

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2205013
Decision Date:	12/5/2022	Hearing Date:	10/07/2022
Hearing Officer:	Alexis Demirjian	Record Open to:	11/28/2022

Appearance for Appellant:



Appearance for MassHealth:

Dr. Sheldon Sullaway



*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	Issue:	Prior Authorization- Root Planning and Scaling
Decision Date:	12/5/2022	Hearing Date:	10/07/2022
MassHealth's Rep.:	Dr. Sullaway	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 4	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 14, 2022, MassHealth denied the Appellant's request for prior authorization of periodontal scaling and root planning on all four quadrants of the Appellant's mouth. (see 130 CMR 420.431 and Exhibit 2). The Appellant filed this appeal in a timely manner on July 8, 2022. (see 130 CMR 610.015(B) and Exhibit 2).¹ Challenging a denial of services is valid grounds to appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's request for approval of the prior authorization request for periodontal scaling and root planning on all four quadrants of the Appellant's mouth.

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated 04/07/2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant did not currently have the medical condition to qualify for approval of the requested treatment.

Summary of Evidence

Appellant is a MassHealth member over the age of 21 who did not appear at the hearing and instead was represented by [REDACTED] of Greater Boston Legal Services.² MassHealth was represented at hearing by Dr. Sullaway, as a consultant for 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.

Dr. Sullaway testified that Appellant's dentist had requested the service of periodontal scaling and/or root planning, hereinafter referred to as "periodontal scaling", for all four quadrants (upper left, upper right, lower left, and lower right) of adult teeth within the Appellant's mouth.

Dr. Sullaway explained that MassHealth has set an objective standard, found within the MassHealth Office Reference Manual for Dental Providers, hereinafter referred to as the "Office Reference Manual", that determines whether the requested treatment of periodontal scaling is medically necessary and allowable. The Office Reference Manual requires that the Appellant's treating dentist include a medical necessity narrative, date of service of periodontal evaluation, complete periodontal charting, appropriate diagnostic quality radiographs history of previous periodontal treatment and a statement concerning the member's periodontal condition. Dr. Sullaway further testified that MassHealth criteria require radiographic evidence of calculus on the root surfaces of at least four teeth in the quad or noticeable bone loss on at least 4 teeth in the quad.

Dr. Sullaway, noted that the x-rays submitted on behalf of the Appellant did not include the name of the Appellant nor did they include the date they were taken, nonetheless, based on the evidence x-rays and submission, MassHealth, did not find evidence of calculus on the root surfaces or bone loss.

The Appellant's representative argued that the service was medically necessary because the Appellant was experiencing significant pain. In support of that argument, the Appellant's representative offered a letter from the Appellant's dentist which stated the Appellant has been suffering from "aggressive periodontitis" and has "lost some of her low molars due to periodontal problems." (Exhibit 5. pp. 3) The letter went on to state that the Appellant has "severe bone loss and calculus, pocket depth of 1 to 6mm and bleeding on probing shows the severity of her problems." (Id.) The Appellant's representative further argued that "significant bone loss" is not a criterion for approval of periodontal scaling and DentaQuest cannot require criteria more limiting than that of MassHealth for dental treatment, thus the Appellant's prior authorization for periodontal scaling should be approved based on the Appellant's diagnosis of

² The Appellant's representative declined the Hearing Officer's offer to call the Appellant for the hearing.

active periodontal disease. (Testimony, Exhibit 5, Exhibit 6)

At the conclusion of the hearing, the Appellant's representative asked for a record open period to provide a letter from the Appellant's doctor attesting that the x-rays submitted with the earlier prior authorization request did in fact belong to the Appellant and they were taken on April 5, 2022. (Exhibit 6) Additionally, the Appellant's representative asked for a brief extension of the record open period to submit a post-hearing memorandum, which was granted. The Appellant's representative provided a letter from the dentist and a post-hearing memorandum which have been incorporated into the record as Exhibit 7. Dr. Sullaway indicated that he had received the documentation, reviewed it and his decision was unchanged, accordingly he was upholding MassHealth's denial of services.

Findings of Fact

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

1. Appellant is an adult MassHealth member who had a request under Service Code D4341 for periodontal scaling and planning on all four quadrants of the member's mouth denied. (Testimony and Exhibit 2)
2. Appellant has severe periodontal disease. (See Exhibit 5, pp.3)
3. Appellant has lost molars due to periodontal disease. (Exhibit 5, pp.3)
4. Appellant has experienced severe bone loss, calculus, pocket depth of 1 to 6mm, and bleeding on probing. (Exhibit 5, pp.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., covered services for certain dental treatments, including periodontal scaling, are subject to the relevant limitations of 130 CMR 42.421 through 420.456. 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 December 2, 2022).

130 CMR 420.427 contains the relevant description and limitation for periodontal services like that at issue in this appeal. As to periodontal scaling and root planing requests, that regulation reads in relevant part as follows:

420.427: Service Descriptions and Limitations: Periodontal Services (A) Surgical Periodontal Procedures. ...

(B) **Periodontal Scaling and Root Planing.** The MassHealth agency pays for periodontal scaling and root planing once per member per quadrant every three calendar years. The MassHealth agency does not pay separately for prophylaxis provided on the same day as periodontal scaling and root planing or on the same day as a gingivectomy or a genioplasty. The MassHealth agency pays only for periodontal scaling and root planing for a maximum of two quadrants on the same date of service in an office setting. **Periodontal scaling and root planing involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus. It is indicated for members with active periodontal disease, not prophylactic. Root planing is the definitive procedure for the removal of rough cementum and dentin, and/or permeated by calculus or contaminated with toxins or microorganisms. Some soft tissue removal occurs.** Local anesthesia is considered an integral part of periodontal procedures and may not be billed separately. Prior authorization is required for members 21 years of age or older.

(C) Non-surgical Scaling in the Presence of Generalized Moderate or Severe Gingival Inflammation - Full Mouth, after Oral Evaluation. ...

(**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.)

The Dental ORM which is incorporated and referenced by earlier parts of the MassHealth Dental Regulations, see e.g., 130 CMR 420.410(A) through (C). The Dental ORM contains many of the detailed standards and guidelines in a format created for all MassHealth dental providers.

Dr. Sullaway specifically cited to pages 44 and 118 of the Dental ORM.³

Page 44 of the Dental ORM contains the following:

15.9 Periodontal Treatment

Some procedures require retrospective review documentation. Please refer to Exhibits A-F for specific information needed by code.

Documentation needed for procedure:

- Appropriate Diagnostic Quality Radiographs – periapical or bitewings preferred.
 - Complete periodontal charting supporting with AAP case type. Dentists are required to record a six-point probing with all numbers recorded once per calendar year on all remaining teeth in the mouth for adult patients. Periodontal Screening and Recording (PSR) is not to be used instead of a full- mouth charting.
 - Medical necessity narrative- Include a statement concerning the member's periodontal condition, date of service of periodontal evaluation and history of previous periodontal treatment.
- ...

From the American Academy of Periodontology (AAP) Policy on Scaling and Root Planning: "Periodontal scaling is a treatment procedure involving instrumentation of the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces. It is performed on patients with periodontal disease and is therapeutic, not prophylactic, in nature. Periodontal scaling may precede root planning, which is the definitive, meticulous treatment procedure to remove cementum and/or dentin that is rough and may be permeated by calculus or contaminated with toxins or microorganisms. Periodontal scaling and root planning are arduous and time consuming. They may need to be repeated and may require local anesthetic."

³ The actual ORM may be found at <https://www.masshealth-dental.net/Documents> and, specifically, <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (both last viewed on September 12, 2022). ⁴ See fn. 1.

Criteria for Periodontal Treatment

- Periodontal charting indicating abnormal pocket depths in multiple sites.
- At least one of the following is present:
 - o Radiographic evidence of root surface calculus; or
 - o Radiographic evidence of noticeable loss of bone support

In this instant case, the Appellant, through her representative, has argued that the criteria used by MassHealth through its agent, DentaQuest, are more restrictive than the regulations put forth by MassHealth. This argument is without merit, as noted above, 130 CMR 420.410(C) 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. Thus, the criteria used by Dr. Sullaway were appropriate and consistent with MassHealth regulations.

In reviewing this matter, I conclude that MassHealth has laid out a consistent and detailed standard regarding the medical necessity for this service which it applied here to Appellant’s submission before reviewing and ultimately denying this request.

However, in reviewing the record before this Hearing Officer, the Appellant included a medical necessity narrative that was not originally submitted with the prior authorization request. The medical necessity statement submitted on October 5, 2022, from the Appellant’s treating dentist gives a definitive diagnosis of periodontal disease, states there is bone loss and that failure to provide the service may lead to a worsening of her dental health which has already decompensated to the point that of lost teeth. I conclude that the evidence within the Hearing Record is sufficient to find that this procedure is medically necessary and MassHealth’s decision should be reversed. Therefore, this appeal is APPROVED.

Order for MassHealth

MassHealth shall authorize the Appellant’s request for periodontal scaling and root planning on all four quadrants of the Appellant’s mouth.

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

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: DentaQuest 1, MA

[REDACTED]