Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	DENIED IN PART; DISMISSED IN PART	**Appeal Number:**	2202135
Decision Date:	5/19/22	**Hearing Date:**	04/25/2022
Hearing Officer:	Christopher Taffe		

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Harold Kaplan, DMD, Consultant for DentaQuest (by phone)

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:	DENIED IN PART; DISMISSED IN PART	**Issue:**	Appealable Action – Possible Provider Misconduct
Decision Date:	5/19/22	**Hearing Date:**	04/25/2022
MassHealth's Rep.:	H. Kaplan, DMD	**Appellant's Rep.:**	Mother, pro se
Hearing Location:	HarborSouth Tower, Quincy	**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 March 11, 2022, MassHealth, via its dental contractor ("DentaQuest"), sent a notice to Appellant stating that it would deny the request for dental benefit under Service Code D8660 because "…*Request for this service is denied due to 1): regulation and program restriction*…" See Exhibit 1 and 130 CMR 420.401 through 420.456. At or around the same time, MassHealth also approved the request for treatments under Service Code D8670 for eight periodic orthodontic treatment visits[1] for the reason that "*Continuation of Care case is approved*." See Exhibit 3, page 2. Appellant exercised her right to file an appeal on her March 11, 2021 denial letter, and a request for a Fair Hearing was timely filed with the Board of Hearings on March 21, 2022. See Exhibit 1; 130 CMR 610.015. Challenging a denial of a requested benefit is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the Prior Authorization (PA) request for dental code D8660 but approved comprehensive orthodontic treatment under Code D8670.

[1] Typically, when MassHealth approves a member for comprehensive treatment, they approve a total of eight visits, to be done quarterly, to cover two years of treatment for braces. For certain patients, a third year may be needed, requested, considered, and approved, but that is done on a individual case-by-case basis. See 130 CMR 420.031(C).

Issue

Is the denial of service under Code D8660 appropriate? In addition, does the Appellant have to be concerned about any costs that her provider claims her family owes him in light of this determination?

Summary of Evidence

Appellant is currently a [redacted] MassHealth member who was represented at hearing by her mother. MassHealth was represented at hearing by Dr. Kaplan, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer and run the agency's dental program for MassHealth members. All parties testified telephonically.

Appellant has never previously had braces put on her teeth anywhere but Arch Orthodontics in Westwood, the orthodontic provider who submitted the PA request in question (hereafter "Arch"). Dr. Andrew Chase is the orthodontist at Arch whose name appears in Exhibit 3.

As background, Appellant has had MassHealth benefits prior to calendar year 2022. In January of 2022, Appellant went to Arch to seek and begin orthodontic treatment for her children.[2] On or around January 26, 2022, braces were put on the top teeth only of Appellant. The Appellant made a $700 down payment on the braces, indicating that she was going to pay privately. Appellant's mother testified that at some point in the early winter months of 2022 (the date is unclear) she learned that MassHealth could cover the braces and she and her provider realized this.[3]

On February 8, 2022, Arch filled out a MassHealth/DentaQuest Continuation of Care Solution Form ("COC form") in Exhibit 3 stating that the teeth were banded on January 26, 2022 and that the "Case Rate Approved By Previous Insurer" was $6,480.[4]

The COC form also stated that the *"Amount **Paid** for Dates of Service that Occurred Prior to patient becoming a MassHealth member:"* was $0.[5] (Bolded emphasis added.) The COC form also stated that the full $6,480.00 was the amount "**Owed"** for services prior to becoming a

[2] There is testimony that Appellant's brother also has a separate appeal or matter pending before the Board of Hearings. The brother's hearing was not heard at this hearing date as the appeals were filed on different dates and not identified as being related; otherwise the brother's appeal would have likely been scheduled and heard the same day to assist the family. It is unknown what issues are involved in that brother's appeal, but they do not fall under the jurisdiction of this appeal. It is also unclear whether the $700 was just for Appellant or for both children.

[3] This is speculation, but usually insurance coverage is investigated by dental providers before treatment begins. But whether it was intentional or inadvertent, it appears that in this case, the provider Arch, Appellant, and/or both did not realize that Appellant had a MassHealth dental benefit which might address the treatment. There is also the possibility that the provider did realize this and opted to seek continuation of care after placing the top set of braces.

[4] There is no mention of any private insurance which MassHealth is supplementing, so it is speculated that this is the rate that the provider quoted to Appellant's family for the Appellant's treatment.

[5] Assuming the Appellant's testimony is truth, this is factually incorrect.

MassHealth member, but that the balance expected for future dates of service was $2,814.00[6] and that eight quarters of treatment were needed. See Exhibit 3, page 5.

On February 14, 2022, Dr. Chase at Arch composed a letter to MassHealth stating that *"We are requesting one (1) D8080 initial band placement and a quantity of eight (8) D8670 quarters for comprehensive orthodontic treatment."* See Exhibit 3, page 6.

All this relevant documentation in Exhibit 3, which includes: the letter from page 6; the COC form on page 5; and the x-rays and photographs showing banding on the upper teeth from pages 11-13; were submitted to MassHealth in a PA request on around 3/9/2022. See Exhibit 3, page 2. Although the letter seeking treatment under D8080 (Exhibit 3, page 6), the ADA Dental Claim form submitted by Arch listed Service Code D8680. Compare Exhibit 3, page 3 with Exhibit 3, page 6.[7] The handwritten notations on the photographs of Appellant's mouth submitted with the PA request make refence to 12 mm of anterior spacing and 13 mm of total spacing; the HLD form submitted also indicated an automatic qualifying condition of 10 or more mm of anterior spacing in one jaw. See Exhibit 3, pages 8-11.

MassHealth approved the treatment for the remaining quarters, but Appellant has been told by Arch that she needs to pay for the service that MassHealth denied. Arch stated that Appellant was approved for ongoing treatment only, and not total treatment, and that Appellant owed money for the services that were denied, and that she would not be refunded her deposit for her daughter unless she went to appeal at the Board of Hearings and was successful.

Dr. Kaplan confirmed that as a general rule, a MassHealth provider is not supposed to charge a MassHealth member for services that are covered and available thought MassHealth. The regulation at 130 CMR 420.009(B) (printed in analysis) was briefly discussed at hearing, with all parties and the hearing Officer agreeing with the interpretation that the Appellant should not be charged.

Findings of Fact

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

1. Appellant is currently a [redacted] MassHealth member who has had her current MassHealth insurance and benefits for all of calendar year 2022, and for at least some period of time prior to the 2022 calendar year. (Testimony)

2. Appellant had braces placed on her top teeth by Arch in January 2022. (Testimony)

[6] It's unclear if this lesser amount is the MassHealth rate of payment.

[7] This is not necessarily inconsistent. A provider may submit for initial banding under D8080 as part of a request for complete or comprehensive treatment and then, if the request for treatment is denied, receive payment under D8680 as a form of compensation. See MassHealth Dental Program's Office Reference Manual (ORM), dated January 1, 2022, pages 45 through 48 (available at https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf (last viewed on May 17, 2022)). It is unclear however how the ADA claim form should be coded and listed but this compensatory is usually given to cover the cost of the submission for those who are denied.

a. Appellant's mother testified that she made a private down payment to Arch for Appellant's braces in January 2022. (Testimony)

b. Appellant's mother was unaware that Appellant's orthodontic needs may have been covered by the child's MassHealth benefit. (Testimony)

c. There was no PA request submitted by Arch to MassHealth seeking comprehensive orthodontic treatment prior to placing the braces on the top teeth in January 2022. (Testimony and Exhibit 3)

3. On March 9, 2022, Arch submitted a PA request to MassHealth seeking approval for orthodontic treatment with specific approval requests for eight Codes of D8670 to cover two years of treatment, and Code D8660. (Testimony and Exhibit 3, page 3)

a. Appellant's orthodontic provider at Arch also submitted a COC form in support of the request for treatment. (Testimony and Exhibit 3, page 5)

b. The request was approved for all eight codes of D8670 by MassHealth for the reason "Continuation of Care case is approved". (Exhibit 3, page 2)

c. The COC form indicated that no amount had been paid for dates of service that occurred prior to the patient becoming a MassHealth member. (Exhibit 3, page 5)

d. Despite quoting a case rate approval of $6,480, the provider filled out the COC Form seeking 8 quarters of treatment with an expected balance of $2,814.00. (Exhibit 3, page 5)

e. The PA documentation submitted including multiple references to Appellant having an automatic qualifier of more than 10 mm of anterior spacing in one jaw. (Exhibit 3, pages 8-11)

4. With the appealable action notice, MassHealth has already approved Appellant for comprehensive orthodontic treatment by approving D8670 for eight units of such service. (Testimony and Exhibit 3)

5. MassHealth denied the Appellant's provider request for payment of Service Code D8660. (Testimony and Exhibits 1 and 3)

a. Based on this denial of Service Code D8660, Appellant's mother testified that she was told by Arch that she had to go to appeal and succeed, or she would owe additional money to Arch.

b. Appellant also testified that she was told she would not receive any refund from her provider for the down payment she paid during January 2022 or earlier. (Testimony)

Analysis and Conclusions of Law

As a rule, the MassHealth agency and its dental program pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 420.410. In addition to complying with the prior authorization requirements at 130 CMR 420.410 et seq,[8] covered services for certain dental treatments, including orthodontia, are subject to the relevant limitations of 130 CMR 42.421 through 420.456. See 130 CMR 420.421 (A) through (C).

130 CMR 420.431 contains the description and limitation for orthodontic services. As to orthodontic requests, that regulation reads in parts relevant to this appeal as follows:

420.431: 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. ...

(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. ...

(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-

[8] 130 CMR 420.410(C) also references and incorporates the aforementioned MassHealth Dental Program Office Reference Manual publication as a source of additional explanatory guidance beyond the regulations. See fn. 7, *supra*.

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…

(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. …*

(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. …

(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. …

*(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.*

(**Bolded** emphasis added.)

In this appeal, as discussed at hearing, it is first noted and confirmed that Appellant received approval of orthodontic treatment from MassHealth. Unlike most cases that come to the Board of Hearings, this approval was done under the Continuation of Care rules at 130 CMR 420.431(C)(6).[9] The approval was for the full two years associated with initial approvals for comprehensive treatment. See 130 CMR 420.431(C)(3)(and (4). Because Appellant has been approved for the full requested treatment, this portion of the appeal is DISMISSED IN PART. The approval given to Appellant should remain in place.

With regard to D8660, this code is to cover *"pre-orthodontic treatment examination to monitor growth and development".* See Exhibit 3, page 2. Page 48 of the MassHealth Dental ORM speaks to the use of this code with regard to the authorization process as follows:

16.3 Authorization Determination
The initial prior authorization approval for comprehensive orthodontics (D8080/D8070) and first two (2) years of treatment visits (D8670 x 8 units) will expire three (3) years from the date of the authorization. Approval for the third year of orthodontics will be valid for twelve to eighteen (12-18) months, depending on the number of units requested. Providers must check the patient's eligibility on each date of service to determine whether it will be an "eligible" service date.
If the case is denied, a determination notice will be sent to the member, and a separate courtesy

[9] It remains a bit strange that the continuation of care submitted by Arch Orthodontics was to continue work began by Arch Orthodontics. The ORM states that Continuation of Care is for when *"...a member is already receiving comprehensive or interceptive orthodontic treatment and is transferring from another provider and/or state Medicaid program or other insurer..."* See the ORM at pages 24, 51, 65.
Now it is possible that the provider was not aware of Appellant's MassHealth eligibility, and that Appellant's mother did not think to mention it, but, as discussed *infra*, and that the Continuation of Care option was used in good faith and/or it is allowable.

notice will be sent to the provider along with the reviewer's worksheet indicating that the authorization for comprehensive orthodontic treatment has been denied. However, if a claim is sent in along with the prior authorization, a payment will be issued for code D8660 to cover the pre-orthodontic work-up, including the treatment plan, radiographs, diagnostic prints and/or photos orthodontic records, and diagnostic models.

(**Bolded** emphasis in original. Underlined emphasis added.)

Based on the ORM and the regulations, when a provider requests orthodontic treatment, they receive one of two options. If orthodontia are found to be medically appropriate, the agency approval for the service of D8670 but not D8660. However, if braces are not approved, the agency approves D8660 only as stated by the 2nd paragraph of Section 16.3 of the ORM. This is consistent with the regulations. See 130 CMR 420.431(C)(1) (stating that pre-orthodontic workup is not paid separately with an ongoing approval of comprehensive treatment); 130 CMR 420.431(C)(8) (saying that radiography payment is included within the comprehensive payment); 130 CMR 420.431(C)(9) (reiterating that orthodontic treatment payment by the program includes the photograph, and that such costs will not be paid separately).

For these reasons, MassHealth was correct to deny the request for the D8660. Perhaps the orthodontist is confused and a separate code would have been billed and approved separately under D8080 (consistent with the narrative letter submitted by Arch) had this been a new case that was requested. But this was a Continuation of Care case. Regardless, the services were effectively approved, so the orthodontic provider is not allowed to receive money from the agency for the pre-submission work up costs.

This appeal is therefore DENIED IN PART.

Lastly, although this goes beyond the scope of this appeal, the main concern raised by the Appellant at hearing was that she was looking for relief or assistance with the claim that she had to pay for certain parts of the orthodontic treatment. The MassHealth Representative expressed some concern with this result, and I share those concerns. Most notably, both the MassHealth Representative and I are aware of the MassHealth Dental regulation which quotes state law and appears to be relevant to this matter. It appears below:

420.409: Non-covered Circumstances

…

(B) Substitutions.

…

> *(1) If a member desires a substitute for, or a modification of, a covered service, the member must pay for the entire cost of the service. The MassHealth agency does not pay for any portion of the cost of a substitute for, or modification of, a covered service. In all such instances, before performing services not covered for the member, the provider must inform the member both of the availability of covered services and of the member's obligation to*

pay for those that are not covered services.
(2) It is unlawful (M.G.L. c. 6A, § 35) for a provider to accept any payment from a member for a service or item for which payment is available under MassHealth. If a member claims to have been misinformed about the availability of covered services, it will be the responsibility of the provider to prove that the member was offered a covered service, refused it, and chose instead to accept and pay for a service that MassHealth does not pay for.
(**Bolded** and underlined emphasis added.)

In this case, regardless of why prior authorization was not properly sought for this MassHealth member before the braces were placed on Appellant's upper teeth, the state regulatory law and statute quoted within stresses that is the provider's responsibility, suggesting that the provider should bear the cost in this situation. It is strongly suggested that the Appellant was a member and there was potential payment for this service available through MassHealth. As discussed at hearing, if Appellant has any concerns or further problem, she can contact DentaQuest Customer Service at 1-800-207-5019.

Order for MassHealth/DentaQuest

Continue to approve Appellant for the comprehensive treatment requested under Service Code D8670.

As necessary, MassHealth/DentaQuest may investigate or followup as is appropriate with the dental provider if they believe there is anything unusual or askew with the chronological events of the Continuation of Care used to generate an approval in this matter. DentaQuest is encouraged to remind the dental provider of the rules and limitation regarding seeking payments for members for certain dental services.

DentaQuest should also work together as needed with the Appellant's family if Appellant's mother or family follows up with MassHealth there are questions about payment she allegedly owes for the Appellant's treatment.

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest