

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	DENIED	Appeal Number:	2202941
Decision Date:	6/14/2022	Hearing Date:	05/20/2022
Hearing Officer:	Christopher Taffe		

Appearance for Appellant:

Appellant with [REDACTED]
[REDACTED] both by phone)

Appearances for MassHealth/MCO:

Cassandra Horne, Appeals & Grievance
Supervisor/Manager, & Jessica Medeiros,
Sr. Director, Ancillary Programs – Dental
Operations, on behalf of Commonwealth
Care Alliance (both 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	Issue:	MCO – Prior Authorization – Dental Implant and Related Services
Decision Date:	6/14/2022	Hearing Date:	05/20/2022
MassHealth’s Rep.:	C. Horne, & J. Medeiros	Appellant’s Rep.:	Appellant
Hearing Location:	HarborSouth Tower, Quincy (Remote Hearing)	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 February 15, 2022 titled “*Notice of Adverse Action - Denial of Level 1 Appeal*”, the Medicare-Medicaid Plan of Commonwealth Care Alliance (“CCA”), an Integrated Care Organization (“ICO”), informed Appellant that it was denying her Level I appeal for Prior Authorization (PA) request # A0220202152054. This PA request sought approval of the following dental services:

- Surgical Placement of Implant Body; Endosteal Implant for teeth # 29/30/31 (under Service Code D6010);
- Custom Fabricated Abutment – Includes Placement for Teeth # 29/30/21 (under D6057);
- Abutment Supported Porcelain/Ceramic Crown for Teeth # 29/30/31 (under D6058); and
- Panoramic Radiographic Image (under DD0330).

See Exhibits 2 and Exhibit 4, page 56. On April 8, 2022, Appellant filed a timely request for a Fair Hearing before the Board of Hearings as to this adverse action. See Exhibit 1; 130 CMR 610.015(B)(7)(a).

The Board of Hearings (BOH) has limited jurisdiction over denials given to certain MassHealth

members when those denials involve requests for assistance related to covered benefits from a Managed Care Contractor (including an ICO like CCA), with which the member is enrolled. See 130 CMR 610.032(B); 130 CMR 508.008 (discussing the role of ICO's in the MassHealth program); 130 CMR 508.011. The denial action codified in the February 15, 2022 denial notice is one such appealable action.

Action Taken by MassHealth

MassHealth denied

Action Taken by MassHealth/CCA

CCA denied the Appellant's request for a series of dental procedures constituting a dental implant.

Summary of Evidence

Appellant is an adult MassHealth member, over the age of 21, who receives dental benefits as an enrollee in CCA's Medicare-Medicaid Plan, a plan which is sometimes referred to as a "OneCare Plan". For this matter, CCA is an ICO, and an ICO is a specific type of Managed Care Contractor (MCC) that offers benefits to individual enrollees who have both Medicare and Medicaid benefits; the ICO will generally deliver a member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member available through his or her health insurance benefits.

Appellant has been a CCA enrollee since 2020. Appellant appeared and represented herself at hearing, and was joined on the phone by one of her care workers from a local agency that provides support services in the community. CCA was represented at hearing by Ms. Horne, who is an Appeals & Grievances Supervisor/Manager for the CCA's Operations Department, and Ms. Medeiros, who is a Senior Director at CCA affiliated with its Dental Program.¹

CCA explained that it had received a request for dental services on behalf of Appellant. The initial Prior Authorization (PA) request was denied on or around February 2, 2022, and, after an internal appeal and reconsideration request, CCA issued the Level I denial on February 15, 2022.

The PA request (# A0220202152054) at issue involved a request for the following, all of which was related to implant treatment:

¹ The cover to the CCA submission found in Exhibit 8 indicated that at hearing, in addition to Ms. Horne, CCA was to also be represented by Ms. Jessica Medeiros the "Director of Dental" for CCA. Neither Ms. Medeiros nor any other dentist from CCA was available or appeared at hearing.

- Surgical Placement of Implant Body; Endosteal Implant for teeth # 29/30/31 (under Service Code D6010);
- Custom Fabricated Abutment – Includes Placement for Teeth # 29/30/21 (under D6057);
- Abutment Supported Porcelain/Ceramic Crown for Teeth # 29/30/31 (under D6058); and
- Panoramic Radiographic Image (under DD0330).

CCA testified that the first three services consisted of the three phases typically associated with implant treatment over a period of time. The first phase of implant typically includes placement of the implant. The second phase involves setting the abutment to support the implant, and then crowns are placed in the third and final phase. CCA testified that the teeth at issue, where the implant was desired is in the back or posterior part of Appellant's lower jaw.²

CCA testified that, when it comes to implants, the MassHealth program does not cover implants for its Medicaid beneficiaries.³ As a MCC, CCA indicated that it can offer more services than are required of the MassHealth program. (As one example within its dental program, CCA says that it can offers dental cleanings for its members up to 4 times in a 12-month period, while MassHealth by regulation covers prophylactic dental cleanings twice in a 12-month period.) CCA then testified that, when it comes to implants, CCA does cover implants for its enrollees in a very limited capacity. Per CCA testimony, it covers implants only in a jaw when there are no teeth remaining, and when something is needed to support a full denture. In such a case the implant is done in the anterior or front part of the mouth.⁴ CCA testified that this situation does not apply to this Appellant. Appellant is missing teeth in the lower right part of her mouth, but has most of her other lower teeth in her mandibular jaw. See Exhibit 4, pages 5 and 11.

As to the other denied service, CCA explained that the panoramic x-ray was denied due to service limitations, which allowed such an x-ray once every three years. Per CCA records, Appellant had a full mouth x-ray done in February 2021.

Appellant had multiple reasons for her appeal. She had damage done and eventually lost some of her lower right teeth due to dental malpractice and abuse which started in 2016. At some point during that time period she was told she needed implants in that area, and that it would be a quality of life issue if not addressed. Appellant also testified that one of the main reasons why she signed up for CCA was for the sole purpose of getting implants. She has been told different things by

² Specifically, tooth # 29 is the second bicuspid on the right side of the lower jaw, and teeth # 30 and 31 are the first two molars in that jaw, with tooth #30 between teeth # 29 and #31.

See, e.g., <https://www.holisticsmilecare.com/general-news/international-tooth-numbering-system/> (last viewed on June 8, 2022) for reference to the common tooth numbering system typically used in the U.S.

³ To clarify, this statement applies to adults (ages 21 and over) who are in the MassHealth program, as children and young adults may be entitled to greater dental services via their MassHealth benefits, including arguably some greater potential for implants if medically necessary. Appellant is adult MassHealth member with an age in her 40s, so this clarification is not relevant to this appeal and is simply noted here.

⁴ Upper Teeth # 6 through 11 and Lower Teeth # 22 through 26 are generally referred to as the anterior teeth and consists of the incisors and cuspids in a jaw. The other teeth, consisting of bicuspid and molars, are commonly referred to as posterior teeth.

different people, including some individuals at CCA, about her dental request, and she had difficulties caused with unclear instructions about how to appeal. As part of her written submission, Appellant said a CCA nurse who visited her home in October 2020 told her, with regard to the implants, to have her dentist ask again and that “[she] would definitely be granted these implants as [she’s] in dire need...”

Appellant has difficulty sleeping for longer periods of time and taking naps, and is in a lot of pain due to her dental condition. She has PTSD and has gone through sleep study exercises. She has difficulty eating and suffers from migraines, vertigo, nausea, and her face muscles are overtaxed and are in pain at times. Water and food fall out of her mouth and her bite is off. Appellant submitted letters from dentists and other providers verifying her conditions and with some general statements that it is medically necessary for her to have the requested dental work including the implants and crown placements.

At hearing, there was brief discussion about whether a lower partial denture could be an alternative that was covered and which may address some if not all of Appellant’s dental needs. Appellant indicated she preferred the implant procedure based on her and her provider’s recommendations. In one of her pre-hearing submissions, Appellant writes that she recently had a “new” denture back from the lab and that it is still unusable after being remade.

Findings of Fact

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

1. Appellant is a MassHealth member, over the age of 21, who has enrolled in CCA as a managed care option. (Testimony and Exhibits 1, 2, and 4)
2. Appellant through her dental provider submitted a PA request to CCA which was initially denied on February 2, 2022 and, after a request for reconsideration/internal appeal, CCA issued a Level I denial to Appellant of the requested PA on February 15, 2022. (Testimony and Exhibits 2 and 4)
3. Appellant appealed the Level I denial notice to the Board of Hearings with an April 8, 2022 filing. (Exhibit 1)
4. The PA request at issue sought approval of the following dental services:
 - a. Surgical Placement of Implant Body; Endosteal Implant for teeth # 29/30/31 (under Service Code D6010);
 - b. Custom Fabricated Abutment – Includes Placement for Teeth # 29/30/21 (under D6057);
 - c. Abutment Supported Porcelain/Ceramic Crown for Teeth # 29/30/31 (under D6058); and
 - d. Panoramic Radiographic Image (under DD0330). (Testimony and Exhibit 3)

5. Teeth # 29, 30, and 31, are posterior teeth (consisting of one bicuspid and two molars) in the lower right jaw. (Testimony and Exhibit 3)
6. CCA offers dental implant services but only in a limited capacity. Specifically, an implant is allowed only for a jaw without any remaining dentition, and in such a case an implant is allowed in the anterior part of the mouth. (Testimony)
7. Appellant was denied the PA request for the panoramic x-ray because such x-rays are allowed by CCA once every three years, and Appellant last had either such an x-ray or a full set of comparable x-rays done in calendar year 2021. (Testimony and Exhibit 3)

Analysis and Conclusions of Law

Massachusetts's Secretary of Health and Human Services is authorized to participate in a demonstration program to integrate care for individuals, aged 21 to 64 at the time of enrollment, who are dually eligible for benefits under MassHealth Standard or CommonHealth and Medicare and do not have any additional comprehensive health coverage. MGL ch. 118E, § 9F(a). This particular waiver program allows MassHealth to contract jointly with the Centers for Medicare and Medicaid Services ("CMS") and Integrated Care Organizations ("ICOs") to provide integrated, comprehensive Medicaid and Medicare services, including medical, behavioral health and long-term support services for a prospective blended payment from the executive office and the Centers for Medicare and Medicaid Services. Id. Such medical services include dental benefits, and CCA is one such ICO.

Whenever an ICO like CCA makes an adverse benefit decision, it must provide notice to the affected MassHealth member. 130 CMR 508.011. An ICO has 30 days to resolve any internal appeals, and the MassHealth member then has 120 days to request a "Level II" Fair Hearing from the Board of Hearings, which is what happened here. See 130 CMR 508.012; 130 CMR 610.015(B)(7).

As to any prior authorization or PA request, the MassHealth program is generally required to cover services and treatments for its Medicaid beneficiaries that are "*medically necessary*". The MassHealth regulation at 130 CMR 450.204 in the "All Provider" regulatory manual, and it defines that term as follows:

450.204: Medical Necessity

...

(A) 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, or 517.007.

Furthermore, additional guidance “*about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.*” See 130 CMR 450.204(D). By referencing “*coverage guidelines*” within this regulation, it is clear that the law allows the MassHealth program to have coverage exclusions within its regulations and other documents.

Within the MassHealth dental program alone, there are many exclusions (or non-covered services) and restrictions that the MassHealth agency has within its dental regulations which are imposed on its members. This list of excluded dental services is greater for adults over the age of 21 than it is for younger Medicaid recipients in the Commonwealth.

420.421: Covered and Non-covered Services: Introduction

(A) Medically Necessary Services. 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.*

*(B) Non-covered Services. The MassHealth agency **does not pay for the following services for any member, except when MassHealth determines the service to be medically necessary and the member is younger than 21 years old.** Prior authorization must be submitted for any medically necessary non-covered services for members younger than 21 years old.*

- (1) cosmetic services;*
- (2) certain dentures including unilateral partials, overdentures and their attachments, temporary dentures, CuSil-type dentures, other dentures of specialized designs or techniques, and preformed dentures with mounted teeth (teeth that have been set in acrylic before the initial impressions);*
- (3) counseling or member education services;*
- (4) habit-breaking appliances;*
- (5) implants of any type or description;*
- (6) laminate veneers;*
- (7) oral hygiene devices and appliances, dentifrices, and mouth rinses;*
- (8) orthotic splints, including mandibular orthopedic repositioning appliances;*
- (9) **panoramic films for crowns, endodontics, periodontics, and interproximal caries;***

- (10) root canals filled by silver point technique, or paste only;
- (11) tooth splinting for periodontal purposes; and
- (12) any other service not listed in Subchapter 6 of the Dental Manual

(C) Covered Services for All Members 21 Years of Age or Older. The MassHealth agency pays for the services listed in 130 CMR 420.422 through 420.456 for all members 21 years of age or older in accordance with the service descriptions and limitations set forth therein:

- (1) diagnostic services as described in 130 CMR 420.422;
- (2) **radiographs as described in 130 CMR 420.423;**
- (3) preventive services as described in 130 CMR 420.424;
- (4) restorative services as described in 130 CMR 420.425;
- (5) endodontic services as described in 130 CMR 420.426;
- (6) periodontal services as described in 130 CMR 420.427;
- (7) prosthodontic services as described in 130 CMR 420.428;
- (8) oral surgery services as described in 130 CMR 420.430;
- (9) anesthesia services as described in 130 CMR 420.452;
- (10) oral and maxillofacial surgery services as described in 130 CMR 420.453;
- (11) maxillofacial prosthetics as described in 130 CMR 420.455;
- (12) behavior management services as described in 130 CMR 420.456(B);
- (13) palliative treatment of dental pain or infection services as described in 130 CMR 420.456(C); and
- (14) house/facility call as described in 130 CMR 420.456(F).

(D) Non-covered Services for Members 21 Years of Age or Older. The MassHealth agency does not pay for the following services for members 21 years of age or older:

- (1) preventive services as described in 130 CMR 420.424(C);
- (2) prosthodontic services (fixed) as described in 130 CMR 420.429; and
- (3) other services as described in 130 CMR 420.456(A), (B), (E), and (F).

Regarding covered dental services, MassHealth's own dental regulations specifically indicate that implant work, which encompasses three of the service codes requested in the PA here, are only covered for members who are younger than age 21. See 130 CMR 420.421(B)(5). In addition, MassHealth covers panoramic x-rays only once every three years.⁵ See 130 CMR 420.423(C)(1) and (C)(2). Thus, if any portion of this request from the Appellant, whose age is in the 40s, was directly made of MassHealth, none of the services would be covered or even considered by the MassHealth.⁶ There is no medical necessity analysis to be done about the need or appropriateness of the requested services if by regulation they are not covered. While the Appellant may have valid, rational, and sympathetic need for such service, those reasons unfortunately do not factor into this appeal analysis due to the non-covered nature of the services at issue.

⁵ The x-ray timing as it relate to CCA will be briefly discussed *infra*. It is noted that the Appellant is understandably more vested and interested into whether she can get the implant than whether or not the provider gets approved for a certain type of radiograph.

⁶ As further support, not one of the four codes listed here appear anywhere in the MassHealth Dental Program's 194-page Office Reference Manual in Exhibit 6. Pages 73-194 of that Exhibit contain pages filled with dozens, if not over a hundred, of Service Codes which are covered by the MassHealth program in some capacity.

However, even though no implant services are required of the MassHealth dental program for those over the age of 21, the denial notice and testimony at hearing indicates that CCA has agreed to potentially cover some implants services for its enrollees on a limited basis. It is important to note that MassHealth's required covered services may set the floor or minimum of such services, but that CCA may choose to go above and beyond these required or entitled services, and offer more in dental services. However, since the additional services are not mandated by the state's Medicaid program, there is no entitlement to such a service. I thus find it unnecessary to look at a service that MassHealth wouldn't cover, and yet apply the other portions of the MassHealth medical necessity regulation regarding appropriateness, reasonableness, cost, and availability of other comparable services to determine whether CCA must cover it. Instead, I conclude that CCA has the right to lay out and create its own standards for such services. If such standards of CCA are then applied properly, with no obvious bias or rationality, then there will be great deference to the CCA program and its decisions.

In this case, the CCA Representatives explained via sworn testimony that while CCA covers implants on occasion, it only does so when the implant is in the front part of the mouth and there is no dentition in that jaw. In Appellant's case, the implant request is for service in the back part of the mouth, and she has other dentition in the mandibular jaw. I thus find no reason to overrule this decision of CCA. Appellant's medical conditions and need do not factor into this analysis as there is no entitlement to consideration for an implant for a MassHealth member.

As to the x-rays, for non-surgical dental situations like this, MassHealth only covers panoramic x-rays once every three years. The testimony of the CCA Representatives indicated that CCA applies the same MassHealth standard, and that such x-rays may be covered at the same frequency. CCA testified that x-rays were done in 2021 and I find no reason or evidence to think this is not true. I thus conclude there is regulatory support or other basis to override the CCA decision on this portion of the PA request.

Based on the above, I find neither an entitlement nor any other reason or evidence which can allow me to conclude that any portion the CCA decision is improper and should be reconsidered or overruled. Therefore, this appeal is DENIED.

Order for MassHealth/CCA

None.

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: Appeals Coordinator @ CCA