

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2206432

Decision Date: 10/19/2022

Hearing Date: 09/30/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:
Appellant, pro se (by phone)

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:	APPROVED	Issue:	PA – Dental – Scaling – Service Limitations
Decision Date:	10/19/2022	Hearing Date:	09/30/2022
MassHealth's Rep.:	S. Sullaway, DMD	Appellant's Rep.:	Appellant, pro se
Hearing Location:	HarborSouth Tower, Quincy (remote)		

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 or series of notices dated August 5, 2022, MassHealth denied the Appellant's request for Prior Authorization approval of deep gum and root cleaning for all four quadrants of Appellant's mouth. See Exhibits 1 and 3; 130 CMR 420.427(B). Appellant filed a timely request for a Fair Hearing over these denials on August 26, 2022. See 130 CMR 610.015(B). Challenging a MassHealth denial of a request for assistance is a valid ground for appeal to the Board of Hearings.¹

Action Taken by MassHealth

MassHealth denied the Appellant's request for periodontal scaling service on all four quadrants of the mouth.

Issue

¹ In requesting a hearing, Appellant only sent in the one notice denying the request for the two quadrants on the right side of the mouth. Testimony from both parties indicated that there was a concurrent request and denial for the same treatment on the left side of the mouth from early August 2022. The Board of Hearings can take jurisdiction over the denial as to all four quadrants. See Exhibit 3; 130 CMR 610.032.

The appeal issue is whether Appellant is entitled to the requested periodontal service or are there any service limitations which prevent this service from being considered.

Summary of Evidence

Appellant is a [REDACTED] MassHealth member. In early August 2022, her current dental providers at the Tufts Dental School (Tufts) submitted a Prior Authorization (PA) request (PA # 2022215000682000) seeking MassHealth approval of all periodontal scaling and root planning (also known as deep gum cleaning, and hereafter referred to as periodontal scaling) of all four quadrants of Appellant's mouth. Appellant appeared at hearing by phone. MassHealth was represented by Dr. Sullaway, a dentist and consultant for DentaQuest, the company and third-party administrator who assists MassHealth with administering its dental benefits for its members.

On or around August 5, 2022, MassHealth denied the request in full. See Exhibit 3, page 3. MassHealth denied the request for the upper right and lower right periodontal scaling because, per the initial DentaQuest review, there was no "*no evidence of significant bone loss*" and "*x-rays and/or complete perio charting fail to reveal the need for scaling and curettage*". See id.; see also Exhibit 1.

With regard to the request for the right side of the mouth, the DentaQuest consultant initially said he would have to uphold the denial because it appeared the services on this side of the mouth were last done in 2021, and the service may only be done by regulation "*once every three calendar years*". The regulation in question is from 130 CMR 420.427(B). However, during the hearing discussion, the DentaQuest consultant re-reviewed the record and agreed with Appellant that this service had last been done on this right side of the mouth in the fall of 2019. Specifically, page 1 of Exhibit 3 had a notation at the bottom stating that "*The member had D4341 UR and LR on 10/28/2019 and D4341 UL and LL on 03/03/2020.*". No information was provided by DentaQuest as to the identity of the provider, but Appellant's testimony verified that she was a long-time dental patient at Tufts, going back to 2019.

Because the request was now made for the right side of the mouth in calendar year 2022, it was no longer barred by the "*once every three calendar years*" service limitation. The DentaQuest then reviewed the x-rays and materials available to him and said there was enough bone loss to approve this treatment and he would be willing to reverse and overturn the decision for the right side of the mouth.² Appellant agreed with the chronology that she last had the treatment, on the right side of her mouth, during the last quarter of calendar year 2019 at Tufts.

As to the left side of the mouth, the MassHealth Representative stated that based on his review of the same materials, he would also find it appropriate to approve this service under the regulation, due to the evident bone loss in the x-rays, and the fact that such dental bone loss would be

² Had the appeal only involved the right side of the mouth, the appeal would have been withdrawn and closed as fully resolved at hearing. However because of the issue with the left side, and for administrative simplicity with the entire PA request, the Hearing Officer agreed to take note of the MassHealth position at hearing concerning the right side of the mouth and write a decision on the entire request.

irreversible. However, for these teeth on the left side of the mouth, he thought the service limitation restriction issue per 130 CMR 420.427 may factor in here, as DentaQuest records indicated this service had been approved for the right side of the mouth in March 3, 2020.

Appellant spoke to this issue by stating that while she got the approval in early March of 2020, she never had time to get the actual periodontal service done in 2020 on her left side of her mouth due to the ensuing COVID-19 pandemic which began that month of March 2020.³ She had been informed by Tufts Dental school in March 2020 that the only services being done during the beginning of the pandemic were emergency treatments, such as extractions, and she testified that the periodontal scaling could not be done back in 2020. Consistent with testimony, Appellant had submitted a note with her appeal filing stating that her approval expired during or soon after the period of time when Tufts Dental School resumed non-emergency appointments. This testimony and writing is consistent with Exhibit 3, which has the electronic health record and treatment history from Tufts, showing a “EXAM – 6 month recall” scheduled for April 10, 2020 but no notes on the treatment done that date.⁴ By the time Appellant was willing and able to have the periodontal service done, Appellant testified that she had been told by her dental provider that the DentaQuest approval from 2020 for periodontal scaling on the left side of the mouth had since expired, and that she would need a new approval from the MassHealth agency, which is what led to the PA request and appeal. The medical record in Exhibit 3 is 7-pages long and shows more extensive records and visit for Appellant from January 2021 through the present, but there is no indication of any periodontal scaling being done at any point in April 2020, or since the date of the prior approval.⁵ There also does not appear to be any dental services done by Tufts for Appellant in calendar year 2020.

Findings of Fact

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

1. Through his dental provider Tufts, Appellant requested PA approval of periodontal scaling under Service Code D4341 for all four quadrants of her mouth in August 2022. (Testimony and Exhibit 3)
2. MassHealth denied the request in full and Appellant timely appealed the denials. (Testimony and Exhibits 1 and 3)
 - a. The request for periodontal scaling was denied for the upper and lower right jaws

³ Both the Commonwealth of Massachusetts and the federal government declared their respective “state of emergency” during the first half of the month of March 2020. The Commonwealth declared its emergency on Tuesday, March 10, 2020 while the federal government’s state of emergency went into effect on Friday, March 13, 2020.

⁴ It is unclear from this notation whether this 4/10/2020 appt even happened in April 2020 or was cancelled. The notes for this lack the detail seen in other notes for later dates, when other dental services were clearly done by Tufts for this member. See Exhibit 3.

⁵ There is a mention of possible D4341 on all 4 quadrants in early January 2021, but the appointment the following week shows that restorations to several teeth on the left side of the mouth were done under D2330, D2331 and D2391 on 1/22/2021. See Exhibit 3. There is no evidence that one would do both restoration type fillings and periodontal scaling simultaneously or in a close time period.

because the agency found there was insufficient evidence to reveal the medical need for this procedure. (Testimony and Exhibits 1 and 3)

- b. The request for periodontal scaling was denied for the upper and lower left jaws because the agency believed it was a service limit violation. Specifically, DentaQuest found that the member “had D4341” for the teeth on her left side on 03/03/2020. (Testimony and Exhibit 3)
3. At hearing, the MassHealth dentist verified that there was a medical need for the requested treatment on the right side of the mouth and he verified that there were substantive grounds to overturn the denial for the right side of the mouth. (Testimony and Exhibit 3)
 - a. Appellant also last had the requested service on the righthand side of the mouth in 2019. (Testimony and Exhibit 3)
4. At hearing, the MassHealth dentist also verified that there was a medical need for the requested treatment on the left side of the mouth. (Testimony and Exhibit 3)
5. Appellant last received approval for the periodontal treatment on the left side of the mouth in March of 2020, but never had a chance to use that approval to get the treatment done due to the COVID-19 pandemic. (Testimony and 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; to that end, the agency 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.,⁶ covered services for certain dental treatments, including periodontal scaling, are subject to the relevant limitations of 130 CMR 42.421 through 420.456. See 130 CMR 420.421 (A) through (C).

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

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

⁶ 130 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 4, 2022).

...

(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 gingivoplasty. 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. ...***

(Bolded emphasis added.)

Regarding the request for the right side of the mouth, the record reveals that all parties agree that Appellant last had the service done in the calendar year 2019. DentaQuest initially denied it on medical substantive grounds, but the DentaQuest representative stated that his review of the medical records and x-rays in Exhibit 3 would lead him to overturn that decision. This portion of the request related to the treatment on the upper right and lower right teeth is therefore APPROVED.

As to the left side of the mouth, the evidence offered by DentaQuest is a bit incomplete as it said

“The member had D4341 UR and UL on 10/28/2019 and D4341 UL and LL on 03/03/2020” See Exhibit 3, page 1. MassHealth is thus denying the request by stating that Appellant is not eligible for this procedure again until a few months from now, in calendar year 2023, per 130 CMR 420.427(B). However it is unclear whether DentaQuest means the member had an approval for the procedure issued in March of 2020, or had the procedure itself on that early March date. The testimony from the Appellant speaks to this issue at hearing, and Appellant testified adamantly and consistently that she never had the procedure done on the left side of her mouth even though she had the approval, and this was caused by the timing of the global pandemic that emerged in early 2020. To add to her credibility, she initially admitted that she had the services done on her right side of her mouth, and, if she was not telling the truth about the left side of her mouth, that would be an unusual half-truth to tell. Further, her story about the “expiration” of the PA approval period makes sense,⁷ and that does not appear to be something a MassHealth member would know to craftily makeup in order to get treatment three months sooner, and the secondhand comments she relayed from her dental provider at Tufts also are consistent with this idea and treatment history. Moreover the idea that the Tufts Dental School provider would limit services in calendar year 2020 also makes sense, and the detailed records from 2021 to the present also support her story. For those reasons, I conclude that the service was not done and that MassHealth has not paid for this service on the upper left and lower left teeth in 2020,⁸ 2021 or 2022, and that this appeal can be APPROVED in full for all four quadrants.

Order for MassHealth/DentaQuest

Rescind the August 5, 2022 denial notices issued for PA # 2022215000682000 and issue approvals for D4341 on all four quadrants of Appellant’s mouth. Send an approval notice to Appellant and her dental provider (Tufts Dental School) as soon as possible and no later than 30 days from the date of the decision.

⁷ Typically, approvals for dental procedures seen in the DentaQuest packets received at Fair Hearings over the year indicate that such PA approvals have a one-year period for the services to be done.

⁸ DentaQuest did not provide evidence of payment to any provider in 2020. If there is additional evidence about payment being made in 2020, DentaQuest can investigate and find out whether the provider (and/or the member) engaged in any fraudulent behavior or whether there was an inadvertent overpayment and take any necessary remedial action. Based on the evidence in this record, and the fact that the provider here is one of the three non-profit dental schools in Massachusetts, such a scenario seems unlikely, but the option is open if needed.

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.⁹ 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

⁹ 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.