

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2176240
<b>Decision Date:</b>	10/19/2021	<b>Hearing Date:</b>	09/29/2021
<b>Hearing Officer:</b>	Christopher Jones		

**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>	10/19/2021	<b>Hearing Date:</b>	09/29/2021
<b>MassHealth’s Rep.:</b>	Dr. Harold Kaplan	<b>Appellant’s Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	No

## 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 May 3, 2021, MassHealth denied the appellant’s prior authorization request for orthodontia. Exhibit 3; 130 CMR 420.431. The appellant filed this appeal in a timely manner on August 16, 2021. Exhibit 2; 130 CMR 610.015(B); See EOM 20-19 (June 15, 2021). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied the appellant’s request for comprehensive orthodontia.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR.420.431, in determining that the appellant did not qualify for braces.

## Summary of Evidence

The appellant’s provider submitted a prior authorization request for comprehensive orthodontic treatment with photographs and x-rays. They submitted Handicapping Labio-Lingual Deviations (“HLD”) Form, with a total score of 22 points based upon the following three measurements: four mm of Overjet, eight mm of Overbite, and 10 mm of Labio-Lingual Spread.

DentaQuest, MassHealth's dental contractor, performed an initial evaluation based upon the submitted documentation. DentaQuest's review found that the appellant had an HLD score of 18 points. Their measurements were only three mm of Overjet, six mm of Overbite, and nine mm of Labio-Lingual Spread. At the hearing, it was explained that MassHealth only pays for orthodontia when it is "medically necessary" to correct a handicapping bite. MassHealth uses an HLD scale to measure various aspects of a person's bite to determine if their malocclusion is handicapping. Dr. Kaplan explained that this scale looks at nine characteristics of a bite to measure how the teeth work, but not how they look. He explained that many children may be appropriate for orthodontic care, but who do not meet MassHealth's definition of a physically handicapping bite.

Before Dr. Kaplan could review his measurements using the HLD scale, the appellant's mother interrupted to strongly express her outrage that her daughter was denied. She expressed her view that the system was unfair and said she would go to the Attorney General's Office to file a complaint regarding MassHealth's decision. She explained that her daughter has been seen by two dentists who recommended orthodontia. She said the first one opined that the appellant "might possibly" need braces, and the second dentist said she needed them.<sup>1</sup> She initially stated that she was told there were medical reasons why her daughter needed braces, but when asked to clarify she explained that her daughter's teeth were crooked had spaces and her jaw was misaligned. She testified that her daughter's jaw pops because her jaw is misaligned and was very upset that MassHealth would not provide orthodontia to fix this issue.

Dr. Kaplan was eventually able to explain that he only saw nine mm of Labio-Lingual Spread. He attempted to explain the way in which he was able to measure teeth on a photograph, but the appellant's mother continued to interrupt his testimony. She felt that MassHealth's measurement was only two points off from the needed 22 points. Her orthodontist saw her daughter in person, therefore the appellant's mother felt that their measurement should be afforded greater weight. Dr. Kaplan responded that his was not the only opinion to see fewer than 22 points. The original review only saw 18. He agreed that the appellant was very close, but in his opinion the only way you could fine 10 mm of Labio-Lingual Spread was by measuring behind the canine's as well, which is contrary to the scoring instructions.

## Findings of Fact

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

1. The appellant's provider submitted a prior authorization request for comprehensive orthodontic treatment with photographs and x-rays. The submitted HLD Form found a total score of 22 based upon four mm of Overjet, eight mm of Overbite, and 10 mm of Labio-Lingual Spread. Exhibit 3, pp. 6, 8-11.
2. MassHealth denied comprehensive orthodontia, finding only 18 points on the HLD scale. Exhibit 3, pp. 3-5, 7, 12.

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<sup>1</sup> It is unclear from the appellant's representative's testimony if this second dentist was the provider orthodontist.

3. For the appeal, another orthodontist performed an independent evaluation and found a score of 20 points. Measuring from canine to canine, there is at most nine mm of Labio-Lingual Spread. Testimony by Dr. Kaplan.

## Analysis and Conclusions of Law

Federal law requires that Medicaid agencies provide “[d]ental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health.” 42 CFR § 441.58; see also 42 U.S.C. § 1396d(r)(3)(B). Orthodontic services are generally described as “discretionary,” under federal law. See 42 CFR § 441.57. MassHealth has chosen to provide orthodontic services when it determines them to be medically necessary. 130 CMR 420.431.

Medical necessity for dental and orthodontic treatment must be shown in accordance with the regulations governing dental treatment, 130 CMR 420.000, and the MassHealth Dental Manual.<sup>2</sup> 130 CMR 450.204. Pursuant to 130 CMR 420.431(C)(3), MassHealth “pays for comprehensive orthodontic treatment ... only when the member has a severe and handicapping malocclusion. The MassHealth agency determines whether a malocclusion is severe and handicapping based on the clinical standards described in Appendix D of the Dental Manual.”

The HLD Form is a quantitative and objective method for measuring malocclusions. It is used to add up a single score based on a series of measurements that represent the degree to which a bite deviates from normal alignment and occlusion. MassHealth has made a policy decision that a score of 22 or higher signifies a “severe and handicapping malocclusion,” ostensibly a medical necessity for orthodontia. Certain exceptional malocclusions are deemed automatically severe and handicapping: cleft palate, deep impinging overbite, severe maxillary anterior crowding, anterior impaction, severe traumatic deviation, overjet greater than nine millimeters, or reverse overjet greater than 3.5 millimeters. Wisdom teeth are not included in the HLD scoring metric. The HLD Form now also allows medical providers to explain how orthodontia is medically necessary, despite not satisfying the measurement criteria otherwise captured on the form.

The instructions for the HLD Form for Labio-Lingual Spread are:

14. Labio-Lingual Spread: The measurement tool is used to determine the extent of deviation from a normal arch. Where there is only a protruded or lingually displaced anterior tooth, the measurement should be made from the incisal edge of that tooth to the normal arch line. Otherwise, the total distance between the most protruded tooth and the lingually displaced anterior tooth is measured. The labio-lingual spread probably comes close to a measurement of overall deviation from what would have been a normal arch. In the event that multiple anterior crowding of teeth is observed, all deviations from the normal

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<sup>2</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 September 27, 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 September 27, 2021).

arch should be measured for labio-lingual spread, but only the most severe individual measurement should be entered on the index.

Additionally, anterior spacing may be measured as the total score in mm from the mesial of cuspid to the mesial of cuspid, totaling both arches.

Enter only the highest score attained by any of the above methods

ORM, pp. 61-62.

Mesial, refers to the side of the tooth that is toward the center of the bite. Looking at the photographs, there is significant spacing behind the appellant's cupids (or canines). Dr. Kaplan testified that he could only see nine mm of spacing, at most, when measuring between the cuspids. DentaQuest's original orthodontist also only saw nine mm of spacing between the cuspids. The appellant's mother's own testimony was that one of the dentists the appellant saw thought she "might possibly" need braces. Had the appellant's mother been a more cooperative participant in the hearing, the hearing record might have been left open for provider to respond and explain what teeth their measurements included, or otherwise responded to Dr. Kaplan's explanations regarding the HLD scoring methodology. As a general matter, I agree that in person measurements, if correctly made, are more accurate and more persuasive evidence.<sup>3</sup>

The appellant is welcome to resubmit with an explanation by their orthodontist that their measurement is of all spacing between the mesial of the cuspids. Also, if there is, in fact, a letter of medical necessity that would need to be submitted by the orthodontist with their HLD scoring.

Therefore, this appeal must be DENIED. The appellant's HLD score is below 22 points at this time.

## **Order for MassHealth**

None.

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<sup>3</sup> See Appeal No. 2010663 (Jan. 8, 2021) (Appellant's orthodontist confirmed their understanding of the HLD Form's directions in the hearing record.)

## **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:  
MassHealth Representative: DentaQuest 1, MA