

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2153547
<b>Decision Date:</b>	9/08/2021	<b>Hearing Date:</b>	06/21/2021
<b>Hearing Officer:</b>	Rebecca Brochstein	<b>Record Closed:</b>	08/06/2021

**Appearances for Appellant:**




**Appearances for MassHealth:**

Dr. Carl Perlmutter



*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 for Orthodonture
<b>Decision Date:</b>	9/08/2021	<b>Hearing Date:</b>	06/21/2021
<b>MassHealth Rep.:</b>	Dr. Carl Perlmutter	<b>Appellant Rep.:</b>	
<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 April 25, 2021, MassHealth denied the appellant's request for prior authorization of comprehensive orthodontic treatment (Exhibit 1). The appellant filed a timely appeal on May 6, 2021 (130 CMR 610.015(B); Exhibit 2). After hearing, the record was reopened for the appellant's representative to submit a hard copy of an exhibit that was referenced at hearing (Exhibits 6 and 7). Denial of a request for prior approval is a valid basis for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization of comprehensive orthodontic treatment.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431(C), in determining that the appellant is ineligible for comprehensive orthodontic treatment.

## Summary of Evidence

MassHealth was represented at hearing by Dr. Carl Perlmutter, an orthodontic consultant from DentaQuest, the MassHealth dental contractor. The evidence indicates that the appellant's provider submitted a prior authorization request for comprehensive orthodontic treatment, together with X-rays and photographs, on April 22, 2021. As required, the provider completed the Handicapping Labio-Lingual Deviations (HLD) Form, which requires a total score of 22 or higher for approval.<sup>1</sup> The provider's HLD Form indicates a total score of 14, as follows:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	5	1	5
Overbite in mm	4	1	4
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	0	3	0
Anterior Crowding <sup>2</sup>	Maxilla Mandible	Flat score of 5 for each <sup>3</sup>	5
Labio-Lingual Spread, in mm (anterior spacing)	0	1	0
Posterior Unilateral Crossbite	No	Flat score of 4	0
Posterior impactions or congenitally missing posterior teeth	0	3	0
<b>Total HLD Score</b>			<b>14</b>

Though the score is below the required threshold of 22, the provider noted that the appellant has a deep impinging overbite. A deep impinging overbite results in automatic approval under the HLD guidelines. See Exhibit 4.

Dr. Perlmutter testified that when DentaQuest initially evaluated this prior authorization request on behalf of MassHealth, its orthodontists determined that the appellant had an HLD score of 16. The

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<sup>1</sup> The form also includes space for providers to indicate whether, regardless of score, a patient has one of the seven conditions (described below) that would result in automatic approval, and/or to provide a narrative to explain why orthodontic treatment is otherwise medically necessary. The provider in this case alleged the presence of an auto-qualifying condition but did not complete a medical necessity narrative. See Exhibit 4.

<sup>2</sup> The HLD Form instructs the user to record the more serious (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores.

<sup>3</sup> The HLD scoring instructions state that to give points for anterior crowding, arch length insufficiency must exceed 3.5 mm.

DentaQuest HLD Form reflects the following scores:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	3	1	3
Overbite in mm	5	1	5
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	0	3	0
Anterior Crowding	Maxilla: No Mandible: Yes	Flat score of 5 for each	5
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	No	Flat score of 4	0
Posterior impactions or congenitally missing posterior teeth	0	3	0
<b>Total HLD Score</b>			<b>16</b>

Because it found an HLD score below the threshold of 22 – and also found no evidence of a deep impinging overbite – MassHealth denied the appellant’s prior authorization request on April 25, 2021. See Exhibit 1.

At hearing, Dr. Perlmutter testified that he carefully examined the photographs and X-rays that were submitted by the provider and came up with his own HLD score of 17. The breakdown of his scoring is as follows:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	4	1	4
Overbite in mm	5	1	5
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	0	3	0
Anterior Crowding	Maxilla: No Mandible: Yes	Flat score of 5 for each	5
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	No	Flat score of 4	0
Posterior impactions or congenitally missing posterior teeth	0	3	0
<b>Total HLD Score</b>			<b>17</b>

He stated that because he and the other orthodontists each found the appellant's HLD score is below the threshold of 22, he could not reverse the denial of the prior authorization request on the basis of the point total. Dr. Perlmutter further testified that there is no evidence that the appellant has a deep *impinging* overbite, as the provider reported. He noted that the HLD index requires a showing of "severe soft tissue damage (e.g., ulcerations or tissue tears – more than indentations)" in order to find a deep impinging overbite. See Exhibit 4. He pointed out that while the appellant has a deep bite, there are no pathological changes to the palate. Accordingly, he does not have a deep impinging overbite as defined in the MassHealth guidelines.

The appellant was represented telephonically by his mother and by Dr. Mouhab Rizkallah, in his capacity as the president of the Medicaid Orthodontists of Massachusetts Association (MOMA).<sup>4</sup> The mother testified that they previously submitted a prior authorization request for orthodontic treatment that was also denied, and that they attended a hearing at the Taunton MassHealth office; at that time, his HLD score was 20 and she was told to bring him back to be reevaluated. She testified that the appellant is on the autism spectrum and that the positioning of his teeth affects his hygiene and his mental health.

Dr. Rizkallah argued that the prior authorization request should be approved because it meets medical necessity standards. Specifically, he contended that the appellant's mandibular crowding, which the provider and both DentaQuest orthodontists agreed that he has, is associated with future periodontal disease. On this basis, he argued, orthodontic treatment "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." See 130 CMR 450.204. He pointed out that the medical necessity standard is not a "today-only" standard, as it looks to prevent the worsening of problems in the future. In addition, he noted that the Attestation signed by the provider on the bottom of the HLD form also makes reference to the medical necessity regulation. See Exhibit 4 at 8.

In support of his position, Dr. Rizkallah pointed to an article published in the European Journal of Orthodontics entitled *The relationship between irregularity of the incisor teeth, plaque, and gingivitis: a study in a group of schoolchildren aged 11-14 years* (F.P. Ashley et al., 1998). He argued that this study found that the overlapping of the incisors is directly related to gingivitis. See Exhibit 7.

In response, Dr. Perlmutter testified that crowding itself is not a cause of gum disease, as "local factors" must be taken into account. He stated that the appellant's crowding is minor, and can be managed with brushing and flossing. He denied that the appellant shows any evidence of periodontal disease at this time, and testified that with proper oral hygiene he may not have any in the future. He argued that if what Dr. Rizkallah is arguing is true, then nearly every case would qualify for payment by MassHealth by virtue of mild crowding. As to the issues raised by the appellant's mother, Dr. Perlmutter stated that the provider can resubmit the prior

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<sup>4</sup> Dr. Rizkallah was not the appellant's provider.

authorization request with a letter from a professional documenting his other problems and stating that correcting his orthodontic issues will solve them. He noted, however, that the provider did not allege medical necessity in this submission.

### **Findings of Fact**

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

1. On April 22, 2021, the appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment to MassHealth.
2. The provider completed a Handicapping Labio-Lingual Deviations (HLD) Form for the appellant, finding an overall score of 14. The provider also indicated that the appellant has a deep impinging overbite, which would result in automatic approval under the HLD guidelines.
3. When DentaQuest initially evaluated the prior authorization request on behalf of MassHealth, it determined that the appellant had an HLD score of 16. It also found no evidence of a deep impinging overbite.
4. On April 25, 2021, MassHealth notified the appellant that the prior authorization request had been denied.
5. On May 6, 2021, the appellant filed a timely appeal of the denial.
6. In preparation for hearing on June 21, 2021, MassHealth orthodontic consultant reviewed the provider's paperwork, finding an HLD score of 17. He found no evidence of a deep impinging overbite.
7. The appellant's HLD score is below the threshold score of 22.
8. A deep impinging overbite is present when the lower incisors are destroying the soft tissue of the palate. It requires a showing of severe soft tissue damage, such as ulcerations or tissue tears.
9. There is no evidence of a deep impinging overbite.
10. The appellant does not have any of the other conditions that warrant automatic approval of comprehensive orthodontic treatment (cleft palate, severe maxillary anterior crowding, anterior impaction, severe traumatic deviation, overjet greater than 9 mm, or reverse overjet greater than 3.5 mm).
11. The appellant has not established that the service is otherwise medically necessary based on a severe deviation affecting the patient's mouth and/or underlying dentofacial structures;

a diagnosed mental, emotional, or behavioral condition caused by the patient's malocclusion; a diagnosed nutritional deficiency and/or a substantiated inability to eat or chew caused by the patient's malocclusion; a diagnosed speech or language pathology caused by the patient's malocclusion; or a condition in which the overall severity or impact of the patient's malocclusion is not otherwise apparent.

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

130 CMR 420.431(C) states, in relevant part, as follows:

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*.

Appendix D of the Dental Manual is the "MassHealth Handicapping Labio-Lingual Deviations Index" (HLD), which is described as a quantitative, objective method for measuring PA requests for comprehensive orthodontic treatment. The HLD allows for the identification of certain auto-qualifying conditions and provides a single score, based on a series of measurements, which represent the presence, absence, and degree of handicap. MassHealth has determined that a score of 22 or higher signifies a handicapping malocclusion.

MassHealth will also approve a prior authorization request, without regard for the HLD numerical score, in two other circumstances: First, MassHealth will approve a request if there is evidence of one or more auto-qualifying conditions: a cleft palate, severe maxillary anterior crowding, deep impinging overbite, anterior impaction, severe traumatic deviation, overjet greater than 9 mm, or reverse overjet greater than 3.5 mm. Second, providers may establish that comprehensive orthodontic treatment is medically necessary by submitting a medical necessity narrative that establishes that comprehensive orthodontic treatment is medically necessary to treat a handicapping malocclusion, including to correct or significantly ameliorate one of the following:

- A severe deviation affecting the patient's mouth and/or underlying dentofacial structures;
- A diagnosed mental, emotional, or behavioral condition caused by the patient's malocclusion;
- A diagnosed nutritional deficiency and/or a substantiated inability to eat or chew caused by the patient's malocclusion;
- A diagnosed speech or language pathology caused by the patient's malocclusion;
- or
- A condition in which the overall severity or impact of the patient's malocclusion is not otherwise apparent.

The medical necessity narrative must clearly demonstrate why comprehensive orthodontic treatment is medically necessary for the patient. If any part of the requesting provider's justification of medical necessity involves a mental, emotional, or behavioral condition; a nutritional deficiency; a speech or language pathology; or the presence of any other condition that would typically require the diagnosis, opinion, or expertise of a licensed clinician other than the requesting provider, then the narrative and any attached documentation must:

- clearly identify the appropriately qualified and licensed clinician(s) who furnished the diagnosis or opinion substantiating the condition or pathology (e.g., general dentist, oral surgeon, physician, clinical psychologist, clinical dietitian, speech therapist);
- describe the nature and extent of the identified clinician(s) involvement and interaction with the patient, including dates of treatment;
- state the specific diagnosis or other opinion of the patient's condition furnished by the identified clinician(s);
- document the recommendation by the clinician(s) to seek orthodontic evaluation or treatment (if such a recommendation was made);
- discuss any treatments for the patient's condition (other than comprehensive orthodontic treatment) considered or attempted by the clinician(s); and
- provide any other relevant information from the clinician(s) that supports the requesting provider's justification of the medical necessity of comprehensive orthodontic treatment.

In this case, the appellant's provider found an overall HLD score of only 14, but reported finding a deep impinging overbite. After reviewing the provider's submission, MassHealth found no deep impinging overbite, and calculated an HLD score of 16. Upon review of the prior authorization documents, a different orthodontic consultant for MassHealth determined the HLD score was 17, also finding no deep impinging overbite.

There is no dispute that the appellant's HLD score is below the threshold qualifying score of 22. Contrary to the provider's HLD findings, the record also does not indicate that the appellant has a deep impinging overbite. According to the HLD Index, a deep impinging overbite is present when there is severe soft tissue damage, such as ulcerations or tissue tears. See Exhibit 4. There is no evidence that this is occurring in the appellant's case. Nor is there evidence that he has any of the other conditions that result in automatic approval without regard for the HLD numerical score (i.e., cleft palate, severe maxillary anterior crowding, anterior impaction, severe traumatic deviation, overjet greater than 9 mm, or reverse overjet greater than 3.5 mm.).

The appellant's provider also did not allege that the appellant qualifies under the medical necessity section of the HLD Form, as she did not submit a medical necessity narrative with the PA request. However, Dr. Rizkallah argued at hearing that the appellant nevertheless qualifies under MassHealth's general "medical necessity" standard under 130 CMR 450.204(A), which provides in relevant part as follows:



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.

Dr. Rizkallah argues that the treatment is medically necessary because it will address crowding in his anterior mandibular arch, which can lead to periodontal disease later in life. However, the study he relies on is not persuasive. It was limited in scope, having looked at only 201 children, and was concerned only with gingivitis (inflammation) and not periodontitis (gum disease); it states that “it would be difficult to establish whether the relationship observed between incisor irregularity and gingivitis would be translated to a relationship with periodontitis in adult life.” Further, the study found that incisor irregularity was not associated with significant gingival inflammation in the subjects with good oral hygiene. See Exhibit 7 at 81. This is consistent with MassHealth’s testimony that the appellant – who, notably, has only mild crowding – can avoid future periodontal disease through proper oral hygiene. As this is a less costly alternative to orthodontic treatment, the appellant does not meet the medical necessity standard under 130 CMR 450.204.

As the appellant does not qualify for MassHealth payment of comprehensive orthodontic treatment by regulation, 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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: DentaQuest  
