

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2112310
<b>Decision Date:</b>	9/22/2021	<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>	Approved	<b>Issue:</b>	Prior Authorization – Orthodontia
<b>Decision Date:</b>	9/22/2021	<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 January 21, 2021, MassHealth denied the appellant’s prior authorization request for comprehensive orthodontia. Exhibit 2. The appellant filed this timely appeal on March 26, 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 26, 2021.

# Summary of Evidence

## HLD Score

On or around January 19, 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 25 points and identifying that the appellant had an autoqualifier of overjet greater than nine mm.<sup>2</sup> Otherwise, the appellant's HLD score was comprised of:

- Nine points for nine mm of overjet;
- Four points for four mm of overbite,
- Five points for anterior mandibular crowding greater than 3.5 mm;
- Five points for one mm of mandibular protrusion; and
- Two points for two mm of labio-lingual spread.

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>

The original DentaQuest review only found 17 points on the HLD scale. Dr. Kaplan's own review generally agreed with MassHealth's measurement, but both parties agreed that the appellant's overjet did not qualify as an autoqualifier because it was not greater than nine mm. However, Dr. Kaplan agreed that MassHealth would approve coverage if the appellant had a mandibular protrusion. A mandibular protrusion exists where the buccal cusp of the upper first molar bites behind the buccal groove of the lower first molar. Dr. Rizkallah pointed to the submitted images of the appellant's lower left bite. The point of the upper tooth is clearly behind the groove of the lower molar. Dr. Kaplan believed that this was a distortion of the angle of the picture.

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<sup>2</sup> The HLD Form was signed December 2, 2020. The x-rays, photographs and medical necessity narrative are dated from around this time as well.

<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.

Dr. Rizkallah raised alternative arguments regarding “medical necessity” for EPSDT-eligible members. These arguments are not addressed in this decision because the appellant is eligible under the HLD system. 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 January 19, 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 that the appellant’s HLD score would be greater than 22 points if the appellant had any mandibular protrusion. Testimony by Dr. Rizkallah and Dr. Kaplan.
3. The appellant has one mm of mandibular protrusion. Testimony by Dr. Rizkallah; Exhibit 3, p. 12.

## 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 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

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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 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).

found to have a handicap. Finally, the HLD Form provides instructions for submitting a “Medical Necessity Narrative and Supporting Documentation.”

The appellant qualifies under the HLD score because she has a score greater than 22 points. The parties only disagreement was whether or not the buccal cusp of the upper first molar was biting behind the buccal groove of the corresponding lower first molar. Dr. Kaplan essentially agreed that the submitted image shows that the upper molar is biting behind the buccal groove of the lower molar but argued that this is a trick of the camera angle. Ultimately, Dr. Rizkallah’s in person measurement combined with the apparent mandibular protrusion in the submitted image carry the preponderance of the evidence standard relevant to a fair hearing. See 130 CMR 610.082.

For these reasons, this appeal is APPROVED.

## **Order for MassHealth**

Authorize the appellant’s request for comprehensive orthodontia.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: DentaQuest

[REDACTED]