

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2206824
Decision Date:	11/3/2022	Hearing Date:	10/14/2022
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Guardian, Caregiver

Appearance for MassHealth:
Dr. Sheldon Sullaway, 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:	Dentures
Decision Date:	11/3/2022	Hearing Date:	10/14/2022
MassHealth's Rep.:	Dr. Sheldon Sullaway	Appellant's Rep.:	Guardian, Caregiver
Hearing Location:	Board of Hearings (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 dated July 27, 2022, MassHealth denied Appellant's prior authorization request for full upper and lower dentures (130 CMR 420.428 and Exhibit 1). Appellant filed this appeal in a timely manner on September 12, 2022 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing record remained open until October 21, 2022, to allow Appellant's representatives to submit photographs of the dentures and a letter from her dental provider. The hearing record open period was extended to November 4, 2022. Documentation was timely received and reviewed by MassHealth (Exhibits 5, 6).

Action Taken by MassHealth

MassHealth denied Appellant's prior authorization request for full upper and lower dentures.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.428, in denying Appellant's prior authorization request for full upper and lower dentures.

Summary of Evidence

MassHealth was represented by a licensed dental consultant who appeared by telephone and testified to 40 years of clinical experience, and status as a professor of dental medicine at Tufts University Dental School. On July 28, 2022, a prior authorization request for full upper and full lower dentures was submitted on Appellant's behalf. MassHealth records show that Appellant's existing dentures were approved by MassHealth on February 20, 2017 and are less than 7 years old. Citing 130 CMR 420.028(F)(5, 8) the MassHealth representative testified that MassHealth pays for dentures once every 84 months unless an exception applies.

Appellant was represented by her legal guardian and her caregiver who lives with Appellant. Appellant's representatives testified that Appellant is [REDACTED], and a DDS client with Down syndrome. Appellant's representatives testified that Appellant takes seizure medications, but had a seizure on July 21, 2022 which caused her to fall, striking her face on the floor. Upon impact, her upper denture broke in half, and her lower denture fractured into several pieces, some of which she swallowed. Appellant's caregiver stated that she had to remove pieces of the denture from Appellant's mouth. Appellant's representatives submitted into evidence a photograph of the dentures (Exhibit 6). Appellant's representatives explained that Appellant also takes thyroid medication which she chews. Since her dentures broke she can't take the thyroid medication because she spits it out, and no liquid alternative is available. Appellant's representatives submitted into evidence a letter from Appellant's dentist stating that the dentures are beyond repair (Exhibit 5).

The MassHealth dental consultant testified that the circumstances are not extraordinary under 130 CMR 420.428(F)(8), and after reviewing the dentist's letter and photographs he responded that almost all of the pieces of the denture are present; and if the pieces of the denture could be put together and an impression taken to see if there are missing pieces, and the missing pieces are added to the denture, perhaps the denture could be repaired, although he admitted this would be a challenge (Exhibit 7).

Findings of Fact

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

1. On July 28, 2022, a prior authorization request for full upper and full lower dentures was submitted on Appellant's behalf.
2. Appellant's existing dentures were approved by MassHealth on February 20, 2017 and are less than 7 years old.
3. Appellant is [REDACTED], and a DDS client with Down syndrome.
4. Appellant takes seizure medications, but had a seizure on July 21, 2022 which caused her to fall, striking her face on the floor. Upon impact, her upper denture broke in half, and her lower denture fractured into several pieces, some of which she swallowed.

5. Appellant takes thyroid medication which she chews.
6. Appellant's dentures are beyond repair.

Analysis and Conclusions of Law

Regulation 130 CMR 420.428(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.

(emphasis added)

The applicable regulation states that MassHealth **does pay** for the necessary replacement of dentures under certain circumstances. The regulation qualifies replacement of dentures under section (F)(5) in that MassHealth **does not pay** for the replacement of dentures that are (1) less than seven years old and (2) **no other condition in the list applies**. Under section (1), MassHealth will not replace dentures if repair or reline will make the existing denture usable.¹ Appellant's dentures

¹ The regulatory language is abstruse. The regulation states that MassHealth does pay for the necessary replacement of dentures, then imposes conditions under which it will not pay for dentures under (1-8). Section (F)(5) specifically addresses dentures less than 7 years old and establishes that MassHealth does not pay for the replacement of dentures that are less than 7 years old and no other condition in the list applies. Ostensibly, if the condition at (F)(1) **does** apply to a denture less than 7 years old, then MassHealth would replace a denture that is less than seven years old that could have been repaired or relined. A more sensible reading of the regulation unwinds the "does not pay" language to arrive at (1) MassHealth does not pay for a replacement denture that is less than 7 years old that can be relined or

are less than 7 years old and broken into multiple pieces after suffering a seizure and falling to the floor. Appellant's dentist stated unequivocally that the dentures are beyond repair. The photographic evidence supports this conclusion and corroborates Appellant's testimony that parts of the dentures are missing and possibly were swallowed when Appellant fell striking her face on the floor. The MassHealth dental consultant's suggestion that the pieces of Appellant's denture, which will be 6 years old in February 2023, could somehow be put together and refabricated despite the missing pieces strains credulity and simply is not credible as he admits it would be a challenge. While I disagree with the MassHealth testimony that the impact of the fall causing Appellant's dentures to shatter into multiple pieces is not extraordinary, section (8) of the regulation applies to dentures that are lost, not broken, and extraordinary circumstances associated with that loss which is not the case here.² Although Appellant's dentures are less than 7 years old, Appellant has carried the burden of proof in showing that repair or reline will not make the existing denture usable.³

Therefore, the appeal is APPROVED.

Order for MassHealth

Approve the prior authorization request for a full upper and lower denture submitted on July 28, 2022.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: DentaQuest 1, MA

repaired; and the inverse, MassHealth does pay for a replacement denture that is less than 7 years old that cannot be relined or repaired.

² Reading the regulation in the same context as MassHealth interpreting "loss" as the unavailability of the denture due to extraordinary circumstances still warrants a replacement denture as the circumstances resulting in the loss of Appellant's denture are indeed extraordinary.

³ The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).