

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304483
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	07/12/2023
<b>Hearing Officer:</b>	Rebecca Brochstein		

**Appearances for Appellant:**



**Appearances for Tufts Health Plan (ICO):**

John Shinn, Esq.  
Dr. David Dohan, Medical Director  
Nicole Dally, Program Manager

**Interpreter:** Spanish



*Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*Board of Hearings*  
100 Hancock Street  
Quincy, MA 02171

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Approval
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	07/12/2023
<b>ICO's Reps.:</b>	John Shinn, Esq. Dr. David Dohan Nicole Dally	<b>Appellant's Reps:</b>	Pro se (with daughter, sister, and daughter-in-law)
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated May 18, 2023, Tufts Health Plan/Tufts Health Unify (Tufts), an integrated care organization (ICO) that contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding her request for coverage of dental implants (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (130 CMR 610.015(B); Exhibit 2). Denial of a request for services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by ICO

Tufts denied the appellant's request for coverage of dental implants, and then denied her Level 1 Appeal of that initial denial.

### Issue

The appeal issue is whether Tufts was correct in denying the appellant's request for dental implants.

## Summary of Evidence

Tufts Health Plan/Tufts Health Unify (Tufts), a MassHealth integrated care organization (ICO), was represented at hearing by an attorney as well as the Tufts medical director and program manager. The medical director testified that Tufts Health Unify is a OneCare ICO plan for individuals who are enrolled in both MassHealth and Medicare. He stated that the appellant, who is a Tufts Health Unify member, requested coverage of dental implants.<sup>1</sup> The request was accompanied by a letter from the appellant's primary care physician, which states as follows:

[Appellant] has been a patient in my primary care practice for the last 3 years. When I first met [appellant] she was suffering from Burning Mouth Syndrome, an entity poorly understood but clearly documented in both the literature and in her medical records. The burning pain in her left superior gum and palate began when she used dental paste for partial dentures in that area in 2019. She saw multiple dentists, a neurologist, and an oral maxillofacial surgeon . . . who specializes in Burning Mouth Syndrome. . . . Inflammatory markers previously negative became positive. The symptoms and inflammatory markers were only relieved/resolved when she stopped using the dental paste and wearing dentures.

Now, 3 years later, she has had to have all of her teeth removed. She has restarted applying dental paste and the symptoms of Burning Mouth Syndrome have returned, though much worse since she now needs to apply it to her entire oral gum area for full dentures. It is absolutely necessary that she have the ability to use teeth for eating and nutrition.

[Appellant's] ability to use her dentures is severely limited due to the recurrent inflammatory reaction she has to the dental paste and recurrent Burning Mouth Syndrome. As such it is medically necessary that she be given full insurance support for dental implants since she is unable to tolerate dentures due to the adverse effect she has to dental paste resulting in painful Burning Mouth Syndrome. (Exhibit 4 at 10)

On March 10, 2023, Tufts denied the request on the basis that implants are not a MassHealth covered service. The appellant filed an internal (Level I) appeal on April 27, 2023, and submitted a supporting letter from a different provider:

This is a letter of medical necessity for [appellant] who we follow for care. We are requesting a limited amount of dental implants for this member due to failure of current dentures. Member received well fitting dentures in 2022 but quickly noted severe pain and burning in her mouth following the use of denture fixative. Dentures can not stay in

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<sup>1</sup> The documentation submitted to Tufts does not clearly indicate how many implants the appellant was seeking. A subsequent letter from her dentist states that she needs a total of eight implants (four on the top and four on the bottom). See Exhibit 2 at 5. The implants are intended to anchor a denture to make it usable without adhesive.

place without fixative but member has tried multiple different fixatives available to her on the market and continues to note severe pain and burning in the mouth. Dentist has determined that member is allergic to all denture fixatives (T78.40) and that they exacerbated her underlying symptoms of glossodynia (K14.9). Dentist has the [sic] determined that the only way to keep dentures in place is with the use of several dental implants that can then be used as anchors. Member is currently unable to to [sic] keep dentures in place for more than 30 minute increments due to the discomfort. Has affected her ability to eat causing unintended weight loss. Member has also suffered a great deal of psychological distress with exacerbation of her major depressive disorder (F33.2) and thoughts of self harm due to the prevailing nature of pain and discomfort. (Exhibit 4 at 26).

Tufts upheld the denial on May 18, 2023. See Exhibit 1. On June 1, 2023, the appellant filed a Level II appeal with the Board of Hearings.

The Tufts medical director testified that Tufts denied the request because, under MassHealth regulations, implants are a noncovered service for individuals over the age of 21. He indicated that Tufts did not consider whether the implants were medically necessary because MassHealth excludes them from coverage. In addition, he pointed to provisions in the Tufts Health Unify Member Handbook, which does not list implants among the covered dental services. See Exhibit 4 at 41.<sup>2</sup> He stated that while Tufts is sympathetic to the appellant's circumstances, it is bound as a MassHealth agent to follow MassHealth regulations.

The appellant appeared at the hearing telephonically along with several family members, and testified via Spanish interpreter.<sup>3</sup> The appellant testified that she needs the implants to help secure her dentures because she cannot tolerate denture adhesive; she stated that she feels a burning sensation in her gums, as well as nausea, when she tries to use the adhesive. She testified that this has affected her ability to eat a regular diet and get proper nutrition. The appellant also noted that she has a heart condition as well as depression and anxiety, and that she has experienced feelings of self-harm due to her situation. She stated that her life suffers because she is unable to socialize or to work in her current condition.

The appellant's sister testified that she has witnessed the appellant's suffering because of the effects of the denture adhesive. She stated that it has caused her to sink deeper into depression, and that she hopes Tufts will be able to see the impact on her quality of life. Similarly, the appellant's daughter-in-law emphasized that the appellant has been suffering a lot more in the past few months, with burning gums, headaches, and abdominal issues caused by swallowing the denture glue.

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<sup>2</sup> The handbook further states that "[a]dditional coverage is based on medical necessity," but that "[b]enefit limitations apply for certain dental services." See Exhibit 4 at 41.

<sup>3</sup> The appellant also named her mental health provider as an appeal representative, but she did not answer the phone at the time of hearing.

The appellant's daughter testified that the appellant first started experiencing pain and difficulty eating when she had partial dentures. She stated that her mother has always suffered from depression and anxiety, but was an independent, successful woman who ate well and exercised regularly. Now, the daughter stated, the appellant has "totally changed" and has no quality of life. She argued that the appellant's situation can be fixed with implants.

### **Findings of Fact**

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

1. The appellant is a MassHealth member who is enrolled in the Tufts Health Unify integrated care organization (ICO).
2. In or around March 2023, the appellant sought prior authorization for coverage of dental implants.
3. The appellant, who does not have any teeth, has full dentures that require the use of dental adhesive to keep them in place.
4. The appellant suffers from a burning sensation in her mouth when she uses any sort of dental adhesive to secure her dentures. She has a history of depression and anxiety, which are exacerbated by her adverse reaction to the dental adhesive, and has expressed feelings of self-harm.
5. On March 10, 2023, Tufts denied the request on the basis that implants are not a MassHealth covered service.
6. On April 27, 2023, the appellant filed a Level I appeal with Tufts.
7. On May 16, 2023, Tufts notified the appellant that it had upheld the original adverse determination.
8. On June 1, 2023, the appellant filed a Level II appeal request with the Board of Hearings.

### **Analysis and Conclusions of Law**

Under 130 CMR 508.010, MassHealth members who are enrolled in MassHealth-contracted managed care plans are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

- (A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010: *Time Limits for Resolving Internal Appeals*;

(6) a decision by a managed care contractor to deny a request by a member who resides in a rural service area served by only one managed care contractor to exercise his or her right to obtain services outside the managed care contractor's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the managed care contractor's network;

(b) the provider from whom the member seeks service, is the main source of service to the member, except that member will have no right to obtain services from a provider outside the managed care contractor's network if the managed care contractor gave the provider the opportunity to participate in the managed care contractor's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the managed care contractor's network does not, because of moral or religious objections, provide the service the member seeks; or

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the managed care contractor's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

At issue in this case is a denial by Tufts Health Unify, a MassHealth-contracted integrated care organization, of the appellant's request for coverage of dental implants. After a Level 1 internal appeal, Tufts again denied the request, and the appellant now seeks relief at the Board of Hearings.

Under 130 CMR 420.421(B), MassHealth identifies "implants of any type or description" as a non-covered dental service. In accordance with this exclusion, the Tufts Health Unify Member Handbook does not list implants among the covered dental services available to its members. Accordingly, Tufts's denial of the request was consistent with MassHealth regulations as well as its own guidelines. Though the appellant has presented a compelling and sympathetic case as to why this service may be medically necessary for her, there is nothing in the MassHealth regulations that allows for a different result. For these reasons, this must be appeal is denied.

## Order for MassHealth/ICO

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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Tufts Health Plan  
Attn: Nicole Dally, Program Manager, Appeals & Grievances  
1 Wellness Way  
Canton, MA 02021

