reimbursed for dental code D0366 (3-D X-rays) in the amount of $255. They argue that the Appellant would not have incurred these costs but for "UHC's wrongful denial and subsequent delays in the appeal process." See Exhibit 6, p. 6.

Additionally, the Appellant and his counsel argue that if the Board reverses the denial of dental code D4263, the Appellant should also be reimbursed for $389 for fees he incurred related to dental code D7953. Id.

A review of UHC's Member benefits/exclusions and limitations shows that UHC does not cover dental code D0366 (3-Dimensional X-rays) and dental code D7953 (bone graft to preserve the bone width). See Exhibit 4, p. 22 – 32.

UHC's Testimony and Response to Appellant's Arguments

In response to the Appellant's arguments, UHC stands by its denial and through its dental expert state that the documentary evidence submitted by the Appellant's provider was deficient. Specifically, UHC argues that the original x-rays submitted by the Appellant's provider did not show a bone defect and failed to satisfy the clinical coverage criteria. UHC also contends that authorization of D4253 is now moot because that procedure is only for a natural tooth and the Appellant had Tooth #9 removed on June 29, 2022.

In their post hearing submission, UHC responds to the Appellant's argument that a delay in the prior authorization and appeals process necessitated subsequent treatment that resulted in the Appellant paying out-of-pocket costs. First, they argue, the initial delay in the appeal process resulted not from UHC's lack of action, but from the Appellant's allowance of several months to pass before the Appellant filed his Level 1 appeal.

Secondly, UHC argues, with respect to dental code D7953 (bone graft to preserve the bone width, the Appellant knew this service was not part of his dental coverage because UHC informed him that they would not cover this procedure in April of 2022.

Neither the Appellant nor the provider requested a Level 1 appeal of procedure D7953. UHC further asserts, that Appellant's Evidence of Coverage is clear that "[member's] are responsible for paying the full cost of services that aren't covered by our plan, either because they are not plan covered services. . ." See Exhibit 4, p. 32. UHC's Dental Provider Manual also provides that when a provider recommends non-covered services, they must get the member's written consent that includes information of the treatment plan and associated costs, and the member's acknowledgement that the services are covered under their SCO Plan, and they have

a right to request a determination from their SCO Plan prior to the services being rendered. See Exhibit 7, p. 3-4.

UHC also argues that they should not be compelled to pay for 3-dimensional x-rays dental code D0366. UHC asserts that it only determined that the original x-ray documentation did not show a bone defect to demonstrate medically necessity of the requested services. UHC never required Appellant or Dental Provider to submit new x-rays or specify that 3-deminsional x-rays are necessary. Id.

Further, UHC argues that the Appellant admits that Dental Provider "convinced [him] to pay out-of-pocket for the 3-deminsional x-rays to assess the damage to the tooth and bone. . ." and Dental Provider "did not submit a prior authorization for 3-diminsional x-rays (D0366) . . ." 17 United's SCO Plan provides coverage for certain types of radiographic images that Appellant and Dental Provider could have considered but chose not to do so. Id.

Findings of Fact

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

1. United Healthcare, Senior Care Organization ("UHC") is a MassHealth Managed Care Provider.

2. The Appellant is over 65 years old and is a MassHealth member who is enrolled in United Healthcare, SCO ("UHC"). See Testimony, Exhibits 4, 5, 6, 7.

3. In January 2022, the Appellant's provider submitted a request for prior authorization for dental codes D4266 (Guided Tissue Generation- Resorbable Barrier for Tooth #9) and D4263 (Bone Replacement Graft-First Site in Quadrant, Tooth #9), they submitted x-rays and a medical history noted dated October 20, 2021. See Testimony, Exhibit 4.

4. On January 31, 2022, UHC denied a prior authorization request for service of dental codes D4266 (Guided Tissue Generation- Resorbable Barrier for Tooth #9) and D4263 (Bone Replacement Graft-First Site in Quadrant, Tooth #9). See Testimony, Exhibit 4.

5. The January 31, 2022, denial notice states the reason for the denial is lack of evidence of a bone defect on x-rays. Id.

6. The January 31, 2022 denial notice does not state the reason for the denial is because of a lack of perio charting and/or a medical narrative. Id.

7. On April 22, 2022, the Appellant's provider submitted a new prior authorization request for procedure D7140 (Extraction, Erupted Tooth or Exposed Root) for Tooth #9 and D7953 (Bone

Replacement Graft for Ridge Preservation) for Tooth #9 . See Exhibit 5.

8. The April 22, 2022 prior authorization approved dental code D7140 (Extraction of Tooth #9), but denied dental code D7953 (Bone Replacement Graft for Ridge Preservation) for Tooth #9. See Testimony and Exhibit 5, 6, 7.

9. Dental code D7953 (Bone Replacement Graft for Ridge Preservation) for Tooth #9 was denied because this service is not included in the Appellant's benefit package. See Testimony and Exhibit 4.

10. Neither the Appellant nor the Appellant's provider appealed the April 22, 2022 denial of dental code D7953. See Testimony.

11. On June 29, 2022, the Appellant's provider extracted Appellant's Tooth #9. See Testimony, Exhibits 5, 7.

12. On June 29, 2022, following the extraction of Tooth #9 the Appellant's provider performed a procedure known as dental code D7953 (Bone Replacement Graft for Ridge Preservation). See Exhibit 5.

13. On July 19, 2022, the Appellant filed a Level 1 appeal of the January 31, 2022. See Testimony and Exhibit 5.

14. On July 28, 2022, UHC denied the Appellant's Level 1 appeal stating "our plan will not cover Guided Tissue Generation-Resorbable Barrier, Per Site, Tooth #9 (D4266) and Bone Replacement Graft-First Site in Quadrant, Tooth #9 (D4263). See Exhibit 4.

15. The July 28, 2022 notice states the reason for the denial is because records sent do not show bone defects. Skygen USA criteria used for review. Id.

16. On November 24, 2022, the Appellant field a request for a Level 2 with the Board of Hearings. See Exhibit 2.

Analysis and Conclusions of Law

Pursuant to regulation 130 CMR 508.001, "MassHealth Member Participation in Managed Care:"

> (A) Mandatory Enrollment with a MassHealth Managed Care Provider. MassHealth members who are younger than 65 years old must enroll in a MassHealth managed

care provider available for their coverage type. Members described in 130 CMR 508.001(B) or who are excluded from participation in a MassHealth managed care provider pursuant to 130 CMR 508.002(A) are not required to enroll with a MassHealth managed care provider.

(B) Voluntary Enrollment in a MassHealth Managed Care Provider. The following MassHealth members who are younger than 65 years old may, but are not required to, enroll with a MassHealth managed care provider available for their coverage type: (1) MassHealth members who are receiving services from DCF or DYS; (2) MassHealth members who are enrolled in the Kaileigh Mulligan Program, described in 130 CMR 519.007(A): The Kaileigh Mulligan Program. Such members may choose to receive all services on a fee-for-service basis; (3) MassHealth members who are enrolled in a home- and community-based services waiver. Such members may choose to receive all services on a fee-for-service basis; or (4) MassHealth members who are receiving Title IV-E adoption assistance as described at 130 CMR 522.003: Adoption Assistance and Foster Care Maintenance. Such members may choose to receive all services on a fee-for-service basis.

(C) Senior Care Organizations (SCO). MassHealth members who are 65 years of age or older may enroll in a SCO pursuant to 130 CMR 508.008(A).

(D) Integrated Care Organizations (ICO). Also referred to as "One Care plans." Members enrolled in an ICO (One Care plan) are participants in the Duals Demonstration, also known as "One Care." MassHealth members who are 21 through 64 years of age at time of enrollment may enroll in an ICO pursuant to 130 CMR 508.007(A).

(Emphasis added)

Next, pursuant to MassHealth regulation 130 CMR 508.008 (C):

Obtaining Services When Enrolled in a SCO. When a member chooses to enroll in a senior care organization (SCO) in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, each SCO is required to provide evidence of its coverage, including a complete list of participating providers, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to covered services such as specialty, behavioral health, and long-term-care services.

As MassHealth's agent, UnitedHealthcare SCO, is required to follow MassHealth laws and regulations pertaining to a member's care.

UnitedHealthcare's Obligations as a MassHealth Managed Care Provider at Fair Hearings

MassHealth regulation 130 CMR 508.010, "Right to a Fair Hearing," provides the following:

> Members are entitled to a fair hearing under 130 CMR 610.000: MassHealth: Fair Hearing Rules to appeal:
> (A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;
> **(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;**
> (C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or
> (D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.
>
> (Emphasis added)

The Appellant exhausted the internal appeal process offered through his SCO, and thereafter, requested a fair hearing with BOH, to which he is entitled pursuant to the above regulations.

Pursuant to regulation 130 CMR 610.062, the acting entity, which in this matter is UHC is required to present the following at hearing.

> (A**) submit to the hearing officer, at or before the hearing, all evidence on which any action at issue is based;**
> B) designate a staff person or representative to appear at the hearing, and arrange for adequate space for the hearing if requested by BOH;
> (C) have the right to present witnesses;
> (D) where the acting entity is the MassHealth agency, ensure that the case file is present at the hearing and that the appellant has adequate opportunity to examine it before and during the hearing;
> (E) where the acting entity is a nursing facility, ensure that the relevant portions of an appellant's resident record are present at the hearing and that the appellant has adequate opportunity to examine such records before and during the hearing upon reasonable request;

(F) where the acting entity is DDS or DMH and the appellant is appealing his or her PASRR determination, ensure that all medical records comprising the PASRR evaluation are present at the hearing and that the appellant or the appellant's representative has adequate opportunity to examine them before and during the hearing;
(G) **introduce into evidence material from pertinent documents that pertain to the issue or issues raised during the hearing and that are not otherwise confidential;**
(H) **present and establish all relevant facts and circumstances by oral testimony and documentary evidence;**
(I) have the right to advance any pertinent arguments without undue interference;
(J) have the right to question and refute any testimony and confront and cross-examine adverse witnesses;
(K) have the right to arrange for the appearance at the hearing of a representative of other assistance programs, where appropriate; and
(L) **where the acting entity is a managed care contractor, ensure that the relevant paperwork is present at the hearing and that the appellant has adequate opportunity to examine it before and during the hearing**

(Emphasis added)

UHC was represented in this matter by Dr. Ellis and Dr. Smith, Dr. Ellis submitted the documentary packet prior to the hearing. UHC's packet of information was woefully inadequate and did not ensure that all relevant documentary evidence was submitted to the Appellant prior to hearing or even at hearing. Specifically, UHC failed to include the original prior authorization request filed by the Appellant's provider. It is imperative that UHC include all the documentation that was relied upon in making its decision, including screenshots or print outs of the requesting provider's prior authorization submission.

Additionally, Dr. Smith offered testimony from the perspective of an expert witness, he did not have firsthand knowledge of how the prior authorization was reviewed. Further, Dr. Smith could not testify even in general terms how a prior authorization is reviewed and processed. Ostensibly this lack of knowledge is because the work is conducted by a third-party vendor. Notwithstanding this business arrangement, UHC must be able to produce all documentation from the third-party vendor and testify as to the process for the review. If they are unable to do so, they should require a representative from Skygen be present before the Board of Hearings. It is not sufficient to have representatives appear and merely state that they reviewed the Level 1 appeal, and in their opinion the Level 1 decision is correct.

In failing to provide sufficient documentary evidence and testimony as to how the prior authorization process works, and more importantly how this Appellant's prior authorization was reviewed and determined, the Appellant has an insurmountable burden in proving whether UHC's actions were improper.

Despite UHC's failure to ensure that the relevant paperwork was present at the hearing and that the Appellant had adequate opportunity to examine it before and during the hearing, the Appellant and his counsel went through extraordinary efforts to establish all relevant and circumstances by oral testimony and documentary evidence.

UHC Notices

In a cover letter submitted to the Board of Hearings in this appeal, UHC's Medical Director of Senior Care Options, stated the reason for the denial of the level one Appeal was:

> UnitedHealthcare Senior Care Options (UHC SCO) denied the Guided Tissue Generation-Resorbable Barrier, Per Site, Tooth #9 (D4266), and Bone Replacement Graft-First Site In Quadrant, Tooth #9 (D4263) because this request is not medically necessary. Bone surgery to treat gum disease can be covered if x-rays sent show a bone defect. Records sent do not show bone defects. Skygen USA criteria used for review. **The provider has not submitted any narrative documentation to support use of code or indicated why code is medically necessary.** See Exhibit 4, p. 1.
>
> (Emphasis added)

Appellant's counsel noted this was the first time UHC had raised supposed lack of narrative as a reason for denying the prior authorization under appeal and objected to this new argument.

Again, in their post-hearing submission, UHC points to insufficient documentation, specifically that the charting and medical necessity narrative were missing. The denial notices do not indicate that a missing narrative was the reason for the denial, rather, they singularly state that the reason for the denial was the lack of bone defect on the submitted x-rays.

Case law is instructive on what agencies must include in their notices and how they should be constructed. Specifically, while "[d]ue process does not require that notices of administrative proceedings 'be drafted with the certainty of a criminal pleading,' " the notice must be "sufficient for persons whose rights may be affected to understand the substance and nature of the grounds upon which they are called to answer." *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 377, 486 N.E.2d 48 (1985), *quoting Higgins v. License Comm'rs of Quincy*, 308 Mass. 142, 145, 31 N.E.2d 526 (1941). *See LaPointe v. License Bd. of Worcester*, 389 Mass. 454, 458, 451 N.E.2d 112 (1983); *Highland Tap of Boston, Inc. v. Commissioner of Consumer Affairs & Licensing of Boston*, 33 Mass. App. Ct. 559, 571, 602 N.E.2d 1095 (1992). The Massachusetts Administrative Procedures Act (act) likewise requires "sufficient notice of the issues involved to afford [parties] reasonable opportunity to prepare and present evidence and argument." G. L. c. 30A, § 11. *See Strasnick v. Board of Registration in Pharmacy*, 408 Mass.

654, 660, 562 N.E.2d 1333 (1990); *Vaspourakan, Ltd. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 347, 353, 516 N.E.2d 1153 (1987). Furthermore, "[i]n all cases ... where subsequent amendment of the issues is necessary," the act provides that "sufficient time shall be allowed after ... amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues." G. L. c. 30A, § 11 (1). *See 15 LaGrange St. Corp. v. Massachusetts Comm'n Against Discrimination*, 99 Mass. App. Ct. 563, 568, 176 N.E.3d 279, 285, *review denied*, 488 Mass. 1106, 178 N.E.3d 852 (2021)

UHC, as an agent of MassHealth, must familiarize and comport themselves with the rules, regulations, and laws governing agencies within the Commonwealth of Massachusetts.

As an agent of MassHealth, UHC has an obligation to produce sufficient explanation of the reasons for the denial of services in their notices. UHC cannot change the rationale for denial at the time of hearing unless they intend to amend the original denial notice and afford the Appellant reasonable opportunity to prepare and present evidence and argument to rebut the newly raised issues.

Assuming, *arguendo*, that UHC did amend their notice to include a lack of medical narrative as a reason for the denial, their own evidence belies this assertion since they included a narrative statement of an office visit, occurring on October 20, 2021, from the Appellant's provider in their submission to the Board of Hearings. Therefore, the hearing officer does not find the assertion that the Appellant's provider failed to submit a medical necessity narrative credible.

UHC's Denial of Dental Code D4266 and Dental Code D42623

In determining whether UHC was correct, pursuant to 130 CMR 420.421 (A) in determining that dental codes D4266 (Guided Tissue Generation – Resorbable Barrier for Tooth #9) and D42623 (Bone Replacement Graft-First Site in Quadrant, Tooth #9) were not medically necessary we must first look at the regulations.

Pursuant to 130 CMR 420.421 (A), MassHealth covers dental services when:

> The MassHealth agency pays for the following dental services when medically necessary:
>
> (1) the services with codes listed in Subchapter 6 of the *Dental Manual*, in accordance with the service descriptions and limitations described in 130 CMR 420.422 through 420.456; and
> (2) all services for EPSDT-eligible members, in accordance with 130 CMR 450.140 through 450.149, without regard for the service limitations described in 130 CMR 420.422 through 420.456, or the listing of a code in Subchapter 6. All such services are available to EPSDT-eligible members, with prior authorization, even if the limitation specifically applies to

other members younger than 21 years old.

Additional guidance "about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines." 130 CMR 450.204(D). MassHealth's dental regulations specifically defines "implants of any type or description" to be non-covered for members over the age of 21.[2] 130 CMR 420.421(B)(5). Despite this limitation in Medicaid coverage, UnitedHealthcare has agreed to cover dental implants under certain circumstances.

Therefore, the rules governing whether the requested procedure should be covered are those written by UnitedHealthcare, or by their vendor SkyGen, not those written by MassHealth.

It is regrettable that the Appellant's counsel did not submit their documentary evidence to UHC prior to the hearing so that the UHC could have reviewed and potentially reversed their decision on March 30, 2023, thus allowing the Appellant to seek treatment. It is equally regrettable that, despite having the documents exchanged by the hearing officer at the close of hearing testimony on March 30, 2023, UHC did not review the documents and report back to the Board of Hearings until May 22, 2023, because ultimately, after review of the Appellant's newly submitted documentation, UHC indicated that they have changed their opinion. Specifically, UHC stated that, upon reviewing the additional documentation submitted in connection with this hearing, the "documentation does support a need for guided tissue regeneration treatment around and existing implant 'to correct deformities resulting from inadequate faciolingual bone.'"

It should also be noted that, in UHC's post-hearing memorandum, they incorrectly state that the new x-ray evidence was not presented at hearing. The Appellant's counsel did in fact supply this documentation at hearing, although they failed to provide a copy to UHC in advance of the hearing. Further, as noted above, immediately following the hearing, the hearing officer sent a copy of Appellant's documentation to UHC and asked them to review and respond to the submission by May 8, 2023. Clearly, the representatives did not open the attachments sent by the hearing officer and they ignored the directive to review and respond to the information contained therein by May 8, 2023.

It is imperative that representatives of both parties submit timely submissions, send copies to all parties, and adhere to directives from the hearing officer and the Board of Hearings to avoid unnecessary delays which could result in a delay of an appellant's approval for procedures.

Hearing Officer's Findings Dental Code D4266

It is puzzling that, despite acknowledging that they now have the requisite documentation to

[2] All non-covered services may be covered "when MassHealth determines the service to be medically necessary **and the member is younger than 21 years old**." 130 CMR 420.021(B) (emphasis added).

approve D4266, UHC would be only "willing to reverse the decision and provide coverage for D4266 for tooth #9 if ordered." When evidence is presented at hearing or during the record open period that supports the authorization of a procedure under appeal, UHC may rescind the denial notice and issue an approval without waiting for an order from the Board of Hearings.

As UHC has conceded in their statement to the hearing officer, which is incorporated in the record, there is sufficient documentary evidence in the record, both x-ray and testimonial evidence by UHC's dental expert, that supports a finding that dental procedure D4266 is medically necessary.

Accordingly, the appeal with regard to dental code D4266 is **APPROVED**.

Hearing Officer's Findings Dental Code D4253

In terms of Dental Code D4253, sadly this code is no longer applicable or medically necessary for the Appellant since he no longer has a natural Tooth #9. This code is only appropriate for a natural tooth and as noted during the hearing and within the documentary evidence, the Appellant had this tooth removed on June 29, 2022. Thus, an appeal of denial of Dental Code D4253 is moot and the appeal with respect to this code is **DISMISSED.**

Hearing Officer's Findings Request for Reimbursement of Out-of-Pocket Expenses for dental codes D0366 (3-Dimensional X-Rays) and D7953 (Bone Graft Treatment)

The Appellant, through his attorneys, argues that, due to UHC's denial of the original planned treatment, the Appellant was seemingly required to pay out of pocket costs to obtain 3-dimensional x-rays to demonstrate that he met the clinical eligibility for D4266 and D4253.

UHC denies that the Appellant was required to obtain 3-dimensional x-rays to obtain a prior authorization for these procedures. UHC asserts that conventional x-rays are appropriate and the issue with the prior authorization was that the x-rays provided by the Appellant's provider did not in fact show a bone defect which was necessary to satisfy the clinical criteria to authorize the treatment.

Neither MassHealth nor UHC cover dental code D0366 (3-dimensional x-rays). The Appellant acknowledged in his affidavit that he knew that his dental provider was not submitting a prior authorization request for this service, thus he knew that the service would have an out-of-pocket cost associated with its completion. A review of the requirements for the dental codes in question show a conventional x-ray is what UHC requires to determine whether a defect exists that authorize the approval of the procedure.

While the hearing officer can appreciate the argument being raised by the Appellant's counsel, it is merely argument. The Appellant's counsel does not argue that this procedure was medically necessary, instead they argue the 3-dimensional x-rays were necessary to obtain a prior

authorization. The record before the hearing officer does not demonstrate that 3-dimensional x-rays were necessary to obtaining approval for the requested procedures that are under appeal.

Additionally, the record does not include a bill for 3-dimensional x-rays or a receipt from Harvard Dental Services for payment in the amount of $255 for such services.

With regard to dental code D7952 (Bone Graft Treatment), there is no evidence in the record that supports the conclusion that but for the denial of dental code D4266 and D4263, the Appellant's provider was required to proceed with dental code D7953 (Bone Graft Treatment), thus resulting in out-of-pocket costs to the Appellant. On or about April 2022, the Appellant's provider requested authorization for dental code D7953 (Bone Graft Treatment). That prior authorization request was denied because the service is not within the Appellant's coverage. Neither the Appellant nor his provider requested a Level 1 appeal of the denial of code D7953. Additionally, documentation from the Appellant's own provider does not opine that this procedure was necessary due to lack of approval of dental codes D4266 and D426.

Instead, the Appellant chose to proceed with procedure D7953 and pay out-of-pocket. There is no objective evidence in the record that supports a finding that the Board of Hearings should compel UHC to pay for a procedure that is not covered, was denied on the basis that UHC does not cover the procedure, and subsequently not appealed by the Appellant or his provider.

The Appellant did not submit a copy of a bill for this procedure or receipt from Harvard Dental Center for payment in the amount of $389 for these services.

The Appellant's affidavit includes numerous statements attributed to his provider, but there is no sworn statement from the Appellant's provider. The Appellant's attorneys were given an extension of time to seek additional evidence related to the Appellant's providers actions including subsequent dental work and whether the Appellant's provider or Harvard Dental Services actively tried to resolve the initial denial through a peer-to-peer review. At the close of the record open period, the Appellant through his attorney did not submit any additional documentation or attestations from the Appellant's provider which would corroborate their argument that subsequent treatment was necessary because of UHC's initial denial.

Instead, the Appellant relies on an un-sworn email from the Appellant's provider that merely states "I am writing to reiterate the necessary treatments" for the Appellant. The statement details the work that was conducted and findings upon examination, but at no point does Appellant's provider opine that subsequent work needed to be conducted because of UHC's failure to authorize D4266 or D4263.

While the rules of evidence at the observed by the courts do not apply to fair hearings, evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to relying in the conduct of serious affairs. See 130 CMR 610.071. At

issue here is the lack of probative evidence of a causal connection between UHC's actions and the subsequent dental work performed on the Appellant several months later.

For those reasons, the Appellant's request that the Board of Hearings order to compensate UHC for out-of-pocket costs associated with dental codes D0366 and D7953 is **DENIED**.

Order for United Healthcare, SCO

Rescind the following: the notice dated January 31, 2022 for the initial prior authorization denial; and the July 28, 2022 denial of Level 1 appeal. UHC shall issue a new approval notice for dental code D4266 (Guided Tissue Generation- Resorbable Barrier for Tooth #9).

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 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.

Alexis Demirjian
Hearing Officer

Board of Hearings

cc:
MassHealth Representative: United Healthcare SCO, Attn: Susan Coutinho McAllister, MD, LTC Medical Director, 950 Winter St., Ste. 3800, Waltham, MA 02451, 856-287-2743

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