

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2208889
<b>Decision Date:</b>	1/18/2023	<b>Hearing Date:</b>	01/06/2023
<b>Hearing Officer:</b>	Christopher Taffe	<b>Record Closed:</b>	01/06/2023

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

**Appearance for MassHealth:**  
Sheldon Sullaway, DMD, on behalf of  
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

<b>Appeal Decision:</b>	DENIED	<b>Issue:</b>	PA – Partial Denture – Replacement
<b>Decision Date:</b>	1/18/2023	<b>Hearing Date:</b>	01/06/2023
<b>MassHealth's Rep.:</b>	S. Sullaway, DMD	<b>Appellant's Rep.:</b>	Appellant, pro se
<b>Hearing Location:</b>	HarborSouth Tower, Quincy (remote hearing)	<b>Aid Pending:</b>	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 November 28, 2022, MassHealth denied a prior authorization (PA) request of Appellant seeking a partial upper denture. See Exhibit 1; 130 CMR 420.428. Appellant filed a timely request for an appeal via phone on November 28, 2022. See Exhibit 1; 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. See 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied Appellant's PA request seeking approval of a replacement upper partial denture.

## Issue

Based on this PA request, is the Appellant entitled to approval or reconsideration of a replacement partial denture?

## Summary of Evidence

Appellant is a MassHealth member between the ages of 21 and 65 who appeared and testified at hearing by phone. MassHealth was represented by Dr. Sullaway, a dentist and consultant for DentaQuest, the third-party administrator of the MassHealth dental program.

MassHealth explained that Appellant's current dental provider in Lawrence had submitted a PA request for replacement of a removable upper partial denture. MassHealth explained that it was denied because dentures are generally approved only once every 84 months (7 years), and that, per the records given to the consultant by DentaQuest, an upper partial removable denture had been previously approved and paid for by MassHealth for Appellant on or around March 16, 2017.<sup>1</sup> MassHealth also testified that the PA request did not contain any x-rays or photos or any letter or narrative about the need for the replacement denture.

MassHealth testified that there were some limited regulatory exceptions to the 7-year restriction but that there was no evidence in the PA submission or record would could satisfy the exception.

Appellant testified that the timeframe, of receiving his last denture in 2017, sounded approximately correct. Appellant testified that in the year 2003, he was the victim of an extremely violent physical crime, which resulted in him being in a coma for 30 days. As a result of that act, he had extreme cuts and damage to his mouth, jaws, and eye area, all of which has required extensive surgery to his face area as well as lots of dental work over the years. Appellant testified that the 2017 denture had broken.

There is no evidence or picture of the broken denture in the PA submission. There is also no narrative or statement from a dental provider describing the break or indicating whether the denture could be repaired or not.

## Findings of Fact

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

1. Appellant timely requested a Fair Hearing after MassHealth denied the request for a replacement upper partial denture. (Testimony and Exhibits 1 and 3)
2. At some point in or around March 2017, Appellant previously received an upper partial denture that was approved and paid for by MassHealth.
3. Appellant testified that the denture had broken. (Testimony)
4. There were no records or photographs submitted which show the partial upper denture in its

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<sup>1</sup> DentaQuest did not provide any written record of this 2017 delivery date in its submission for hearing in Exhibit 3, but Appellant did not contest this fact or general 2017 timeframe.

current condition. (Testimony and Exhibits 1 through 3)

5. There is no information, such as a medical narrative, from Appellant's dental provider in the PA submission which describes the current condition of appellant's upper partial denture or which opines on whether the upper partial denture could be repaired or not. (Testimony and Exhibit 3)
6. The PA request did not contain photographs or x-rays. (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 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.,<sup>2</sup> covered services for certain dental treatments, including removable prosthodontic devices such as dentures, are subject to the relevant limitations of 130 CMR 420.421 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 the removable partial denture at issue in this appeal; it also has a specific section regarding the rules for replacement. The 130 CMR 420.428 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*

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<sup>2</sup> 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 5, 2022).

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;***
- (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.)**

In this matter, 130 CMR 420.428(A) through (G) lay out the framework for denture benefits for MassHealth beneficiaries and the possible replacement and repair of such dentures. A careful read<sup>3</sup> of the regulation shows that replacement dentures cannot be granted for 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), exists.

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<sup>3</sup> 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 logical and clear systematic manner that lays out the exceptions to the 7-year restriction.

Here, there is no dispute that Appellant's denture is less than seven years old. Turning to the exceptions, the only exception that may arguably help Appellant is the one in 130 CMR 420.428(F)(1), as there is a claim that the existing denture is broke, and presumably, repair may not make it usable. The problem today for Appellant is that, in such a case, there needs to be some greater evidence about how the current denture is not capable of being repaired. It is not that one thinks Appellant's testimony about the broken denture is not valid, but more importantly the need, by law, "*must be substantiated by records including evidence of such medical necessity and quality.*" See 130 CMR 450.204(B). The Appellant's dentist should have followed the procedure more properly and submitted records, including x-rays, and anything else of support such as relevant photos and a narrative on why repair or reuse of the current denture was not possible. See 130 CMR 420.410(C). The instructions in the MassHealth Dental Office Reference Manual (cited in 130 CMR 420.410(C)(2)) state that for all denture PA submissions, the dental provider should, at the least, submit x-rays showing that the existing bite can still stand a partial denture.<sup>4</sup> In addition, if an existing denture is being replaced, it is reasonable to expect that there should be something verifying the need for a new denture and why the old one cannot be repaired or is no longer suitable. Accordingly, I conclude that the seven-year bar applies to this case, and that Appellant is not entitled to a replacement of his partial upper removable denture per 130 CMR 420.428(F)(5). This appeal is therefore DENIED.

As discussed at hearing with Appellant, this is not necessarily the end of the road. The denial letter sent to Appellant in November states that the MassHealth member may work together with his dental provider and submit a new PA request at any time with new or additional supporting documentation.<sup>5</sup> Perhaps the denture can be repaired. But if the denture is truly not repairable, a new PA submission should be able to verify that and MassHealth and DentaQuest should be able to respond appropriately to such a new request with greater supportive evidence.

## Order for MassHealth/DentaQuest

None.

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<sup>4</sup> 130 CMR 420.410(C) references and incorporates the MassHealth Dental Program Office Reference Manual (ORM) publication as a source of additional explanatory guidance beyond the regulations. The ORM is a helpful guide for providers. The current version (dated June 1, 2022) of the ORM can be found at <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last viewed on January 9, 2023).

<sup>5</sup> The record in this matter closed at the conclusion of the hearing on January 6, 2023. It was never reopened post-hearing per 130 CMR 610.081. During the hearing, the Hearing Officer communicated to Appellant that he would not be accepting future materials directly and that Appellant may wish to work with his dental provider on a new PA submission.

Despite this, while this decision was pending and being processed to be sent out, the Appellant submitted some materials via mail to the Board of Hearings on January 13, 2023. These materials contain an x-ray and a 4-line narrative from his dentist, containing one conclusory sentence about the upper partial denture being "*non-repairable*" (sic). These materials have been returned to Appellant as being non-timely. **However, it is likely that these materials may be part of a future PA submission that has a better chance of being approved. To that end, Appellant may want to ask his dentist to not only re-submit these new materials to DentaQuest as part of a future Prior Authorization request, but the dentist may want to also possibly include either (1) a photograph of the existing denture showing how it is broke and/or (2) an additional supportive sentence or two describing, in slightly more detail, why the denture can't be repaired or how it is broken.**

## 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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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: Appeals Coordinator @ DentaQuest