

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2112243
<b>Decision Date:</b>	9/24/2021	<b>Hearing Date:</b>	06/09/2021
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	07/27/2021

**Appearance for Appellant:**




**Appearance for MassHealth:**

Dr. Harold Kaplan



*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 – Orthodontia
<b>Decision Date:</b>	9/24/2021	<b>Hearing Date:</b>	06/09/2021
<b>MassHealth’s Rep.:</b>	Dr. Harold Kaplan	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower		

## 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 March 17, 2021, MassHealth denied the appellant’s prior authorization request for comprehensive orthodontia. Exhibit 2. The appellant filed this timely appeal on March 25, 2021. Exhibit 2; 130 CMR 610.015(B).<sup>1</sup> Denial of assistance is valid grounds for appeal. 130 CMR 610.032. Following the hearing, the record was left open until July 27, 2021 for the appellant to supplement the hearing record.

## Action Taken by MassHealth

MassHealth denied the appellant’s request for comprehensive orthodontia because the appellant has fewer than 22 points on the Handicapping Labio-Lingual Deviations Scale.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that that comprehensive orthodontia was not medically necessary for the appellant.

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<sup>1</sup> This appeal designates Dr. Mouhab Rizkallah as the Appeal Representative and is signed by the appellant’s parent on March 10, 2021.

# Summary of Evidence

## HLD Score

On or around March 15, 2021, the appellant's provider, Dr. Rizkallah, submitted a prior authorization request on the appellant's behalf seeking MassHealth coverage for comprehensive orthodontic treatment. Along with photographs and x-rays, Dr. Rizkallah submitted a Handicapping Labio-Lingual Deviations ("HLD") Form, with a total score of 18 points.<sup>2</sup> Dr. Rizkallah testified that this was the wrong HLD score for the patient. He had an HLD score in his notes indicating that the appellant had an HLD score of 25. It was also noted that there was no lateral cephalogram in the records submitted to MassHealth. A lateral cephalogram has a metal rod in it with etches that are visible on the x-ray. The notches designate 10 mm gaps. Therefore, a ruler can be used to measure the distance between the notches to get an accurate scale for measuring the teeth.

Dr. Rizkallah testified that the scoring he had before him reflected:

- Eight mm of overjet worth eight points;
- Five mm of overbite worth five points;
- Five points for mandibular, anterior crowding greater than 3.5 mm;
- Five points for one mm of mandibular protrusion; and
- Two mm of labio-lingual spread worth two points.

Dr. Kaplan explained that MassHealth developed the HLD system to ensure that the agency can continue to afford to provide orthodontic treatment to those in the Commonwealth who need it the most. He explained that these limitations include only allowing orthodontia for children and requiring an HLD score of 22 or above or the existence of one of seven automatic qualifying characteristics. Dr. Kaplan testified that there are many people who need orthodontia, according to the standards of care for orthodontia, who do not qualify for MassHealth to cover their orthodontia.<sup>3</sup>

Dr. Kaplan agreed with the lower anterior crowding, mandibular protrusion, and two mm of labio-lingual spread. However, he testified that he was only able to see four mm of overbite and four mm of overjet. Thus, his HLD score was only 20 points. Dr. Rizkallah accepted that there were only four mm of overbite, but he felt certain that there were at least six mm of overjet which would qualify the

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<sup>2</sup> The HLD Form was signed July 24, 2020. The x-rays and photographs are dated from this time as well. The medical necessity flowchart was signed on November 23, 2020.

<sup>3</sup> This hearing occurred as one of 12 in a day for which Dr. Kaplan and Dr. Rizkallah were the only testifying witnesses. The witnesses' general arguments were set out most thoroughly during Appeal No. 2112449, though the witnesses referenced those arguments throughout the day in each of the hearings. Of the 12 hearings, Dr. Kaplan overturned MassHealth's denial in three, Dr. Rizkallah accepted that three did not qualify for orthodontia and withdrew their claims. The remaining six went to a fair hearing decision.

appellant for coverage. The record was left open for the appellant to submit a copy of the lateral cephalogram. Dr. Kaplan responded that he was only able to see 4.5 mm of overjet. Because the appellant's overjet would need to be six mm to qualify, he continued to uphold MassHealth's denial. Dr. Rizkallah offered no response to this measurement.

Dr. Rizkallah waived his alternative arguments regarding "medical necessity" for EPSDT-eligible members. As noted in footnote 3, these arguments are more thoroughly developed in other decisions and I am not generally persuaded by their legal reasoning.

## Findings of Fact

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

1. On or around March 15, 2021, Dr. Rizkallah submitted a prior authorization request on the appellant's behalf seeking MassHealth coverage for comprehensive orthodontic treatment. Included with this request were an HLD Form, x-rays and photographs, and a "Medical Necessity Narrative Form." Exhibit 3.
2. The parties agreed at the hearing to the following HLD score: four mm for overbite, two mm for labio-lingual spread, five points for mandibular anterior crowding greater than 3.5 mm, and five points for one mm of mandibular protrusion. The parties disagreed regarding the measurement for overjet. Testimony by Dr. Rizkallah and Dr. Kaplan.
3. The appellant has 4.5 mm of overjet. Exhibits 5-6.

## Analysis and Conclusions of Law

Federal law requires that Medicaid agencies provide "early and periodic screening, diagnostic, and treatment services" to "all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title ... ." 42 USC § 1396a(a)(43). "Medical assistance" includes "early and periodic screening, diagnostic, and treatment services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21 ... ." 42 USC § 1396(a)(4)(B).

The term "early and periodic screening, diagnostic, and treatment services" means the following items and services:

...

(3) Dental services—

(A) which are provided—

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to

determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

42 USC § 1396d(r), (3).<sup>4</sup>

MassHealth requires that members establish their eligibility for dental procedures, including orthodontia, in accordance with the MassHealth dental regulations, the Dental Manual, and the ORM. The regulatory language regarding orthodontia is:

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 21 birthday.

...

(C) Service Limitations and Requirements.

...

(3) Comprehensive Orthodontics. The MassHealth agency pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime 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.

130 CMR 420.431 (emphasis **in bold**).

Appendix D of the Dental Manual, the HLD Form, sets forth three avenues for establishing that the member has a handicapping malocclusion, which would mean that orthodontia is “medically necessary.”<sup>5</sup> First, the member could have one of seven “autoqualifiers,” conditions so severe that

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<sup>4</sup> Federal law also requires that state Medicaid agencies create such “procedures relating to the utilization of, and the payment for, care and services available under the plan ... as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care ... .” 42 USC § 1396a(30)(A).

<sup>5</sup> The Dental Manual and Appendix D are available on MassHealth’s website, in the MassHealth Provider Library. (Available at <https://www.mass.gov/lists/dental-manual-for-masshealth-providers>, last visited August 16, 2021). Additional guidance is at the MassHealth Dental Program Office Reference Manual (“ORM”), available at: <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last visited August 16, 2021). The

they automatically qualify as handicapping. Second, objective measurements of various bite conditions are scored using the HLD Scale; if the member's score is 22 points or higher, they are found to have a handicap. Finally, the HLD Form provides instructions for submitting a "Medical Necessity Narrative and Supporting Documentation."

The appellant does not qualify under the HLD Form. The appellant did not have an auto-qualifying condition and their HLD score did not total 22 points or more. Dr. Rizkallah and Dr. Kaplan agreed regarding almost every measurement on the HLD score except for the measurement of overjet. After the lateral cephalogram was submitted, Dr. Kaplan measured the apparent overjet at 4.5 mm. This measurement accords with the apparent overjet from the document itself. Even rounding this up to 5 mm, the resulting HLD score is only 21 points. At the hearing, the appellant waived their argument that they might qualify through the "medical necessity" narrative. Therefore, this decision will not go on to address the legal insufficiencies of the submitted "medical necessity" flowchart.

For these reasons, 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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: DentaQuest

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relevant HLD Form is also published through Transmittal Letter DEN-108, available at: <https://www.mass.gov/doc/den-108-revised-appendix-d-0/download> (last visited August 16, 2021).