

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED IN PART; **Appeal Number:** 2203067
DENIED IN PART

Decision Date: 6/28/2022 **Hearing Date:** 06/17/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:
Appellant (by phone)

Appearance for MassHealth:
Cynthia Yered, DMD, on behalf of
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:	APPROVED IN PART; DENIED IN PART	Issue:	PA – Dental – Full Denture Replacement
Decision Date:	6/28/2022	Hearing Date:	06/17/2022
MassHealth's Rep.:	C. Yered, DMD	Appellant's Rep.:	Appellant, 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 April 15, 2022, MassHealth denied Appellant's Prior Authorization ("PA") request (#202210500186400) for replacement of both a complete upper denture (under Service Code D5120) and a complete lower denture (under Service Code D5110). See 130 CMR 420.428(D); Exhibits 1 and 3. On April 25, 2022, Appellant filed a timely appeal with the Board of Hearings. See 130 CMR 610.015(B). On April 26, 2022, the Board of Hearings dismissed this appeal request without prejudice due to a need to obtain a full copy of the appealable action notice. See 130 CMR 610.035; Exhibit 2. On April 28, 2022, Appellant filed a copy of the appealable action denial notice, resulting in the vacating of the dismissal. See 130 CMR 610.035; 130 CMR 610.048; Exhibit 3.¹ Challenging a MassHealth denial of assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for replacement upper and lower full dentures.

¹ While the first appeal was pending in late April and early May 2022, Appellant's dentist submitted a new PA request (#202213800346300) for the set of full dentures, and this was denied on May 18, 2022 and appealed by Appellant on May 24, 2022. See Exhibits 6 and 7. As this denial is virtually and substantively identical, it has been consolidated into this appeal action due to commonality of fact and parties. See 130 CMR 610.073.

Issue

The appeal issue is whether there are extraordinary circumstances that warrant greater consideration of Appellant's request.

Summary of Evidence

Appellant is a [REDACTED] MassHealth member. As of the hearing date, Appellant is completely edentulous in that he has no remaining natural teeth. He has had a full upper denture and full lower denture for at least a few years. Per MassHealth records, Appellant received his complete maxillary (upper) full denture on December 31, 2015 through his MassHealth benefits. MassHealth also approved and paid for a complete mandibular (lower) full denture on December 20, 2019.

At some point in the late winter or early spring of 2022, Appellant was at home, and his girlfriend brought him a breakfast from a local takeout place, which the Appellant quickly ate. The breakfast did not sit well, and after eating, Appellant had stomach pains, and then went to the bathroom and threw up a substantial portion of the meal. During this episode of vomiting, Appellant's upper denture fell into the toilet. Appellant testified that he was unaware that his upper denture had been launched into the toilet, and that he could not see it in the toilet due to the murkiness of the bowl's contents. Appellant stated that the smell was terrible, causing him to flush the toilet at one of his earliest opportunities to do so. As the toilet was flushing, it was around this moment when Appellant realized that his upper denture was no longer in his mouth, but it was too late to save the upper denture which went down the drain.

Appellant expressed regret and disappointment with himself over not catching the denture, as it has cost him so much over the months between then and the hearing date. Appellant testified that he was at 200 lbs at the time he lost the denture and he has since dropped to 186 lbs due to his inability to chew and eat proteins and the fact that he can only consume certain soft foods. Appellant states that he has four stents in his heart and that he has been told that it is essential that as a patient with heart and cardiac issues that he be able to eat an appropriate diet. Appellant submitted a May 13, 2022 letter from one of his physicians, which stated that Appellant had "*multiple chronic medical conditions*" and that it was necessary for Appellant to have a complete set of dentures or false teeth "*in order to meet his current level of health. Without his teeth, the patient is unable to maintain proper nutrition and is at risk for complications which could impact his quality of life and worsen his chronic conditions.*" See Exhibit 4.

Appellant testified that soon thereafter he spoke with someone at MassHealth and he was told that under these circumstances he could get his dentures replaced. Although he still had his lower full denture, Appellant claims he was told by either MassHealth or his dentist that he needed a full set (both upper and lower) as the dentures had to work together for chewing. After his initial PA request was denied by MassHealth, appellant claims he called MassHealth and eventually spoke with someone named Jenny, who told him to appeal and he would get his dentures.²

² It is unclear whether Appellant spoke to a MassHealth Customer Service Representative named Jenny or someone

Appellant was asked why he couldn't use his lower denture which he still had. He stated that he was told they had to be replaced as a set. Appellant stated that, after receiving encouragement from someone from the state over the phone, he went to his dentist to get the process of new dentures started. The dentures have since been completed and are awaiting for him at the dentist's office, but, because there was a denial, he cannot pick them up until they are approved.

The DentaQuest representative later pointed out that this wasn't necessarily the case as evident by the fact that Appellant got his top denture in 2015 and his lower denture in 2019.

The dentist from DentaQuest stated that by regulation, the MassHealth program couldn't ordinarily pay for or cover multiple dentures. Dentures are expected to last for seven years. While MassHealth had some limited regulatory exceptions which allowed for replacement of dentures before the seven year period lapses, the MassHealth Representative stated that, in the agency's opinion, this didn't constitute "*extraordinary circumstances*", like a fire in the home, that could allow for replacement and approval.

Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member who is completely edentulous and has no remaining natural teeth. He has used a full upper denture since at least 2015, and a full lower denture since at least 2019. (Testimony and Exhibit 7)
2. MassHealth most recently paid for Appellant full upper denture on December 31, 2015, and for his full lower denture on December 20, 2019. (Testimony and Exhibit 7)
3. Earlier this year, Appellant had a vomiting episode after eating a takeout breakfast, resulting in him vomiting his upper full denture into the toilet. Appellant then flushed the toilet before realizing that his upper full denture was in the bowl, and this led to his full upper denture going down the drain. (Testimony and Exhibits 1, 3, and 6)
4. Appellant's dental provider subsequently submitted a series of requests, both of which sought (1) a replacement full upper denture under Service Code D5120 AND (2) a replacement full lower denture under Service Code D5110. (Testimony and Exhibits 1, 3, 6, and 7)
5. Appellant still has his full lower denture.
6. There is no evidence in the record suggesting that the lower denture cannot be reused, replaced or work in conjunction with a new upper denture. (Testimony)

at DentaQuest customer service, or someone else. DentaQuest is the name of the company that is the administrator of the MassHealth Dental Program for MassHealth members. Appellant had reference numbers for at least one of his calls to the agency about this problem.

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.,³ covered services for certain dental treatments, including removable prosthodontic devices such as dentures, are subject to the relevant limitations of 130 CMR 42.421 through 420.456. See 130 CMR 420.421 (A) through (C).

130 CMR 420.428 contains the relevant description and limitation for prosthodontic devices like those dentures at issue in this appeal, including specific sections regarding replacement request for such dentures. That regulation reads in relevant part as follows:

420.428: Service Descriptions and Limitations: Prosthodontic Services (Removable)

(A) General Conditions. The MassHealth agency pays for dentures services once per seven calendar years per member, subject to the age limitations specified in 130 CMR 420.428(B). MassHealth payment includes all services associated with the fabrication and delivery process, including all adjustments necessary in the six months following insertion. The member is responsible for all denture care and maintenance following insertion. The MassHealth agency does not pay for complete dentures when the member's medical record indicates material limitations to the member's ability to cooperate during the fabrication of the denture or to accept or function with the denture, or indications that the member does not intend to utilize the denture.

(B) Prosthodontic Services. The MassHealth agency pays for complete dentures for all members. The MassHealth agency pays for immediate dentures, including relines and post insertion procedures and placement of identification, for members younger than 21 years old.

...

(D) Complete Dentures. Payment by the MassHealth agency for complete dentures includes payment for all necessary adjustments, including relines, as described in 130 CMR 420.428(E).⁴

(E) Removable Partial Dentures. The MassHealth agency pays for removable partial dentures if there are two or more missing posterior teeth or one or more missing anterior teeth, the remaining dentition does not have active periodontitis, and there is a favorable prognosis for treatment outcome. A tooth is considered missing if it is a natural tooth or a prosthetic tooth missing from a fixed prosthesis. Payment for a partial denture includes payment for all necessary procedures for fabrication including clasps and rest seats.

³ 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual ("Dental ORM" or "Dental Office Reference Manual") publication as a source of additional explanatory guidance beyond the regulations. It is noted that references in the regulations to the "Dental Manual" include the pertinent state regulations, the administrative and billing instructions (including the HLD form), and service codes found in related subchapters and appendices. See <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on June 21, 2022).

⁴ This appears to be an outdated citation in the dental regulations which were revised in October 2021. It is suspected that this likely should be a reference to 130 CMR 420.428(G) instead of 130 CMR 420.428(E).

(F) Replacement of Dentures. The MassHealth agency pays for the necessary replacement of dentures. The member is responsible for denture care and maintenance. The member, or persons responsible for the member's custodial care, must take all possible steps to prevent the loss of the member's dentures. The provider must inform the member of the MassHealth agency's policy on replacing dentures and the member's responsibility for denture care. The MassHealth agency does not pay for the replacement of dentures if the member's denture history reveals any of the following:

- (1) repair or reline will make the existing denture usable;*
- (2) any of the dentures made previously have been unsatisfactory due to physiological causes that cannot be remedied;*
- (3) a clinical evaluation suggests that the member will not adapt satisfactorily to the new denture;*
- (4) no medical or surgical condition in the member necessitates a change in the denture or a requirement for a new denture;*
- (5) the existing denture is less than seven years old and no other condition in this list applies;*
- (6) the denture has been relined within the previous two years, unless the existing denture is at least seven years old;*
- (7) there has been marked physiological change in the member's oral cavity, and any further reline has a poor prognosis for success; or*
- (8) the loss of the denture was not due to extraordinary circumstances such as a fire in the home.*

(G) Complete Denture Relines. The MassHealth agency pays for chairside and laboratory complete denture relines. Payment for dentures includes any relines or rebases necessary within six months of the insertion date of the denture. The MassHealth agency pays for subsequent relines once every three calendar years per member.

(Bolded emphasis added.)

130 CMR 450.204 speaks to the medical necessity issue for all MassHealth providers. 130 CMR 450.204 reads in relevant part as follows:

450.204: Medical Necessity

The MassHealth agency does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

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

*(B) **Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.** A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)*

...
*(D) **Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.***

(Bolded emphasis added.)

In this matter, 130 CMR 420.428(A) through (G) lay out the framework for denture benefits for MassHealth beneficiaries and their possible replacement and repair. There is a strong regulatory presumption that replacement dentures for those dentures which are less than seven years old cannot be approved by the MassHealth agency unless some extraordinary or unusual circumstances, such as those in 130 CMR 420.428(F)(1) through (4) or (6) through (8), exist.

In this case, the record is clear that Appellant has lost his upper denture. The circumstances described by Appellant's detailed and sworn testimony and handwritten notes were consistent, unusual, and sufficiently credible. MassHealth thought this does not meet the definition of extraordinary, and I somewhat understand the decision made initially, in part because Appellant's dental provider did not appear to submit any information or narrative to the agency on the circumstances with either of the PA requests. Ultimately though, after hearing, I conclude that the sworn testimony and written evidence in the record justifies a conclusion that "extraordinary" circumstances for the loss are present in this case.

Although Appellant could certainly have been more cautious and bears some from of contributory negligence in the loss, it is understandable that the act of vomiting creates a temporary emergency situation where people are not in control of their body or completely aware of their circumstances in the moment. I find these circumstances, plus the fact that Appellant had the same set of dentures for over six years, warrants a finding of extraordinariness to allow this Appellant to get the dentures replaced now as opposed to waiting six-plus months for the seven year period to expire.⁵ This appeal is APPROVED IN PART as to the upper denture.

In contrast to the upper denture, the lower denture, which is less than three years old, has not been lost. Thus the extraordinary circumstances surrounding the loss of the upper denture and 130 CMR 420.428(F)(8) do not factor into Appellant's request as to the lower denture. There is no evidence

⁵ I will note that neither party indicated that Appellant had any moments of carelessness or any earlier requests to replace either of his dentures due to loss in the prior years, going back to 2015, which further evidences some level of the responsibility the regulation requires in 130 CMR 420.428(F).

Additionally, while not something allowed to be factored in by the regulation, I will note that an approval of this seems more appropriate considering the Appellant does not have any upper teeth and the upper replacement denture will help with the basic everyday activity of chewing and eating.

that the lower denture has any structural issue or need for repair or reline that would allow any other portion of 130 CMR 420.428(F) to factor in. Finally, as the DentaQuest representative astutely pointed out, the fact that Appellant's current lower denture was made in 2019, and was able to be used consistently for a few years with the upper denture created in 2015, strongly suggests that the existing lower denture can work together with the new upper denture. There is thus no need at this time for the lower denture to be replaced nor can it be allowed to be approved. The portion of the request for the lower full denture is thus DENIED.

Although Appellant mentioned that there were a set of dentures (both lower and upper) waiting for him at his dentist, it is unclear why the dentist created those before receiving a PA approval. If the dentist did that, then he/she may have done that at the dentist's own financial risk.

Based on the above, the appeal is APPROVED IN PART and DENIED IN PART.

Order for MassHealth/DentaQuest

Rescind the April 15, 2022 and May 18, 2022 PA notices as to the upper full denture, and approve a request for complete upper denture (under Service Code D5120). Send an approval notice to Appellant and his dental provider for approval of D5120 as soon as possible and no later than 30 days from the date of the decision.

Do not approve the portion of the PA request for the lower denture.

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 the MassHealth Dental Program through MassHealth Customer Service.⁶ 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest Appeals Coordinator

⁶ The direct Customer Service number for DentaQuest for MassHealth members is 1-800-207-5019. The general number for MassHealth Customer Service is 1-800-841-2900.