

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DENIED

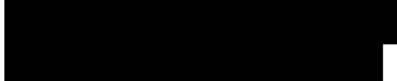
**Appeal Number:** 2301275

**Decision Date:** 4/6/2023

**Hearing Date:** 03/29/2023

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**



**Appearance for MassHealth:**

Carl Perlmutter, DMD, Consultant for  
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

<b>Appeal Decision:</b>	DENIED	<b>Issue:</b>	PA – Dental – Orthodontics – Service Limitation
<b>Decision Date:</b>	4/6/2023	<b>Hearing Date:</b>	03/29/2023
<b>MassHealth's Rep.:</b>	C. Perlmutter, DMD	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<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 January 20, 2023, MassHealth, via its agent DentaQuest, denied Appellant's request for approval of a Prior Authorization (PA) request for orthodontic treatment due to a service limitation. See Exhibits 1 and 3; 130 CMR 420.431. Appellant filed this appeal in a timely manner with the Board of Hearings on February 15, 2023. See 130 CMR 610.015(B) and Exhibit 1. 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 request for orthodontic treatment.

## Issue

Is Appellant entitled to consideration of the request for orthodontic treatment, or does any prior dental history limit his ability to request that benefit?

## Summary of Evidence

Appellant is a [REDACTED] MassHealth member who was represented at hearing by his mother. MassHealth was represented at hearing by Dr. Perlmutter, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer and run the agency's dental program for MassHealth members. All parties testified telephonically.

Per the MMIS screen in Exhibit 1, Appellant's current MassHealth eligibility is through the MassHealth Family Assistance program. Appellant has had MassHealth continuously from August 2019 to the present. Appellant moved to Massachusetts from Virginia around that time period.

Appellant's current dental provider, Dr. Lu of Raynham, submitted a request for comprehensive treatment of the adolescent dentition to DentaQuest on January 20, 2023. The request indicated that appellant had some significant mandibular protrusion, an anterior open bite, some anterior crowding, and some interior spacing. Even though Appellant is in his late teen years, the x-ray in Exhibit 3 shows a lower tooth about to approach near the root of a canine or first molar. Exhibit 3 shows that Appellant's current orthodontist scored 28 points on the HLD index. Typically one needs 22 points or some automatic condition to qualify for comprehensive orthodontic treatment.<sup>1</sup>

In terms of testimony, Dr. Perlmutter testified that he had received information from DentaQuest which he was to relay at hearing, that Appellant had some history of having braces before, and that those braces were removed, and that was why MassHealth could not pay for or consider this request because MassHealth had a "once per lifetime" rule regarding braces.<sup>2</sup>

Appellant's mother testified that MassHealth did not put the braces on Appellant, as the Appellant had them put on in or around 2017 under another insurance, possibly the Medicaid program of Virginia) when he was living in Virginia last decade and that "*all they [MassHealth] did was remove them*" after he moved to Massachusetts in August 2019. Appellant had the braces removed at a dentist's office in Waltham in June of 2020. Appellant's mother testified that she thought that dentist was a MassHealth provider.

Appellant's mother testified that Appellant has a history of having extra teeth and had oral surgery previously to remove some of those teeth, and that these additional teeth created a complicated case with a need for orthodontia. The condition of hyperdontia, when one has extra

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<sup>1</sup> In response to later questioning at hearing, Dr. Perlmutter testified that he estimated that Appellant had 17 points of scoring on the HLD index.

<sup>2</sup> At one point, Dr. Perlmutter told the Appellant's mother that he didn't have further information and that Appellant would have to "*take the case to MassHealth*" because "*neither [he] nor your hearing officer*" could help Appellant. Both Appellant and the Hearing Officer expressed confusion over that statement as both thought part of the purpose of this appeal was to discuss the request of MassHealth, and that being told in the Fair Hearing to "*take the case to MassHealth*" was a bit perplexing and inappropriate.

or supernumerary teeth, was mentioned at hearing. Appellant's mother also indicated that she still wasn't sure why the braces were taken off in the summer of 2020 but that there was some concern that his face was continuing to grow. She also testified that Appellant had at some point in his youth also had a condition described by some medical providers as "*an elongated face*". She was also told that at the time they were removed in 2020, the braces may have to go back on later, and that is part of the reason why she believes the current request was made by the current orthodontist. She also mentioned at hearing that she thought or understood that the dentist who had removed the braces in 2020 may have used a different dental code.

## Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member who is currently receiving MassHealth Family Assistance benefits. (Testimony and Exhibit 1)
2. Appellant moved to Massachusetts from Virginia in August 2019, and has had MassHealth health insurance coverage since that month. (Testimony and Exhibit 1)
3. Appellant began orthodontic treatment while living in Virginia. He had braces put on his teeth in either 2016 or 2017. (Testimony and Exhibit 1)
4. After coming to Massachusetts, Appellant eventually went to a dentist or orthodontist in Waltham who decided to remove the braces in June of 2020. (Testimony and Exhibit 1)
  - a. Appellant's mother stated that she believe that dentist in Waltham may have been a MassHealth provider. (Testimony)
5. DentaQuest provided information to the consultant available at hearing stating that Appellant had used up his "*once per lifetime*" benefit for orthodontic treatment with MassHealth. (Testimony and Exhibit 3)

## Analysis and Conclusions of Law

The MassHealth program is generally required to cover services and treatments for its Medicaid beneficiaries that are "*medically necessary*". The MassHealth regulation at 130 CMR 450.204 in the "All Provider" regulatory manual, defines that term as follows:

450.204: Medical Necessity

...

(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, or 517.007.

Additional guidance “about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.” See 130 CMR 450.204(D).

By referencing “coverage guidelines” within this regulation, the law is clear that the MassHealth program may have coverage exclusions or noncovered services within its regulations and other documents, even if that service is thought to be necessary or there are no viable alternatives to those services. Within the MassHealth dental program alone, there are many exclusions, non-covered services, and restrictions that the MassHealth agency has, which are imposed on its members’ potential benefits, and which prevent the agency from providing such services.

Some of the more relevant MassHealth Dental regulations discussing limitations as it applies to orthodontia are found at 130 CMR 420.431. That regulation reads in relevant part as follows:

420.431: Service Descriptions and Limitations: Orthodontic Services

(A) General Conditions. The MassHealth agency pays for orthodontic treatment, subject to prior authorization, service descriptions and limitations as described in 130 CMR 420.431. The provider must seek prior authorization for orthodontic treatment and begin initial placement and insertion of orthodontic appliances and partial banding or full banding and brackets prior to the member's 21st birthday.

...

(3) Comprehensive Orthodontics. **The MassHealth agency pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime for a member younger than 21 years old and only when the member has a handicapping malocclusion.** The MassHealth agency determines whether a malocclusion is handicapping based on clinical standards for medical necessity as described in Appendix D of the Dental Manual. Upon the completion of orthodontic treatment, the provider must take post treatment photographic prints and maintain them in the member's dental record.

...

*(5) Orthodontic Case Completion. The MassHealth agency pays for orthodontic case completion for comprehensive orthodontic treatment which includes the removal of appliances, construction and placement of retainers and follow-up visits. The MassHealth agency pays for a maximum of five visits for members whose orthodontic treatment begins before their 21st birthday, consistent with 130 CMR 420.431(A). The MassHealth agency pays for the replacement of lost or broken retainers with prior authorization.*

*(6) Orthodontic Transfer Cases. The MassHealth agency pays for members who transfer from one orthodontic provider to another for orthodontic services subject to prior authorization to determine the number of treatment visits remaining. Payment for transfer cases is limited to the number of treatment visits approved. Providers must submit requests using the form specified by MassHealth.*

**(Bolded emphasis added.)**

Prior authorization requests for such dental procedures must be submitted in accordance with the instructions found in the MassHealth Dental Program Office Reference Manual (ORM). The ORM has a specific form found on page 62 in its February 28, 2023 version.<sup>3</sup> The form contains instructions on how to submit the form and allows the provider to submit the number of anticipated adjustments or visits.

The record built by the parties is a bit unclear as to what happened in 2020. However, based on the limited evidentiary information available to me, and based on the testimony, I conclude that Appellant utilized his once per lifetime MassHealth orthodontic benefit from 130 CMR 420.431(C) when the Massachusetts provider removed the braces in 2020. The mother indicated that the dentist in 2020 was a MassHealth provider, and her reference to codes indicate that the provider may have been paid for some sort of service done in 2020. The DentaQuest consultant's testimony at hearing alludes to this.<sup>4</sup> I thus find that there is enough evidence and authority in 130 CMR 420.431 to uphold the agency's decision to deny the PA treatment requested.

Lastly, there is sometimes an argument that certain service limitations within the MassHealth Dental Program should not apply to a subpart of children and young adults who are under the age of 21 and MassHealth members. These members are referred to as EPSDT-eligible members. EPSDT is defined in the dental regulations at 130 CMR 420.402 as "*Early and Periodic*

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<sup>3</sup> The ORM may be found at <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last viewed on April 5, 2023). If this was used as it probably should have been in 2020, that provider in Waltham could have indicated to MassHealth how much more work needed to be done to finish the job. The form has instructions as to how the form should be submitted if the member began treatment in another state or through another non-MassHealth insurance benefit.

<sup>4</sup> DentaQuest's presentation would have been stronger and much simpler if documentary evidence of details concerning what MassHealth paid to another orthodontic provider had been provided. It is unclear why DentaQuest gave Dr. Perlmutter such vague, general, and limited information to testify about. A little more written evidence about Appellant's history with the dental program since 2019, prepared and submitted per the agency's obligation at 130 CMR 610.062(A), may have gone a long way in resolving confusion for all the parties at the Fair Hearing. This is probably one of the reasons why the testimony at hearing was not up to par.

*Screening, Diagnostic and Treatment Services as described in federal law at 42 U.S.C. §§ 1396d(a)(4)(B) and 1396d(r) and 42 CFR 441 Subpart B. In Massachusetts, EPSDT-eligible members are in MassHealth Standard or MassHealth CommonHealth categories of assistance, and are younger than 21 years old.”*

However, because Appellant receives benefits through MassHealth Family Assistance, he is not an EPSDT-eligible member and thus he cannot make the argument that the “*once per lifetime*” service limitation should not apply. Had Appellant been receiving a different type of MassHealth benefit (such as Standard or CommonHealth), it is possible then that he could have made an argument (based in part on 130 CMR 420.408 and 130 CMR 420.421(A)(2)), and opened an avenue to disregard that service limitation and make the decision more on the grounds of medical necessity.<sup>5</sup> But those regulations do not apply in this case.

I thus conclude that I have insufficient evidence or regulatory authority which can allow for the DentaQuest decision to be overturned. This appeal must therefore be DENIED.

## Order for MassHealth

None.

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<sup>5</sup> Even if it applied, the differing HLD scores in the Summary may have still prevented approval. See fn. 1, *supra*. Those regulations read in relevant part as follows:

420.408: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services

*The MassHealth agency pays for all medically necessary dental services for EPSDT-eligible members in accordance with 130 CMR 450.140: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction, **without regard to service limitations described in 130 CMR 420.000, and with prior authorization.***

...

420.421: Covered and Non-covered Services: Introduction

*(A) Medically Necessary Services . The MassHealth agency pays for the following dental services when medically necessary:*

*(1) **the services with codes listed in Subchapter 6 of the Dental Manual, in accordance with the service descriptions and limitations described in 130 CMR 420.422 through 420.456; and***  
*(2) **all services for EPSDT-eligible members, in accordance with 130 CMR 450.140 through 450.149, **without regard for the service limitations described in 130 CMR 420.422 through 420.456, or the listing of a code in Subchapter 6. All such services are available to EPSDT-eligible members, with prior authorization, even if the limitation specifically applies to other members younger than 21 years old.*****

**(Bolded emphasis added.)**

## 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: DentaQuest