

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304415
<b>Decision Date:</b>	08/18/2023	<b>Hearing Date:</b>	07/14/2023
<b>Hearing Officer:</b>	Thomas Doyle	<b>Record Open to:</b>	7/21/23

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Dr. Sheldon Sullaway

**Interpreter:**



*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-Occlusal Guard
<b>Decision Date:</b>	08/18/2023	<b>Hearing Date:</b>	07/14/2023
<b>MassHealth's Rep.:</b>	Dr. Sheldon Sullaway	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote (video)	<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 April 26, 2023, MassHealth denied the appellant's request for prior authorization for an occlusal guard. (130 CMR 420.456 (D); Ex. 4). The appellant filed this appeal in a timely manner on May 30, 2023. (130 CMR 610.015(B); Ex. 2). Challenging a denial of services is valid grounds to appeal before the Board of Hearings. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied appellant's prior authorization request for an occlusal guard.

### Issue

The appeal issue is whether MassHealth was correct in denying appellant's prior authorization for an occlusal guard.

### Summary of Evidence

Appellant is a MassHealth member over the age of 20 who appeared at hearing via video. MassHealth was represented at hearing by Dr. Sullaway, a consultant for DentaQuest, the entity

that has contracted with MassHealth agency to administer and run the agency's dental program for MassHealth members. He also appeared via video. Dr. Sullaway testified he has 40 years experience as a dentist and is a professor at Tufts Dental School.

Dr. Sullaway testified that appellant's dentist had requested prior authorization so appellant could obtain an occlusal guard. He stated the request was denied by DentaQuest because the service is not covered for people over the age of 20. Appellant is in her mid-50's. Dr. Sullaway upheld the denial.

Appellant testified on her own behalf. She stated she has had a broken mouth guard since January 2023. She stated she needs a lower guard and it will reduce her pain. The record was left open for appellant to submit a letter from her dentist. That letter was received with minutes of the conclusion of the hearing and was marked as Exhibit 6.

## **Findings of Fact**

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

1. Appellant is a MassHealth member in her mid-50's. (Testimony; Ex. 5).
2. MassHealth denied a prior authorization request for an occlusal guard for appellant. (Testimony; Ex. 4).
3. Appellant is older than 21 years of age. (Testimony; Ex. 5).
4. Appellant paid for her current mouth guard with her own funds. (Testimony).

## **Analysis and Conclusions of Law**

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

### 420.456: Service Descriptions and Limitations: Other Services

(D) Occlusal Guard. The MassHealth agency pays for occlusal guards only for members younger than 21 years old and only once per calendar year. The MassHealth agency pays for only custom-fitted laboratory-processed occlusal guards designed to minimize the effects of bruxism (grinding) and other occlusal factors. All follow-up care is included in the payment.

### 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. (emphasis added).

- (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.

By regulation, MassHealth only pays for occlusal guards for members younger than 21 years old. (130 CMR 420.456 (D)). Appellant is a MassHealth member in her mid-50's. MassHealth will only pay for certain dental services that are medically necessary. Those services are listed in Subchapter 6 of the Dental Manual. Appellant requested a medical necessity be found for her request for an occlusal guard. Her requested procedure code is D9945 and that procedural code is not covered for a person 21 years of age or older, therefore a medical necessity can not be found for appellant. (Dental Manual, Subchapter 6, Adjunctive Services, Page 6-25).

Appellant argued that it felt like discrimination and it was not fair that she could not have a

mouth guard covered by MassHealth because of her age. This argument calls into question the validity of the MassHealth regulations. The hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. The hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092. (130 CMR 610.082 (C) (2)).

Appellant is a MassHealth member over the age of 20. By regulation, she is not covered for a occlusal guard nor medical necessity. Therefore, this appeal is denied.

## **Order for MassHealth**

None.

## **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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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: DentaQuest 1, MA