

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2206543
<b>Decision Date:</b>	3/6/2023	<b>Hearing Date:</b>	10/28/2022
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	01/26/2023

**Appearance for Appellant:**  
*Pro se via telephone*

**Appearance for Integrated Care  
Organization (ICO):**

Cassandra Horne, Appeals and Grievances  
Supervisor *via telephone* (the ICO representative)  
Dr. Allen Finkelstein, Sr. Director, Ancillary  
Programs Dental Operations *via telephone* (the  
ICO dental consultant)



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	ICO Dental
<b>Decision Date:</b>	3/6/2023	<b>Hearing Date:</b>	10/28/2022
<b>ICO's Rep.:</b>	Cassandra Horne; Dr. Allen Finkelstein	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 August 11, 2022, the ICO denied the appellant's prior authorization (PA) request for "D6010 Surgical Placement Of Implant Body: Endosteal Implant for tooth #3/8/9/14/21/22/24/25/27/28/30, D6100 Surgical removal of implant body removal [sic], by report for tooth #22/27, D6104 Bone Graft At Time of Implant Placement for tooth#22/24/25/28/27 [sic], D0367 Cone Beam – Both Jaws" because the services proposed were beyond the scope of coverage and did not meet the criteria for medical necessity. (See 130 CMR 420.429; 450.204; and Exhibit (Ex.) 1, p. 2). The appellant filed this appeal in a timely manner on September 1, 2022. (See 130 CMR 610.015(B) and Ex. 1, p. 1). Denial of a request for prior authorization by a managed care contractor is valid grounds for appeal. (See 130 CMR 610.032).

On September 1, 2022, the Board of Hearings notified the appellant in writing that it would dismiss his appeal unless he provides one of three pieces of documentation indicating that he or a representative authorized the appeal. (Ex. 2). On September 13, 2022, the appellant called the Board confirmed that he signed the appeal at which time the Board scheduled the hearing for October 28, 2022. (Ex. 2).

At the end of the hearing on October 28, 2022, the appellant asked that the record remain open so that he could submit further documentation for consideration by the hearing officer and the ICO and for the ICO to respond. The appellant submitted the documentation by fax on November 21 and November 28, 2022. (Ex. 9; Ex. 10). These were forwarded to the ICO. (Ex. 11). The record closed on January 26, 2023, when the ICO submitted their response to the information the appellant submitted. (Ex. 11).

## Action Taken by the ICO

The ICO denied the appellant's PA request for proposed dental services because those dental services were beyond the scope of coverage and did not meet the criteria for medical necessity.

## Issue

The appeal issue is whether the ICO was correct, pursuant to 130 CMR 420.429 and 450.204, in determining that the proposed dental services were beyond the scope of coverage and did not meet the criteria for medical necessity.

## Summary of Evidence

The ICO representative stated the following. The appellant has been enrolled in the ICO's One Care plan since November 1, 2014. (Ex. 6). On July 19, 2022, the ICO sent the appellant a notice denying the appellant's PA request for dental procedures under current dental terminology (CDT) codes D6010 (surgical placement of implant body: endosteal implant) for teeth 3, 8, 9, 14, 21, 22, 24, 25, 27, 28, and 30; D6100 (implant removal, by report) for teeth 22, and 27; D6104 (bone graft at time of implant placement) for teeth 22, 24, 25, 28, and 27; and D0367 (cone beam CT capture and interpretation with field of view of both jaws; with or without cranium). (Ex. 6, pp. 1-10). For teeth 22 and 27, the ICO denied D6010 because the maximum frequency was reached and D6100 because that code was not covered for those teeth. (Ex. 6). The ICO denied D0367 for all teeth because it was not a covered code. (Ex. 6; Ex. 8, ). The ICO denied D6010 for teeth 3, 5, 12, 14, 30, 28, and 21 because that code was not covered for those teeth. (Ex. 6; Ex. 8). The ICO denied D6104 for teeth 22, 24, 25, 28, and 27 because it was not medically necessary if the corresponding implants were denied there was no need for bone grafts. (Ex. 6; Ex. 8). The appellant filed an internal appeal with the ICO on August 9, 2022. (Ex. 6). The ICO referred the matter to the ICO dental consultant, who performed an impartial appeal desk review of all materials and any new information submitted. The ICO dental consultant denied the appeal in a notice dated August 11, 2022 because the proposed treatment was beyond the scope of the appellant's dental coverage. (Ex. 6; Ex. 1).

The ICO dental consultant testified that the member presented radiographs, which he reviewed. (Ex. 6). These show that the appellant has implants in his lower jaw. (Ex. 6). There is a request to remove these, but there was no documentation as to why they are failing. (Ex. 6). The removal is not covered without an explanation. (Ex. 6). The ICO does cover implants to support upper and lower dentures, but the appellant was requesting 10 implants in addition to removal. (Ex. 6; Ex. 7). The ICO would consider paying for a full set of removable dentures but what was requested was both beyond the scope of coverage and was not medically necessary.

The appellant asserted that the requested treatment was originally covered under a class action lawsuit. The appellant stated that the implants he did have were emplaced in order to allow for dentures. The appellant discovered, however, that he could not wear the dentures because of his gag reflex. The appellant stated that he does not currently have teeth and that his health has declined because he cannot eat right. The appellant stated that prior to the COVID-19 shutdown, the ICO approved the requested treatment.

The ICO representative stated that she reviewed the history of the appellant's PA requests. She confirmed that there was a PA request for dental services submitted in December 2020 concerning implants for multiple teeth. At that time, the ICO only approved implants (D6010) for teeth 6 and 11, all the others were denied. The ICO representative stated that she could not tell the reason for that PA denial. The PA request, however, was submitted using the same CDT codes as the present appeal.

The ICO dental consultant stated that is his professional view there was an alternate way to restore functionality in a way permitted by the ICO's benefit package. The ICO does support two implants per jaw to provide an anchor for partial dentures. The appellant's dentist would need to submit further evidence explaining the medical necessity for the removal of teeth. The appellant stated that he cannot wear a partial in his upper jaw because of his gag reflex.

Before the conclusion of the hearing, the appellant stated that he had documents that he wanted to submit for consideration. The appellant was given 30 days to submit the documents to this hearing officer, at which time he would forward them to the ICO. The ICO representative and the ICO dental consultant initially asked for five days to review.

The appellant submitted documents by fax on November 21 and November 28, 2023. (Ex. 9; Ex. 10). These largely consisted of the same documentation, including letters from three of the appellants' medical/service providers. (Ex. 9; Ex. 10). In a November 13, 2019 letter, Dr. Matthew Siu of Tufts Medical Center Community Care wrote that it was medically necessary for the appellant to have dental implants because he tried dentures and they made him gag. (Ex. 9, p. 5; Ex. 10, p. 6). In a June 24, 2022 letter Dr. Michael S. Hanau wrote that the appellant has dysphonia due to encephalopathy and dental issues, which are chronic and not the effect of any medications or drugs. (Ex. 9, p. 6; Ex. 10, p. 7). Finally, there was a letter from Maurice J. Maher, LICSW dated June 13, 2022 stating that it was medically necessary for the appellant to have the dental implants because he seldom left home due to the embarrassment he experiences by his speech impediment brought on from his dental issues; he is often mistaken for being under the influence of addictive substances due to his slurred speech which has prevented him from applying to have his Massachusetts driver's license reinstated; he struggles to eat proper foods due to frequent gagging brought on from his dental issues. (Ex. 9, p. 9; Ex. 10, p. 10).

The appellant also submitted a copy of a Notice of Approval of Coverage Request date January 14, 2020. (Ex. 9, p. 11; Ex. 10, p. 12). This document was also present in the ICO's submission. (Ex. 6, pp. 23-24). This notice indicates that in 2020, the ICO approved a PA request that was extremely similar to the PA request that they are presently denying. (Ex. 9, p. 11; Ex. 10, p. 12; Ex. 6, pp. 23-24).

The hearing officer forwarded these packets to the ICO representative. (Ex. 11). The ICO's response was delayed until January 26, 2023. (Ex. 11). On that date the ICO representative emailed the hearing officer stating that the ICO dental consultant reviewed the additional information the appellant submitted and that the ICO would continue to uphold the denial. (Ex. 11). The ICO representative stated that the only additional approval will be for two upper arch implants as the ICO will cover this. (Ex. 11). The ICO representative wrote that the other service requests were beyond the scope of the appellant's benefits. (Ex. 11).

## Findings of Fact

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

1. The appellant has been enrolled in the ICO's One Care plan since November 1, 2014. (Ex. 6; Testimony of the ICO representative).
2. On July 19, 2022, the ICO denied the appellant's PA request for dental procedures under CDT codes D6010 (surgical placement of implant body: endosteal implant) for teeth 3, 8, 9, 14, 21, 22, 24, 25, 27, 28, and 30; D6100 (implant removal, by report) for teeth 22, and 27; D6104 (bone graft at time of implant placement) for teeth 22, 24, 25, 28, and 27; and D0367 (cone beam CT capture and interpretation with field of view of both jaws; with or without cranium). (Ex. 6).
3. For teeth 22 and 27, the ICO denied D6010 because the maximum frequency was reached and D6100 because the code was not covered for these teeth. (Ex. 6).
4. The ICO denied D0367 for all teeth because it was not a covered code. (Ex. 6; Ex. 8).
5. The ICO denied D6010 for teeth 3, 5, 12, 14, 30, 28, and 21 because the code was not covered for these teeth. (Ex. 6; Ex. 8).
6. The ICO denied D6104 for teeth 22, 24, 25, 28, and 27 because it was not medically necessary as there was no bone defect. (Ex. 6; Ex. 8).
7. The appellant filed an internal appeal with the ICO on August 9, 2022. (Ex. 6).
8. The ICO referred the matter to the ICO dental consultant, who performed an impartial appeal desk review of all materials and any new information submitted. (Testimony of the ICO dental consultant).
9. The ICO dental consultant denied the appeal on August 11, 2022 because the proposed treatment was beyond the scope of the appellant's dental coverage. (Ex. 6; Ex. 1).
10. On January 14, 2020, the ICO approved a PA request for services that was similar to what was denied in the present PA request. (Testimony of the appellant; Ex. 9, p. 11; Ex. 10, p. 12; Ex. 6, pp. 23-24).

## Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted ICO available for their coverage type. (130 CMR 450.117(A); 130 CMR 508.002). MassHealth managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. (130 CMR 450.117(K)).

A member may enroll in an ICO if he or she meets the following criteria:

(A) Eligibility.

(1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):

- (a) be 21 through 64 years of age at the time of enrollment;
- (b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;
- (c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*; and
- (d) live in a designated service area of an ICO.

(130 CMR 508.007).

The ICO will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, the ICO is required to provide evidence of its coverage, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to specialty, behavioral-health, and long-term services and supports. (130 CMR 508.007(C)). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

CCA's One Care Plan is a MassHealth ICO, and therefore includes dental services as part of its coverage. Under MassHealth regulations, the ICO must, at minimum, cover what non-managed care MassHealth covers. MassHealth only pays for fixed partial dentures/bridge for anterior teeth for members younger than 21 years old with two or more missing permanent teeth. (130 CMR 420.429(A)). According to the ICO representatives, the ICO has also chosen to cover fixed partial dentures if it is part of a decision to support a full denture. The appellant has requested that the ICO pay for far more implants than this. Neither the ICO nor MassHealth cover implants in this quantity. Furthermore, the appellant has requested other services that neither MassHealth nor the ICO cover. The ICO's decision to deny coverage in this case was supported by the evidence in the record here.

That said, the appellant did submit documentation showing that the ICO approved a PA request in 2020 that was similar to the PA request in the present case. There is no evidence that this PA request was acted upon. The appellant indicated that this may have been due to the COVID 19 lockdown and this is entirely possible given the circumstances at that time. The ICO representatives did not provide an explanation for approving the services in one case, and then denying a similar request a little over two years later. The Board certainly cannot make the ICO act on its previous approval.

For the above stated reasons, the appeal is DENIED.

## Order for the ICO

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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

ICO Commonwealth Care Alliance, Attn: Cassandra Horne, 30 Winter Street, Boston, MA 02108