

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |              |                       |            |
|-------------------------|--------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Denied       | <b>Appeal Number:</b> | 2311338    |
| <b>Decision Date:</b>   | 5/13/2024    | <b>Hearing Date:</b>  | 01/19/2024 |
| <b>Hearing Officer:</b> | Mariah Burns |                       |            |

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Dr. Sheldon Sullaway 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>            | Prior Authorization;<br>Dental Procedures |
| <b>Decision Date:</b>     | 5/13/2024            | <b>Hearing Date:</b>     | 01/19/2024                                |
| <b>MassHealth's Rep.:</b> | Dr. Sheldon Sullaway | <b>Appellant's Rep.:</b> | Pro se                                    |
| <b>Hearing Location:</b>  | Remote               | <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 October 6, 2023, MassHealth denied the appellant's request for prior authorization for of dental procedure code D4341 for all four oral quadrants because MassHealth determined that the appellant exceeded her maximum benefit limitation for that code. *See* 130 CMR 420.427(B) and Exhibit 1. The appellant filed this appeal in a timely manner on November 24, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of a request for prior authorization is valid grounds for appeal *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for dental code D4341 for all four oral quadrants.

### Issue

The appeal issue is whether MassHealth correctly determined that she has met her current maximum benefit allowance for dental code D4341 in denying her prior authorization request.

## Summary of Evidence

The appellant is an adult MassHealth member over the age of 21. MassHealth was represented by a Massachusetts-licensed dentist and consultant for DentaQuest, the third-party contractor that administers and manages MassHealth's dental program. All parties appeared by telephone. The following is a summary of the evidence and testimony provided at hearing.

On October 6, 2023, the appellant's dental provider submitted a prior authorization request on the appellant's behalf requesting coverage for dental code D4341 for each of the appellants four oral quadrants. That same day, the request was denied because it exceeded the appellant's benefit limitations.

The MassHealth representative testified that MassHealth previously approved the appellant for the requested treatment and paid her dental provider for the completed services on October 4, 2022, for the upper quadrant and October 12, 2022, for the lower quadrant. He reported that MassHealth will only pay for periodontal scaling and root planing, the service attached to code D4341, once every 36 months, or 3 years. The MassHealth representative explained that because the appellant received coverage for the procedure within the last three years, she is ineligible for coverage at this time.

The appellant agreed that she last received coverage of the procedure for all four quadrants in October 2022. She testified that she has been diagnosed with a particular condition that, among other limitations, prevents her from using toothpaste. She reported that the periodontal scaling and root planing procedure is the only way for her teeth to feel clean and argued that her condition entitles her to an accommodation under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1971.

## Findings of Fact

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

1. The appellant is a MassHealth member over the age of 21. Testimony, Exhibit 4.
2. On October 6, 2023, MassHealth received a prior authorization request on the appellant's behalf seeking approval for coverage of dental code D4341, periodontal scaling and root planing, for each of the appellant's four oral quadrants. Exhibit 1.
3. That same day, MassHealth denied the request because it exceeds the appellant's benefit limitations. Exhibit 4 at 1.
4. The appellant submitted a timely request for fair hearing on November 24, 2023. Exhibit 2.

5. MassHealth last paid for periodontal scaling and root planing for the appellant on October 6, 2022, for her upper quadrant and October 12, 2022, for her lower quadrant. Testimony.

## Analysis and Conclusions of Law

MassHealth pays only for dental services that are medically necessary. 130 CMR 420.421(A). Medical necessity for dental and orthodontic treatment must be shown in accordance with the regulations governing dental treatment, 130 CMR 420.000 et seq, and the MassHealth *Dental Manual*.<sup>1</sup> 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.

130 CMR 450.204(A).

MassHealth dental regulations governing coverage of periodontal services state, in relevant part, the following:

The MassHealth agency pays for periodontal scaling and root planing *once per member per quadrant every three calendar years*. The MassHealth agency does not pay separately for prophylaxis provided on the same day as periodontal scaling and root planing or on the same day as a gingivectomy or a gingivoplasty. The MassHealth agency pays only for periodontal scaling and root planing for a maximum of two quadrants on the same date of service in an office setting. Periodontal scaling and root planing involves instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus. It is indicated for members with active periodontal disease, not prophylactic. Root planing is the definitive procedure for the removal of rough cementum and dentin, and/or permeated by calculus or contaminated with toxins or microorganisms. Some soft tissue removal occurs. Local anesthesia is considered an integral part of periodontal procedures and may not be billed separately. Prior authorization is required for members 21 years of age or older.

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<sup>1</sup> The Dental Manual is available on MassHealth's website, in the MassHealth Provider Library. Available at <https://www.mass.gov/lists/dental-manual-for-masshealth-providers>.

130 CMR 420.427(B) (emphasis added). All medically necessary services are subject to “the service descriptions and limitations described in 130 CMR 420.422 through 420.456” except for certain EPSDT-eligible members. 130 CMR 420.421(A). Accordingly, the regulations provide no exception to the benefit time limitations, even in the event of an emergency.

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.”

In this case, the appellant does not deny that she last received coverage of periodontal scaling and root planing in October 2022, which, even as of the date of this decision was less than three years ago. As such, there is no question that the appellant is not entitled to coverage of the procedure prior to October 2025 under the MassHealth regulations. Instead, the appellant argues that she is entitled to a reasonable accommodation under the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (504).<sup>2</sup> To the extent that the appellant is arguing that the MassHealth regulations are discriminatory, this fair hearing offers her no mechanism for a remedy, and the appellant should seek relief in the courts. See 130 CMR 610.082(C) (“If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency...[and] cannot rule on the legality of such law or regulation and [such a challenge] must be subject to judicial review in accordance with 130 CMR 610.092”).

As such, I find that the appellant has not met her burden of proof that MassHealth issued the October 6, 2023, notice in error. For the foregoing reasons, the appeal is hereby 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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<sup>2</sup> It should be noted that the appellant provided no documentation from her dental provider indicating that her request would be an appropriate accommodation for her disability.

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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: DentaQuest 1, MA