

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2176615

Decision Date: 11/03/2021

Hearing Date: 10/18/2021

Hearing Officer: Christopher Taffe

Appearance for Appellant:



Appearance for MassHealth:

Harold Kaplan, DMD, on behalf of
DentaQuest



*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:	APPROVED	Issue:	PA – Dental – Orthodontics
Decision Date:	11/03/2021	Hearing Date:	10/18/2021
MassHealth's Rep.:	H. Kaplan, DMD	Appellant's Rep.:	
Hearing Location:	HarborSouth Tower, Quincy	Aid Pending:	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 August 10, 2021, MassHealth denied Appellant's request for prior authorization of interceptive orthodontic treatment. See Exhibit 1; 130 CMR 420.431. Appellant filed a timely request for a Fair Hearing with Maximus over the phone on August 30, 2021. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial of a MassHealth of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for approval of the prior authorization request for interceptive orthodontic treatment.

Issue

Is there a reason to approve the request for interceptive orthodontic treatment?

Summary of Evidence

Appellant is currently a [REDACTED] MassHealth member who was represented at hearing by his father. MassHealth was represented at hearing by Dr. Kaplan, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer and run the agency's dental program for MassHealth members. All parties testified telephonically.

The record reveals that on August 10, 2021, Appellant's orthodontic provider at Merrimack Valley Orthodontics in Lawrence, Dr. Bogle submitted a request for interceptive orthodontic treatment. See Exhibit 4, page 7.

In her submission, Appellant's orthodontic dental provider submitted an August 6, 2021 letter on her office letterhead stating

"I am submitting a "medical necessity narrative" request for early intervention orthodontic treatment for [Appellant] for his active thumb sucking habit. If not treated in time, this will most likely lead to continued excessive maxillary overjet maxillary constriction and future more complex orthodontic treatment. He is ready for treatment at this time and my recommendation is to begin as soon as is possible. [signature]" Exhibit 4, page 7.

Exhibit 4, page 11 contains the DentaQuest notes regarding the request. It acknowledges receipt of the medical necessity narrative but the final row of the table on this page contains a column that says *"Does the documentation submitted satisfy criteria for medical necessity approval? (see manual)"* with an answer in the following column of "No".

Appellant's father provided testimony and a written letter; the testimony was very consistent with the letter (in Exhibit 1), excerpts of which are presented in relevant part below:

"[Appellant] was born with a terrible habit of thumb sucking. When my wife was 8 weeks pregnant, the first profile image was a little boy sucking his thumb. The next image, at 16, 22, 32, every image was the same, a beautiful boy sucking his thumb. On the day he was born, he was sucking his thumb. Early as he reached his developmental milestones, it was clear he needed intervention because his speech was delayed...The school speech pathologist said his mouth was crooked and the words he spoke were mispronounced. This has caused some psychological issues, where he struggles to express himself..."

When [Appellant] was examined by [the submitting orthodontist], she explained that the device, a Crib Appliance, would serve two essential functions. Discourage continued thumb sucking and a gentle reshaping of his jaw, so that in 4 years time, his mouth would not be so deformed...[otherwise] even with full braces, ideal correction might be impossible..."

The father testified that Appellant received early intervention services before the age of three, but did not receive regular speech therapy in school because it was trialed, but the cause of the speech issues were related to be more dental and mouth-shaped related, and not the type of issues

with which speech therapy could assist. Appellant's father stated that the family had tried other ways to break the habit (including putting some spice on a wrap on the child's thumb) but the family thought it was a bit cruel and were looking for the other option.

The MassHealth Representative stated that it was a compelling case, but he could not approve it. He did state however that, if the letter the Appellant's father wrote could come from a treating physician, like the child's pediatrician, that would likely lead to an approval.

The pictures in Exhibit 3 and Exhibit 4 show the two upper (maxillary) central incisors protruding outward at a notably obtuse angle and a substantial and relatively large overjet between the upper and lower central incisors.

Findings of Fact

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

1. Appellant is currently a [REDACTED] MassHealth member whose prior authorization request for interceptive orthodontic treatment was denied by MassHealth and the Appellant timely appealed this decision. (Testimony and Exhibits 1 and 4)
2. In support of the request Appellant's orthodontic dental provider, Dr. Bogie, submitted an August 6, 2021 letter on her office letterhead stating

"I am submitting a "medical necessity narrative" request for early intervention orthodontic treatment for [Appellant] for his active thumb sucking habit. If not treated in time, this will most likely lead to continued excessive maxillary overjet maxillary constriction and future more complex orthodontic treatment. He is ready for treatment at this time and my recommendation is to begin as soon as is possible. [signature]" (Exhibit 4)

3. Appellant's father testified that his son had a long habit of thumb sucking which persists to this day. (Testimony)
4. Appellant has a mouth shape that is atypical, and likely caused by the habit. Specifically, the two upper (maxillary) central incisors protrude outward at a notably obtuse angle and a substantial and relatively large overjet exists between the upper and lower central incisors. (Testimony and Exhibits 3 and 4)

Analysis and Conclusions of Law

As a rule, the MassHealth agency and its dental program pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 420.410.

130 CMR 420.410(C) lists the submission requirements.

420.410: Prior Authorization

(A) Introduction.

(1) The MassHealth agency pays only for medically necessary services to eligible MassHealth members and may require that medical necessity be established through the prior authorization process. In some instances, prior authorization is required for members 21 years of age or older when it is not required for members younger than 21 years old.

...

(C) Submission Requirements.

(1) The provider is responsible for including with the request for prior authorization appropriate and sufficient documentation to justify the medical necessity for the service...

(Bolded emphasis added.)

In addition to complying with the prior authorization requirements at 130 CMR 420.410 et seq.,¹ covered services for certain dental treatments, including orthodontia, are subject to the relevant limitations of 130 CMR 420.421 through 420.456. See 130 CMR 420.421 (A) through (C).

130 CMR 420.431 contains the description and limitation for orthodontic services. As to interceptive orthodontic requests, that regulation reads in relevant part as follows:

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. ...

(C) Service Limitations and Requirements.

...

(2) Interceptive Orthodontics.

(a) The MassHealth agency pays for interceptive orthodontic treatment once per member per lifetime. The MassHealth agency determines whether the treatment will prevent or minimize a handicapping malocclusion based on the clinical standards described in Appendix F of the Dental Manual.

*(b) The MassHealth agency **limits coverage of interceptive orthodontic treatment to primary and transitional dentition with at least one of the following conditions:** constricted palate, deep impinging overbite, Class III malocclusion, including skeletal Class III cases as defined in Appendix F of the Dental Manual when a protraction facemask/reverse pull headgear is necessary at a young age, craniofacial anomalies, anterior cross bite, **or dentition exhibiting results of harmful habits or traumatic***

¹ 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual publication as a source of additional explanatory guidance beyond the regulations. It is noted that references in the regulations to the “Dental Manual” include the pertinent state regulations, the administrative and billing instructions (including the HLD form), and service codes found in related subchapters and appendices.

See <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on October 25, 2021). Relevant parts of the Office Reference Manual are discussed *infra*.

interferences between erupting teeth.

(c) When initiated during the early stages of a developing problem, interceptive orthodontics may reduce the severity of the malformation and mitigate its causes. Complicating factors such as skeletal disharmonies, overall space deficiency, or other conditions may require subsequent comprehensive orthodontic treatment. Prior authorization for comprehensive orthodontic treatment may be sought for Class III malocclusions as defined in Appendix F of the Dental Manual requiring facemask treatment at the same time that authorization for interceptive orthodontic treatment is sought. For members with craniofacial anomalies, prior authorization may separately be sought for the cost of appliances, including installation.

(Bolded emphasis added.)

In this case, MassHealth is asserting its right to deny the case based on the insufficiency of the submission. Exhibit 4 page 11 says the submission doesn't satisfy the criteria for medical necessity approval. However, it is unclear how MassHealth can rely on that to justify their denial decision. The most current Office Reference Manual (published October 15, 2021) contains the instructions at pages 51-53.² The most relevant parts mirror the regulation and read as follows:

16.5 Authorization for Interceptive Orthodontic Treatment

The MassHealth agency approves prior authorization requests if the treatment will prevent or minimize a handicapping malocclusion based on the clinical standards described in Appendix F of the *Dental Manual*. The MassHealth agency limits coverage of interceptive orthodontic treatment to primary and transitional dentition with at least one of the following conditions: constricted palate, deep impinging overbite, Class III malocclusion including skeletal Class III cases as defined in Appendix F of the *Dental Manual* when a protraction facemask/reverse pull headgear or other appropriate device is necessary at a young age, craniofacial anomalies, anterior cross bite, or dentition exhibiting results of harmful habits or traumatic interferences between erupting teeth.

Providers are encouraged to treat Class III malocclusions with the appropriate interceptive treatment and may submit for approval of both interceptive and comprehensive treatment of Class III malocclusions at the time interceptive treatment is necessary. Please note the expiration date of the prior approval and submit for an extension of comprehensive treatment if comprehensive treatment is not complete prior to the expiration date.

...

The process for requesting authorization and billing for interceptive orthodontic treatment is described below:

- a. Provider performs pre-orthodontic treatment examination to determine if orthodontic treatment is necessary.
- b. Provider completes and submits the following documentation:
 - 2012 or newer ADA Form requesting authorization for interceptive orthodontic treatment. The form must include:
 1. The code for the appliance being used (D8050 or D8060)
 2. The code (D8999) for and number of treatment visits you are requesting for adjustments, up to a maximum of 5.
- c. A detailed medical necessity narrative establishing that interceptive orthodontic treatment is medically necessary to prevent or minimize the development of a handicapping malocclusion or will preclude the need for comprehensive orthodontic treatment. This narrative must be submitted on the provider's office letterhead and any supporting documentation or imaging supporting medical necessity of the treatment should be attached. If any part of the requesting provider's justification of medical necessity involves a mental, emotional, or behavioral

² <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last viewed October 29, 2021)

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 medical necessity narrative and any attached documentation must:

- i. 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);
- ii. describe the nature and extent of the identified clinician(s) involvement and interaction with the patient, including dates of treatment.
- iii. state the specific diagnosis or other opinion of the patient's condition furnished by the identified clinician(s).
- iv. document the recommendation by the clinician(s) to seek orthodontic evaluation or treatment (if such a recommendation was made).
- v.³
- vii. discuss any treatments for the patient's condition (other than interceptive orthodontic treatment) considered or attempted by the clinician(s); and
- viii. provide any other relevant information from the clinician(s) that supports the requesting provider's justification of the medical necessity of interceptive orthodontic treatment.

The medical necessity narrative must be signed and dated by the requesting provider and submitted on the office letterhead of the provider. If applicable, any supporting documentation from the other involved clinician(s) must also be signed and dated by such clinician(s) and appear on office letterhead of such clinician(s). The requesting provider is responsible for coordinating with the other involved clinician(s) and is responsible for compiling and submitting any supporting documentation furnished by other involved clinician(s) along with the medical necessity narrative.

...

(**Bolded** emphasis in original)

In this Appellant's case, we have a condition that satisfies the regulation; specifically, we have a long-standing harmful habit creating an unusual issue with the dentition. The pictures of the dentition in the exhibit show a highly unusual mouth and angle of teeth for a seven-year-old. The orthodontic provider referenced this habit, submitted the reasoning in a coherent narrative on the orthodontic office's letterhead, and then articulated why interceptive treatment is needed. This request does not appear to be something that needs something more in the form of a non-dental provider to provide the last piece of the request. The idea that Appellant's father needs to repeat his detailed letter to the child's pediatrician seems to suggest a little too much form over substance, especially when the letter reveals an accurate layperson's opinion, and not something that needs a medical diagnosis. Instead for this missing piece (details on a harmful habit) I find the parental testimony on this habit, articulated both in detail and clearly via verbal testimony and also in writing, should more than suffice in fulfilling the missing link for establishing medical necessity. To send the parent back to the pediatrician's office does not appear to be a good use of time and resources for any party, especially considering the urgency stressed in the orthodontist's letter.

For these reasons, I conclude this appeal should be APPROVED. Appellant should be approved for the requested interceptive treatment.

³ This Section of the Dental Office Reference Manual skips (v) and (vi), apparently due to an editing error.

Order for MassHealth

DentaQuest and/or the agency must, no later than 30 days of the date of this decision, send notice of approval of the interceptive orthodontic treatment to both Appellant's family and the provider who submitted this prior authorization request.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth Dental Customer Service at 1-800-207-5019. 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 Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest