

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: DENIED

Appeal Number: 2204323

Decision Date: 10/19/2022

Hearing Date: 09/30/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:



Appearance for MassHealth:

Sheldon Sullaway, 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	Issue:	PA – Dental – Replacement Denture
Decision Date:	10/19/2022	Hearing Date:	09/30/2022
MassHealth's Rep.:	S. Sullaway, DMD	Appellant's Rep.:	Pro se, with Granddaughter
Hearing Location:	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 May 16, 2022, MassHealth denied Appellant's prior authorization request seeking approval of a replacement upper partial denture. See Exhibit 1; 130 CMR 420.428. Appellant filed a timely request for a Fair Hearing on June 7, 2022. See Exhibit 1; 130 CMR 610.015. Challenging a MassHealth denial of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Via a scheduling letter dated June 13, 2022, the Board of Hearings originally scheduled this hearing to take place on July 15, 2022. See Exhibit 1. Appellant failed to attend that hearing on July 15, 2022, and the Board of Hearings dismissed this appeal on July 28, 2022. See id.; 130 CMR 610.035.

Appellant submitted a written request to vacate the dismissal on August 5, 2022, and the Board of Hearings vacated this dismissal on August 22, 2022. See Exhibits 1A and 1B; 130 CMR 610.035 and 130 CMR 610.048. On September 6, 2022, the Board of Hearings rescheduled the hearing (for a good cause determination) and set the hearing for September 30, 2022. See Exhibit 2.

Action Taken by MassHealth

MassHealth denied the request for a replacement denture.

Issue

Is there enough evidence or information to allow Appellant to make a claim for entitlement for a replacement denture under the governing regulations?

Summary of Evidence

Appellant is a MassHealth member over the age of 65 who appeared and testified at the September 30, 2020 hearing by phone. Although Appellant had asked in her original appeal request for the Board of Hearings to provide her with a Spanish-speaking interpreter, Appellant appeared at that hearing with her granddaughter. With the Appellant's assent and the granddaughter's agreement, the granddaughter served as Appellant's interpreter for the Fair Hearing. MassHealth was represented by Dr. Sullaway, a dentist and consultant for DentaQuest, the third-party administrator of the MassHealth dental program.

The hearing was re-scheduled for September 30, 2022 for a good cause determination as to why Appellant did not appear for the original hearing on July 15, 2022. At the September 30, 2022 hearing, Appellant indicated that she had a medical appointment going on concurrently during the time of the July 15, 2022 Fair Hearing attempt. With the Appellant present at the 2nd hearing date, as well as the other party and the relevant documentation needed for a substantive determination, the Hearing Officer found good cause existed and proceeded to the substantive appeal issue.

MassHealth explained that Appellant's current dental provider in Fall River had submitted a request for replacement of a removable upper partial denture. MassHealth explained that it was denied because dentures are generally approved only once every 7 years, and that, specifically, an upper partial removable denture had been provided or approved for Appellant on January 26, 2018. MassHealth testified that there were limited exceptions to the 7-year restriction but indicated that no such exception existed in the record here or could apply to this case. The MassHealth Representative also explained that medical necessity could not be a factor in this case, as Appellant was over the age of 21, and the representative cited to 130 CMR 420.421(B) as to a partial basis to justify the MassHealth decision.

Appellant explained that she did receive the denture in question in early 2018. She testified that the denture never fit properly, and that shortly after the time she received it, it was too tight and was causing stress to her upper teeth which remained in her jaw. Appellant indicated that this problem with the fit happened the day after she received it and she never used it again after that second date of receipt. Appellant has five upper teeth in the front part of her mouth and one molar tooth in the back. Appellant explained that she received the denture in 2018 from a different dentist (not her current one) in New Bedford. Appellant stated she no longer has the original upper denture as it

was lost when she moved. Appellant states that she currently has trouble eating as that her upper gums have had increasing irritation when she tries to eat and she believes a new upper partial denture would help with that.

Appellant's request has a short letter from her primary care doctor from Dartmouth who is neither her dental provider nor is he affiliated with the dental office in Fall River. The letter from May 2022 states that Appellant "...[h]as significant problems with digestion related to poor dentition - her nutrition is also inadequate and she has multiple underlying chronic medical conditions that require a well-balanced diet. [Appellant] would greatly benefit from extensive dental care, particularly on her upper dentures, reason why (sic) I would like to respectfully request your cooperation and expediting the approval for such needed dental care." See Exhibit 3.

There is no evidence that the denture she received in 2018 is broken or unusable nor is there any evidence that she tried to have that denture repaired or refitted by either the original dentist that produced it for her, or any later dentist.

Findings of Fact

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

1. Appellant timely requested a Fair Hearing after MassHealth denied the request for a replacement upper partial denture. (Testimony and Exhibit 3)
2. A hearing in this matter was originally scheduled for this Appellant on July 15, 2022, but Appellant failed to attend the appeal on that date. The Board of Hearings then dismissed the appeal, but Appellant timely filed paperwork seeking to vacate that dismissal. (Exhibits 1 and 1A)
3. The Board of Hearings rescinded the dismissal and rescheduled the hearing, subject to a good cause hearing. (Exhibits 1B and 2)
4. Appellant appeared at hearing on the second hearing date and good cause for failing to attend the first hearing date was found on the record. (Testimony)
5. Appellant previously had an upper partial denture that was approved and paid for by MassHealth. Appellant last received a partial upper denture from MassHealth during or shortly after February 2018. (Testimony and Exhibit 3)
6. Appellant did not like the fit of the upper partial denture in 2018 and stopped using it within one or two days after the date she received it. (Testimony)
7. There is no evidence that Appellant ever attempted to have the 2018 upper partial denture refitted or addressed with the dentist who provided it, nor is there any evidence of any analysis of the suitability or use of the 2018 denture by any subsequent dentist for Appellant.

(Testimony and Exhibit 3)

8. Appellant no longer has the 2018 denture as she lost it at some time between 2018 and the present during a move. (Testimony)
9. Appellant submitted a letter from her primary care stressing some need for better nutrition and help with her upper denture issue but the letter does not speak to the condition of the (now-lost) 2018 partial upper denture. (Exhibit 3)

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.,¹ covered services for certain dental treatments, including removable prosthodontic devices such as dentures, are subject to the relevant limitations of 130 CMR 420.421 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 the 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.*

...

(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

¹ 130 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 October 5, 2022).

missing from a fixed prosthesis. Payment for a partial denture includes payment for all necessary procedures for fabrication including clasps and rest seats.

(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.)

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 cannot be granted for those dentures which are less than seven years unless some extraordinary or unusual circumstance or exception, such as those in 130 CMR 420.428(F)(1) through (4) or (6) through (8),² exists.

² As stated repeatedly by the Board of Hearings in the past, the regulation in 130 CMR 420.428(F) is written in an extremely confusing English manner and could use a re-write in order for the regulation to be easier to decipher and apply. Specifically, the sentence immediately preceding the conditions in subsections (F)(1) through (8) is written in the negative (“does not pay...if [conditions (1), (2), (3)...(8) exist]”)., but then some of the conditions subsequent are written in a negative tense (i.e. “cannot”) while others are written with a positive. Compare e.g., 130 CMR 420.428(F)(2) and (F)(8) (written in the negative) with (F)(1) (written in the positive). Further, 130 CMR 420.428 (F)(5) only applies as a restriction that comes into play so long as none of (F)(1) through (4) and (F)(6) through (8) apply. It would be easiest for all parties and legal analysis if the agency could rewrite this regulation in a more logically systematic and proper English manner that clearly lays out the exceptions to the 7-year restriction.

Before looking at the replacement denture, I will first address the issue raised at hearing by MassHealth. MassHealth stated that the argument of “*medical necessity*” could not be factored in or used to justify a replacement request for denture for adults over the age of 21, and in doing so, MassHealth cited to 130 CMR 420.421(B). However, that reliance on that citation is misplaced, as the 420.421(B) regulation specifically deals with services that are always non-covered under the regulations, such as implants, veneers, and other cosmetic services.

The relevant parts of 130 CMR 420.421 are as follows:

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.

In other words, a MassHealth member over the age of 21 can’t use “*medical necessity*” to justify a request for any of the non-covered services. But in this case, the requested partial denture is not part of the items in 130 CMR 420.421(B)(1) through (12). As discussed above, partial dentures are specifically discussed in 130 CMR 420.428 and thus they may be granted if there is medical necessity, subject to the service limitations of 130 CMR 420.428. See 130 CMR 420.421(A)

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.)

With that established, I first conclude that there is some medical necessity demonstrated by Appellant, in that both her and her medical provider have provided evidence in the form of letter and testimony explaining how the dentures are needed to help with her food intake, and MassHealth did not offer any alternative services or suggestions.

That said, even if there is an argument of medical necessity, the regulation at 130 CMR 420.421(A) says that even coverage of medically necessary products (such as removable dentures) is subject to service limitations. The regulation of 130 CMR 420.428 does indicate a 7-year restriction on replacement dentures, but there are exceptions. The hurdle for Appellant in this appeal is that her situation unfortunately does not appear to fall into any of the exceptional situations in 130 CMR 420.428(F)(1) through (F)(4) or (F)(6) through (F)(8). There is no evidence that the denture was not repairable as the record reveals that Appellant did not try to fix the denture, nor is there any new medical or surgical condition justifying the need for a replacement denture. Further there is no issue regarding the possibility of reline and that is partially caused by the fact that the denture is no longer in Appellant's possession and that it was lost, but not due to any extraordinary circumstance.

Instead, the record suggests that Appellant did not comply with the general conditions in 130 CMR 420.428, in that she did not care for the denture or try to remedy it. MassHealth can and will try to adjust dentures within six months of them being provided and first inserted, see 130 CMR 420.428(A), but it appears that Appellant did not make that effort to work with the ones that MassHealth paid for four years ago. It would seem inappropriate to let the Appellant try to get around the 7-year restriction and get another denture during that period, when Appellant did not make the best effort to utilize the partial denture MassHealth has already once paid for during this recent time period. Accordingly, I conclude that the seven-year bar applies to this case, and that Appellant is not entitled to a replacement of her partial upper removable denture per 130 CMR 420.428(F)(5).

This appeal is therefore DENIED. Under the controlling regulations and current facts in this record, Appellant is not eligible for a new partial upper denture until January 2025.

Order for MassHealth

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: DentaQuest