

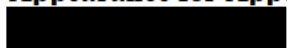
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|-------------------|------------------------|------------|
| Appeal Decision: | Approved | Appeal Number: | 2112351 |
| Decision Date: | 9/24/2021 | Hearing Date: | 06/09/2021 |
| Hearing Officer: | Christopher Jones | Record Open to: | 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

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|---------------------------|---------------------------|--------------------------|---|
| Appeal Decision: | Approved | Issue: | Prior Authorization – Orthodontia |
| Decision Date: | 9/24/2021 | Hearing Date: | 06/09/2021 |
| MassHealth's Rep.: | Dr. Harold Kaplan | Appellant's Rep.: |  |
| Hearing Location: | 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 10, 2021, MassHealth denied the appellant's prior authorization request for comprehensive orthodontia. Exhibit 2. The appellant filed this timely appeal on March 29, 2021. Exhibit 2; 130 CMR 610.015(B).¹ 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.

¹ This appeal designates Dr. Mouhab Rizkallah as the Appeal Representative and is signed by the appellant's parent on March 24, 2021.

Summary of Evidence

HLD Score

On or around March 8, 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 22 points and identifying that the appellant had an autoqualifier of overjet greater than nine mm.² Otherwise, the appellant's HLD score was comprised of:

- Ten points for 10 mm of overjet;
- Five points for five mm of overbite;
- Five points for anterior mandibular crowding greater than 3.5 mm; 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.³

The original DentaQuest review only found 20 points on the HLD scale, based upon seven mm of overjet and six mm of overbite. Dr. Kaplan's own review generally agreed with Dr. Rizkallah's measurements except for only finding eight mm of overjet. Therefore, he felt that the appellant neither qualified for the auto-qualifier or under the HLD score. Dr. Rizkallah waived his remaining "medical necessity" arguments because he felt it was clear from the submitted photographs that the overjet was 10 mm. The witnesses discussed the method for measuring the overjet. Ideally, Dr. Kaplan testified that a probe would be used to measure from the front of the lower central incisor to the front of the upper central incisor. He testified that it looks like about six mm on the pictures of the side of the appellant's teeth.

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

³ 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 reviewed that the lateral cephalogram for the appellant. He explained that the 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. He identified the tooth from which the measurement should be made, the lower central incisor. He identified which tooth that was on the lateral cephalogram. The lower central incisor is angled, so the bottom of the central incisor is hidden behind the tooth next to it. There is a two mm difference from the bottom of the tooth to the top of the tooth. Dr. Rizkallah testified that even measuring from the furthest forward point of the lower incisor would measure 10 mm and noted that the appellant only needed nine mm to have an auto-qualifier.

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 8, 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 to the HLD score, except for the measurement of the overjet. MassHealth’s HLD score of 20 was premised upon an overjet of eight mm. Testimony by Dr. Kaplan.
3. The appellant’s lower central incisor is angled, and the top of the incisor is about two mm forward from the bottom. Measuring from the bottom of the lower incisor, the appellant’s overjet at least 10 mm. Exhibit 3; testimony by Dr. Rizkallah.

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).⁴

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**).

⁴ 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).

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.”⁵ 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 found to have a handicap. Finally, the HLD Form provides instructions for submitting a “Medical Necessity Narrative and Supporting Documentation.”

The relevant HLD instructions are:

5. Overjet Greater Than 9mm: Indicate an “X” on the form. This is recorded with the patient in the centric occlusion and measured from the labial of the lower incisor to the labial of the upper incisor. The measurement could apply to a protruding single tooth as well as to the whole arch. The measurement is read and rounded off to the nearest millimeter and entered on the form. (This is considered an autoqualifying condition.)

...

8. Overjet in Millimeters: This is recorded with the patient in the centric occlusion and measured from the labial of the lower incisor to the labial of the upper incisor. The measurement could apply to a protruding single tooth as well as to the whole arch. The measurement is read and rounded off to the nearest millimeter and entered on the form.

ORM, p. 62.

Unfortunately, these instructions do not address from where on the “labial of the lower incisor” the measurement should be made. Other measurements specify that the measurement should be from the “incisal edge” (see “labio-lingual spread”) or the top of the incisor. Therefore, the absence of specificity here indicates that the measurement may be made from the bottom of the tooth, which for the appellant is about two mm further away from the labial of the upper incisor. Measuring from the bottom of the lower incisor, the appellant’s overjet would be at least 10 mm. Therefore, the appellant qualifies under the HLD scoring system because he both has an HLD score greater than 22 points and an auto-qualifying condition.

For these reasons, this appeal is APPROVED.

⁵ 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).

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: DentaQuest

