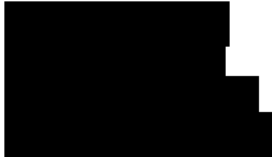


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2206247

Decision Date: 10/13/2022

Hearing Date: 09/30/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:
Appellant, pro se

Appearance for MassHealth:
Sheldon Sullaway, DMD (Consultant on
behalf of DentaQuest)



*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:	PA – Dental – Denture Replacement
Decision Date:	10/13/2022	Hearing Date:	09/30/2022
MassHealth's Rep.:	S. Sullaway, DMD	Appellant's Rep.:	Appellant, pro se
Hearing Location:	HarborSouth Tower, Quincy (heard remotely)	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 on or around July 20, 2022, MassHealth denied Appellant's request for approval of replacement upper and lower dentures. See 130 CMR 420.428 and Exhibits 1 and 3. Appellant filed a timely request for an appeal with the Board of Hearings on August 22, 2022. See 130 CMR 610.015(B) and Exhibit 1. Challenging a denial of a request for 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 of partial dentures.

Issue

Is Appellant entitled to replacement of these dentures due to the circumstances of this case?

Summary of Evidence

Appellant is a MassHealth Standard member between the ages of 18 and 65 who appeared and testified for hearing by phone. Dr. Sullaway appeared by phone on behalf of DentaQuest, who is the third-party administrator of the MassHealth Dental program.

In July of 2022, Appellant's dental provider (Family Dental Associates LLC of Haverhill) submitted a request for approval of prior authorization (PA) # 202220100241700 to the MassHealth dental program. The PA request sought a replacement upper partial denture and a replacement lower partial denture for the Appellant.¹ MassHealth denied the request because, per the agency's records, a set of partial dentures had been approved in October 2019 and per the MassHealth regulation, dentures are provided once per every 7 years unless there is a regulatory exception. MassHealth testified that none of the exceptions were found to apply to this case. MassHealth understands that the dentures have apparently been stained and are discolored, but the MassHealth Representative stated at hearing that care of the dentures is the patient's responsibility and that the agency, as well as himself, did not think any of the exceptions applied.

Appellant offered a detail letter, color photos, and testimony at hearing. Appellant has been legally blind since approximately 2013. She admits that she received the dentures in the last quarter of calendar year 2019. At that time she was given a blue and white case from the dentist in which to store them, and she was given cleaning tablets by the provider that she could use to periodically soak and clean the dentures. She cleaned them regularly and, at one point shortly after receiving the dentures, she put a cleansing tablet in the case and left the dentures there for over 24 hours, going a day without dentures. At some point thereafter, when she put the dentures in, she did not notice that the partials had turned a very dark shade of blue. Due to her eyesight, she did not notice this until she was walking around with a friend in public and the friend asked if she knew she was walking around with blue teeth, leaving the Appellant "*mortified, horrified, and very confused*". See Exhibit 1. Shortly after, she realized it was probably some combination of the tablet and the dye or coloring from the case which likely caused this situation. After her friend told her about this situation, Appellant felt hesitant and did not leave or use her dentures out in public much more, and then the COVID-19 pandemic happened in early 2020 and Appellant spent a lot of time over the next two years isolated at home. She has talked to multiple dentists to try to see if this coloring could be fixed, but has been told that it would be a cost and that it would not likely assist too much due to the deep staining on the dentures.

Appellant's two-page handwritten letter, submitted with the appeal, concludes by stating: "*Due to my legal blindness I can't see what people are looking at and I certainly can't go around with blue teeth. I realize partials are expensive and are only done every seven years, however, I really need teeth. My self-esteem is completely shattered. I am at the mercy of this hearing board to please help an already disabled person to regain her self-esteem and self-respect by providing me with teeth a normal color (sic) and not blue ones.*" See Exhibit 1.

¹ All dentures discussed in this decision are the removable type, and not the fixed type.

Photographs were submitted to DentaQuest as indicated by Exhibit 3, but it is unclear if the ones sent to DentaQuest were in color; the copies forwarded by DentaQuest to the Board of Hearings for the appeal in Exhibit 3 are all black and white. Appellant submitted colored photographs of her two dentures in Exhibit 1 and indicated she chose to do so as she knew the color photographs would be more helpful via mail as opposed to sending them via fax. The photographs in Exhibit 1 show very good photographs on 8 ½ by 11 paper with a white gray background and the entirety of the colored parts of the denture around the teeth range from a dark blue to a purple. For context in this summary, the color of the acrylic-esqe part of the denture which is supposed to match the gums ranges from those shades of blue and purple typically associated with the fruits of blueberries, dark purple grapes, and blackberries. See Exhibit 1.

Findings of Fact

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

1. Appellant is seeking a replacement partial upper denture and a replacement partial lower denture. (Testimony and Exhibit 3)
2. MassHealth last paid and approved for dentures for the Appellant in October of 2019. (Testimony and Exhibit 3)
3. Appellant is legally blind. (Testimony)
4. Appellant's dentures became discolored when Appellant tried to clean her dentures by using the cleaning tablets provided by the dentist in the blue-and-white case in which the dentures were enclosed when given to her in 2019.
5. Appellant's dentures have been discolored to the point that the acrylic or gum-like portion of the dentures have some sort of bluish or purplish hue. The colors are akin to the colors associated with blueberries, purple grapes, or blackberries. (Testimony and Exhibit 1)
6. The dentures in their current color and state are not usable. (Testimony and Exhibit 1)
7. There is no evidence suggesting that the color of these dentures can be repaired or restored. (Testimony and Exhibit 1)

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.,²

² 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual

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.

...

(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.

(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;**

("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).

(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 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),³ exists.

In this matter, there is no dispute that the dentures are less than 7 years old. While MassHealth noted that typically the MassHealth member has to show some level of responsibility of care for her dentures and implied that the lack of such care may be a factor in the analysis, I do not think that applies here. In this case we have an Appellant, who is legally blind, and who apparently acted in good faith and tried to be a good patient by follow the cleaning protocol and using the cleaning materials and case she had been given. In trying to keep her dentures clean, she did not realize the damage she was doing to the color of her dentures. I find this story credible and the circumstances extremely unusual.

As a result, the dentures are a very unusual bluish-purplish color and there is no indication that the color can be restored or repaired to the original. See Exhibit 1. MassHealth offered no testimony indicating how the dentures or their color could be improved or bettered, and the idea of dark blue stains being removed so long after the period when they were incurred does not seem feasible. Appellant's concerns are genuine and understandable and I find her argument and request not only sympathetic, but more importantly, I think it speaks to the practical use of the dentures and how she would risk being embarrassed every day to use these in public. I thus conclude that the existing denture is not practically usable due to the severe and unusual discoloration, and I think it is inappropriate to make this member (figuratively and literally) grin and bear it, and wait for more than 4 years before these dentures can be replaced by MassHealth. Accordingly, I find the exception in 130 CMR 420.427(F)(1) should apply to this Appellant's highly unusual factual circumstances, and the appeal should be APPROVED.

³ 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.

Order for MassHealth/DentaQuest

Rescind the denial for PA # 202220100241700, and approve the request for both the replacement upper partial denture (D5211) and replacement lower partial denture (D5212). Send an approval notice to Appellant and her dental provider as soon as possible, and no later than 30 days from the date of the 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.⁴ 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

⁴ 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.