

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155094
Decision Date:	9/14/2021	Hearing Date:	08/09/2021
Hearing Officer:	Christine Therrien		

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

Appeal Decision:	Denied	Issue:	Orthodontics
Decision Date:	9/14/2021	Hearing Date:	08/09/2021
MassHealth's Rep.:	Dr. Kaplan	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated 4/29/2021 stating: MassHealth has denied your request for full orthodontic treatment (130 CMR 420.431(E)(1) and Exhibit 1). The appellant filed this appeal timely on 7/2/2021 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that appellant is not eligible for full orthodontic treatment.

Summary of Evidence

MassHealth was represented by a licensed orthodontist who stated the appellant requested prior authorization for full orthodontic treatment which is authorized only when there is evidence of a severe and handicapping malocclusion. The appellant's provider submitted a prior authorization request for comprehensive orthodontic treatment, including photographs and x-rays, on 4/27/2021. The orthodontic consultant testified that the appellant's request was considered after review of the oral

photographs and written information submitted by the appellant's orthodontic provider. This information was then applied to a standardized Handicapping Labio-Lingual Deviations Form (HLD) Index that is used to make an objective determination of whether the appellant has a severe and handicapping malocclusion. The orthodontist consultant testified that the HLD Index uses objective measurements taken from the subject's teeth to generate an overall numeric score representing the degree to which a case deviates from normal alignment and occlusion. A severe and handicapping malocclusion reflects a score of 22 and above. The orthodontist consultant testified that according to the prior authorization request, the appellant's dental provider did not find any of the conditions that warrant automatic approval of comprehensive orthodontic treatment. The orthodontist consultant testified that the appellant's dental provider reported a HLD Index score of 22 and is broken down as follows:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	2	1	2
Overbite in mm	1	1	1
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	2	3	6
Anterior Crowding ¹	Maxilla: x Mandible: x	Flat score of 5 for each ²	10
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	0	3	0
Total HLD Score			22

The orthodontic consultant testified that the instructions for the form state that the more serious (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores. The appellant's provider counted both. The orthodontic consultant testified that had the HLD form been counted properly the score would have been 17.

When DentaQuest initially evaluated this prior authorization request on behalf of MassHealth, its orthodontists did not find any of the conditions that warrant automatic approval of comprehensive orthodontic treatment and determined that the appellant has an HLD score of 19. The DentaQuest HLD Form reflects the following scores:

¹ 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.

² The HLD scoring instructions state that to give points for anterior crowding, arch length insufficiency must exceed 3.5 mm.

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	4	1	4
Overbite in mm	2	1	2
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	2	3	0
Anterior Crowding	Maxilla: x Mandible: x	Flat score of 5 for each	10
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	0	3	0
Total HLD Score			19

Because DentaQuest found an HLD score below the threshold of 22, no autoqualifying conditions, and no medical necessity, MassHealth denied the appellant's prior authorization request on 4/29/ 2021. At hearing, Dr. Kaplan completed an HLD form based on a careful review of the x-rays and photographs. He determined that the appellant's overall HLD score was 20, as calculated below:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	4	1	4
Overbite in mm	2	1	2
Mandibular Protrusion in mm	0	5	0
Anterior Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	2	3	6
Anterior Crowding	Maxilla: Mandible: x	Flat score of 5 for each	5
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	0	3	0
Total HLD Score			20

The appellant's attorney did not dispute the HLD score, but instead stated that the notice the appellant received violated his due process rights because it did not specify a reason for the intended action as is required under 130

CMR 610.026(A)(2). The appellant's attorney submitted a brief stating that the notice the appellant received only says, "[o]ur records show...you did not reach a score of 22 on the HLD test." Further, the appellant's attorney stated that the notice is in violation of MassHealth regulation 130 CMR 610.026(A)(3) which requires that a notice contain "a citation to the regulations supporting such action." The appellant's attorney noted that the determination notice received by the appellant cites a regulation that does not exist, 130 CMR 420.431(E), as the reason for the denial.

Findings of Fact

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

1. On 4/27/2021, the appellant's provider submitted a PA request for comprehensive orthodontic treatment, including photographs, x-rays, and a medical necessity narrative (Exhibit 1).
2. The provider completed a HLD Form for the appellant and calculated an overall score of 17 (Exhibit 1).
3. The provider did not find any of the autoqualifying conditions (Exhibit 1).
4. When DentaQuest evaluated the prior authorization request on behalf of MassHealth, its orthodontists determined that the appellant had an HLD score of 19 (Exhibit 1).
5. MassHealth approves requests for comprehensive orthodontic treatment when the member has an HLD score of 22 or more or when one of the conditions that warrant automatic approval of comprehensive orthodontic treatment is present (Testimony).
6. The MassHealth orthodontic consultant reviewed the provider's paperwork, photographs, and x-rays and found an HLD score of 20 (Testimony).
7. The appellant's score is below 22.
8. The appellant does not have any of the conditions that warrant automatic approval of comprehensive orthodontic treatment (cleft palate, severe maxillary anterior crowding greater than 8 mm, deep impinging overbite, anterior impaction, severe traumatic deviation, overjet greater than 9 mm, or reverse overjet greater than 3.5 mm).
9. The notice received by the appellant references 130 CMR 420.431(E) in one place on the notice. 130 CMR 420.431(E) does not exist. The notice also references the correct regulation, 130 CMR 420.431, in eight other places on the notice (Exhibit 2, p.2-7).

Analysis and Conclusions of Law

When requesting prior authorization for orthodontic treatment, a provider must submit a completed

HLD Index recording form with the results of the clinical standards described in Appendix D of the *Dental Manual* (130 CMR 420.431).

130 CMR 420.431 states, in relevant part, as follows:

(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 members 21st birthday.

(B) Definitions.

...

(3) Comprehensive Orthodontic Treatment. Comprehensive orthodontic treatment includes a coordinated diagnosis and treatment leading to the improvement of a member's craniofacial dysfunction and/or dentofacial deformity which may include anatomical and/or functional relationship. Treatment may utilize fixed and/or removable orthodontic appliances and may also include functional and/or orthopedic appliances. Comprehensive orthodontics may incorporate treatment phases including adjunctive procedures to facilitate care focusing on specific objectives at various stages of dentofacial development. Comprehensive orthodontic treatment includes the transitional and adult dentition.

(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. The MassHealth agency pays for the office visit, radiographs and a record fee of the pre-orthodontic treatment examination (alternative billing to a contract fee) when the MassHealth agency denies a request for prior authorization for comprehensive orthodontic treatment or when the member terminates the planned treatment. The payment for a pre-orthodontic treatment consultation as a separate procedure does not include models or photographic prints. The MassHealth agency may request additional consultation for any orthodontic procedure.

Payment for comprehensive orthodontic treatment is inclusive of initial placement, and insertion of the orthodontic fixed and removable appliances (for example: rapid palatal expansion (RPE) or head gear), and records. Comprehensive orthodontic treatment may occur in phases, with the anticipation that full banding must occur during the treatment period. The payment for comprehensive orthodontic treatment covers a maximum period of three calendar years. The MassHealth agency pays for orthodontic treatment as long as the member remains eligible for

MassHealth, if initial placement and insertion of fixed or removable orthodontic appliances begins before the member reaches 21 years of age.

Appendix D of the Dental Manual is the “Handicapping Labio-Lingual Deviations Form” (HLD), which is described as a quantitative, objective method for evaluating prior authorization requests for comprehensive orthodontic treatment. The HLD index provides a single score, based on a series of measurements that represent the degree to which a case deviates from normal alignment and occlusion. 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, if there is evidence of one of the following autoqualifiers: a cleft palate, deep impinging overbite, anterior impaction, severe traumatic deviation, overjet greater than 9 mm, reverse overjet greater than 3.5 mm, or severe maxillary anterior crowding, greater than 8 mm.

The appellant does not meet the requirements of 130 CMR 420.431 and therefore the denial of the prior authorization request is correct.

The appellant’s attorney argued that the notice was deficient and thus violated the appellant’s due process right because it did not give an explanation in the notice as to reason the action is being taken. Further, the appellant’s attorney argued that the notice references an incorrect regulation, 130 CMR 420.431(E).

130 CMR 610.026: Adequate Notice Requirements states:

- (A) A notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain
 - (1) a statement of the intended action;
 - (2) the reasons for the intended action;
 - (3) a citation to the regulations supporting such action;
 - (4) an explanation of the right to request a fair hearing; and
 - (5) the circumstances under which assistance is continued if a hearing is requested.

The notice sent to the appellant states:³

Braces are approved only when considered to be medically necessary. To qualify for braces, you must have a certain condition or reach a certain score on a test. You would qualify for braces if you have one of these conditions: 1) cleft palate, which is an opening in the roof of your mouth; 2) a deformity in the bone growth of the head or face; 3) severe crowding of your upper front teeth; 4) an overbite where the bottom teeth bite into the roof of the mouth; 5) changes in your bite due to trauma or an infection in the bones of your face or jaw; 6) your front teeth are in a position that will not let them come through the gums into the normal position without braces; or 7) your top or bottom teeth are too far forward and do not line up correctly. If you do not have any of these conditions, you can also qualify for braces

³ The notice sent to the provider states: “Per Dental Director review, submitted documentation did not support the medical necessity of comprehensive orthodontic treatment. Specifically, submitted documentation did not support presence of an autoqualifying condition or a score greater than or equal to 22 on the HLD index.”

by getting a certain score on a test. The test is called Handicapping Labio-Lingual Deviation or HLD. The test gives you points for crowded teeth, missing teeth, crooked teeth, the spacing between your teeth, how your top and bottom teeth come together when you bite down, and if your lower jaw projects forward. You must reach a score of 22. Our records show you do not have any of the qualifying conditions and you did not reach a score of 22 on the HLD test. We have also told your dentist. Please talk to your dentist about your treatment choices.

The above language is repeated nine times in the determination notice and on one occasion 130 CMR 420.431(E) is referenced and not the correct citation 130 CMR 420.431 (Exhibit 2, p. 2-7).⁴ The notice adequately provides a statement of the intended action (a denial), the reasons for the intended action (no support of an autoqualifier nor an HLD score of 22 or above), and a citation to the regulations supporting such action is listed (130 CMR 420.431). 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc: DentaQuest 1, MA

⁴ The regulation was rewritten and section 130 CMR 420.431 (E) is now 130 CMR 420.431(C)(3).