

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2209380
Decision Date:	2/6/2023	Hearing Date:	01/27/2023
Hearing Officer:	Patrick M. Grogan	Record Open to:	N/A

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Dr. Sheldon Sullaway

Interpreter:
N/A



*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 Services
Decision Date:	2/6/2023	Hearing Date:	01/27/2023
MassHealth's Rep.:	Dr. Sheldon Sullaway	Appellant's Rep.:	Pro se
Hearing Location:	Remote (Tel)	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 December 12, 2022, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that service limitations applied and the service (complete denture maxillary) is allowed once per 84 months. (see 130 CMR 420.428, Exhibit 1, Exhibit 5, p.3). The appellant filed this appeal in a timely manner on December 20, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's request for replacement complete denture (maxillary) for the upper arch.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.428(F), in determining that service limitations applied and the service (complete denture maxillary) is allowed only once per 84 months, thus denying the Appellant's request for replacement complete denture maxillary for the upper arch.

Summary of Evidence

The Appellant is a MassHealth member who has received complete denture maxillary for the upper arch. (Testimony, Exhibit 5, p.3-4). The dentist consultant for MassHealth testified that he is a dentist licensed to practice in the Commonwealth of Massachusetts and has been a dentist for more than 40 years. The dentist consultant further testified he is currently a professor at Tufts University School of Dental Medicine, and is a consultant for DentaQuest, the MassHealth agent responsible for administering the MassHealth dental plan. (Testimony). The dentist consultant for MassHealth testified that MassHealth will cover the cost of dentures once for a period of 84 months or 7 years as codified within the Regulations with exceptions. (Testimony, 130 CMR 428(F)(5)).

The Appellant testified that she is currently unable to eat due to the loss of her dentures, she is losing weight, and this affects her diabetic condition. (Testimony). The Appellant testified that she is a victim of domestic violence, and she has an open restraining order out of Brockton District Court since August 2022. (Testimony). The Appellant testified that the subject of the restraining order violated the restraining order and during the violation, struck her in the face, breaking her dentures. (Testimony, Exhibit 2). The Appellant testified that the police were called, and charges are pending for assault and battery on a family member as well as violating the restraining order. (Testimony). The Appellant testified that during the domestic violence incident, the aggressor broke her phone¹. (Testimony). The Appellant testified that she attended a recent court hearing for the criminal case against her aggressor and believes the case will proceed to trial. (Testimony). The Appellant testified that she requires replacement dentures to eat. (Testimony).

Findings of Fact

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

1. The Appellant is a MassHealth member who has received complete denture maxillary for the upper arch. (Testimony, Exhibit 5, p.3-4).
2. The Appellant sought replacement dentures from MassHealth. (Testimony, Exhibit 5)
3. The Appellant testified her dentures were broken during an act of domestic violence perpetrated against her. (Testimony)
4. The Appellant testified that the criminal case against the aggressor is pending, and she attended Court recently and anticipates the case will proceed to trial. (Testimony).
5. The Appellant testified that she requires her dentures to eat. (Testimony).

¹ The original telephone number provided to this Hearing Officer was not in service. An additional phone number was retrieved from the MassHealth APS database, allowing this appeal to proceed. The Appellant indicated this original telephone number belonged to the telephone that was broken during the domestic violence assault. (Testimony)

Analysis and Conclusions of Law

MassHealth will cover the cost of dentures once for a period of 84 months or 7 years as codified within the Regulations with exceptions. (130 CMR 420.428)

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.

The maintenance and care of the dentures is the responsibility of the MassHealth member. There are exceptions to this service limitation explicitly stated within the Regulations. (130 CMR 420.428(F):

(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.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Here, the Appellant testified that the dentures were lost through no fault of her own, but rather during a domestic violence assault perpetrated against her. (Testimony). The Appellant testified that she has an open restraining order since August 2022, the restraining order was active at the time of the assault, and that the police were contacted and the criminal case against the perpetrator is pending in Court. (Testimony).

Under the preponderance standard in this administrative proceeding, testimony, if deemed credible and reliable, can support an evidentiary finding of fact. I find the Appellant's testimony credible. The Appellant provided information which included that a restraining order had issued in August 2022 prior to the assault from Brockton District Court, that the perpetrator was charged with multiple crimes, and that she personally has attended Court hearings related to the prosecution of the perpetrator. Additionally, the Appellant testified that during the assault her telephone was broken, and this is corroborated by the fact that the initial telephone number provided for this hearing was out of service. (see Footnote 1). The Appellant further testified that the domestic violence assault included a blow to her face, breaking her dentures. This testimony has the requisite indicia of reliability, is detailed, and corroborated by the inactive telephone number. Therefore, I credit her testimony and find as fact that she has suffered the loss of her denture through the domestic violence episode.

Pursuant to 130 CMR 420.428(F), MassHealth does not pay for the replacement of dentures if the member's denture history reveals any of the enumerated conditions including 130 CMR 420.428(F)(8) "the loss of the denture was not due to extraordinary circumstances such as a fire in the home." However, I find that the loss of the denture was due to an 'extraordinary circumstance' of suffering a domestic violence assault, and that the MassHealth Regulation explicitly carves out an exception to pay for replacement dentures in these "extraordinary circumstances" to allow for the departure from the general services limitation outlined in the Regulation. Therefore, I APPROVE the Appellant's appeal of her December 12, 2022, denial of pre-authorization for replacement denture under these specific extraordinary circumstances.

Order for MassHealth

Approve the Appellant's prior authorization request for a complete denture – maxillary (upper arch) pursuant to procedure D5110.

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.

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.

Patrick M. Grogan
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: DentaQuest 1, MA