

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: DENIED

Appeal Number: 2301363

Decision Date: 4/5/2023

Hearing Date: 03/31/2023

Hearing Officer: Christopher Taffe

Appearance for Appellant:



Appearance for MassHealth:

Sheldon Sullaway, 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

Appeal Decision:	DENIED	Issue:	PA – Dental – Noncovered Services
Decision Date:	4/5/2023	Hearing Date:	03/31/2023
MassHealth's Rep.:	S. Sullaway, DMD	Appellant's Rep.:	██████████
Hearing Location:	HarborSouth Tower, Quincy	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 on or around February 7, 2023, MassHealth denied Appellant's request for prior authorization of an immediate mandibular denture (Service Code D5140) and an immediate maxillary denture (Service Code D5130) because the service is not covered. See Exhibit 1; 130 CMR 420.421. Appellant filed a timely appeal was filed on Appellant's behalf with the Board of Hearings on February 21, 2023. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial of a MassHealth 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 approval of a PA request for a set of immediate dentures.

Issue

Is there any authority under the MassHealth regulations which can allow this request to be approved through the PA process?

Summary of Evidence

Appellant is currently a [REDACTED] MassHealth member who appeared and testified at hearing by phone. He was joined at appeal by his mother who was his Appeal Representative. MassHealth was represented by Dr. Sullaway, a dentist and consultant for DentaQuest, the third-party administrator of the MassHealth dental program.

The DentaQuest representative testified as to the source of the appealable action notice. Appellant, through his dental provider at the B.U. Dental School (affiliated with Boston Medical Center) submitted a PA request seeking approval and payment of a set of immediate dentures under codes D5130 (for the upper, or maxillary denture) and D5140 (for the lower, or mandibula denture). The dentist testified that by 130 CMR 420.421(B), these were non-covered services for MassHealth members under its adult dental program, and that medical necessity could not be a factor as the non-coverage made it an absolute restriction. The DentaQuest representative stated that this service, and many other non-covered services, may be covered for MassHealth members under the age of 21, but Appellant was over that age. The DentaQuest representative also stated that based on the correspondence it looked like Appellant was seeking immediate dentures in conjunction with a dental plan that was seeking a full set of implants, but that those services would also be considered non-covered if and when they are requested, for similar reasons.¹

Appellant submitted multiple letters from providers, as well as his own letter, and he and his mother provided testimony in support of his appeal. Appellant is a cancer survivor, who had a stage 4 neuroblastoma when he was an infant and he had treatment until he was 3 years old. He has since received two bone marrow transplants, local and total body irradiation, and several rounds of chemotherapy. As a result of this treatment history, certain teeth never materialized, others were impacted, and none had a strong root system. As his more current dentition and teeth finally became looser, he has begun the process of removing them with a plan to seek implants for his teeth. All his upper teeth have been extracted and, as of February 2023, his lower teeth were set to be pulled, and he will be without teeth for 6 to 12 months at a minimum, barring future complications. Appellant is only 4'5" in height and weighs about 70 lbs. His mother testified that even though he is of an adult age, he has some of the physical characteristics of a young child. He has restrictive lung disease, scoliosis, kyphosis, and other disabling conditions, and he is on SSI. Without the requested dentures, there are concerns that he will not be able to consume proper nutrition.

Appellant submitted letters from two providers; the letters focused more on implants than the dentures but spoke to his overall health, including his dental health. One of his dentists, who is the Director of Maxillofacial Prosthodontic Clinic at Boston Medical Center wrote that *"due to his young age, it is imperative that [Appellant] have implants on both jaws, this will stimulate his bone and prevent bone resorption. He must wear implant supported maxillary and mandibular prostheses for the remainder of his life to restore essential functions including eating, drinking, and speaking. Therefore the only option to restore his mouth is with implants and implant*

¹ There is no separate PA request for any other dental service that the Board of Hearings could find which could be an appealable action reached by Appellant's February 23, 2023 appeal request beyond the immediate denture request. This appeal analysis will thus solely focus on the request for immediate dentures.

overdentures.” See Exhibit 4.

Appellant also submitted a letter from an oral surgeon in Brookline that echoed many of the same health concerns and detailed the same medical history. This letter, in Exhibit 5, reads in relevant part:

“The restoration of his masticatory function cannot be achieved simply with dentures due to the small size of the ridges on which such appliances rest.

However, with the help of bone grafting and sinus lifting, dental implants can be placed in select locations even though the ridges remain small and shallow. These implants will be used to support fixed full arch appliances that can restore both form and function to his dentition. He can then be free of the daily pain and uncertainty of the loose teeth and inevitably ill-fitting dentures.

It is my strong belief and recommendation that [Appellant] be treated with extraction of the teeth and placement of dental implants to support fixed restoration as the only sensible and viable option for this courageous young man.”

Appellant and his mother expressed dismay over the lack of options, noting that the need for these services, and that without help from the MassHealth dental insurance, it would require loans and/or mortgages. Documentation in Exhibit 4 indicates that estimated charges for services if done at Boston Medical Center would involve \$2,720.00 in “estimated charges” for the immediate dentures alone, with \$2,550 of that total being the patient responsibility. There was also another page in Exhibit 4 from Boston Medical Center for related implant services alone (with a total of \$29,870, with \$28,880 being the “patient responsibility” for that estimate). In addition, a separate estimate from a treatment plan from the Brookline oral surgeon showed a treatment plan with an approximate cost of \$47,350. See Exhibit 4.² Appellant’s mother stated that she was very upset that they never knew that potentially some of these services may have been covered by insurance if they had been contemplated before he turned 21 years of age, but the idea of removing those teeth, particularly before they became loose, did not seem wise.

Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member. (Testimony and Exhibits 1 and 3)
2. Appellant’s dental provider has submitted an approval request for a PA for an immediate upper denture (under Service Code D5130) and immediate lower denture (under Service Code D5140).

² It is unclear if these estimates from two different dental sites represent two different alternatives, or if the total process would require services from both providers and whether the aggregate of all these expected costs would be well over \$75,000 total.

3. The dentures were denied by DentaQuest on the grounds that they were for noncovered services. (Testimony and Exhibits 1 and 3)
4. The dentures are being requested in conjunction with some long-term treatment of his teeth in a dental plan that may need extraction of all teeth and then some implant-related procedures. (Testimony and Exhibits 1, 4, and 5)
5. Appellant has an extensive medical history, having received treatment for cancer, including a stage 4 neuroblastoma treated since he was an infant under the age of 1. This medical history has affected the health of his dentition throughout his life. (Testimony and Exhibits 1, 4, and 5)

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.

This list of excluded dental services is greater for adults over the age of 21 than it is for younger Medicaid recipients in the Commonwealth.

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.

(B) Non-covered Services. The MassHealth agency **does not pay for the following services for any member, except when MassHealth determines the service to be medically necessary and the member is younger than 21 years old.** Prior authorization must be submitted for any medically necessary non-covered services for members younger than 21 years old.

- (1) cosmetic services;
- (2) **certain dentures including unilateral partials, overdentures and their attachments, temporary dentures, CuSil-type dentures, other dentures of specialized designs or techniques, and preformed dentures with mounted teeth (teeth that have been set in acrylic before the initial impressions);**
- (3) counseling or member education services;
- (4) habit-breaking appliances;
- (5) implants of any type or description;
- (6) laminate veneers;
- (7) oral hygiene devices and appliances, dentifrices, and mouth rinses;
- (8) orthotic splints, including mandibular orthopedic repositioning appliances;
- (9) panoramic films for crowns, endodontics, periodontics, and interproximal caries;
- (10) root canals filled by silver point technique, or paste only;
- (11) tooth splinting for periodontal purposes; and
- (12) **any other service not listed in Subchapter 6 of the Dental Manual.**

(C) Covered Services for All Members 21 Years of Age or Older. The MassHealth agency pays for the services listed in 130 CMR 420.422 through 420.456 for all members 21 years of age or older in accordance with the service descriptions and limitations set forth therein:

- (1) diagnostic services as described in 130 CMR 420.422;
- (2) radiographs as described in 130 CMR 420.423;
- (3) preventive services as described in 130 CMR 420.424;
- (4) restorative services as described in 130 CMR 420.425;
- (5) endodontic services as described in 130 CMR 420.426;
- (6) periodontal services as described in 130 CMR 420.427;
- (7) **prosthodontic services as described in 130 CMR 420.428;**
- (8) oral surgery services as described in 130 CMR 420.430;

- (9) anesthesia services as described in 130 CMR 420.452;
- (10) oral and maxillofacial surgery services as described in 130 CMR 420.453;
- (11) maxillofacial prosthetics as described in 130 CMR 420.455;
- (12) behavior management services as described in 130 CMR 420.456(B);
- (13) palliative treatment of dental pain or infection services as described in 130 CMR 420.456(C); and
- (14) house/facility call as described in 130 CMR 420.456(F).

(D) Non-covered Services for Members 21 Years of Age or Older. The MassHealth agency does not pay for the following services for members 21 years of age or older:

- (1) preventive services as described in 130 CMR 420.424(C);
 - (2) **prosthodontic services (fixed) as described in 130 CMR 420.429**; and
 - (3) other services as described in 130 CMR 420.456(A), (B), (E), and (F).
- (**Bolded** and underlined emphasis added.)

Dentures are prosthodontic devices. A review of both 130 CMR 420.428 and 130 CMR 420.429 does not reveal any basis indicating that immediate dentures³ are the type of dentures that are potentially coverable. More importantly, 130 CMR 420.421(B) offers two citations which confirm that immediate dentures are not potentially coverable. 130 CMR 420.428(B)(2) mentions temporary dentures, in an attempted to distinguish between the types of dentures requested here and those more “permanent” or longer lasting dentures, which are expected to have a lifespan of at least seven (7) years. See 130 CMR 420.428(F).

In addition to these regulations above, 130 CMR 420.428(B)(12) may be the most proper place to look to see if the agency’s decision to deny this request is justified, as all such dental services must be listed in Subchapter 6 of the Dental Manual. The codes being requested here, D5130 and D5140, do not appear in Subchapter 6.⁴

Thus, because Appellant is over the age of 21 and because immediate dentures are not covered for such adults, the MassHealth decision to deny this request is correct under the request and cannot be overturned in a Fair Hearing. The services are simply not coverable, and even though Appellant certainly presents a sympathetic case with genuine, appropriate, and understandable need for such services, there is no flexibility in the regulations which can allow for a different result in this appeal or consideration of a medical necessity argument. Accordingly, this appeal is DENIED.

Order for MassHealth

None.

³ Although not defined anywhere in the MassHealth regulations, immediate dentures are generally considered to be a temporary denture, designed to be worn for a limited time like a period of several months, and often prepared before, but placed shortly after, the extraction of teeth.

⁴ See pages 6-12 and 6-13 of Subchapter 6, found at <https://www.mass.gov/files/documents/2022/01/14/sub6-den.pdf> (last viewed on April 4, 2023).

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest