

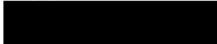
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2177296
<b>Decision Date:</b>	12/08/2021	<b>Hearing Date:</b>	11/24/2021
<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>	12/08/2021	<b>Hearing Date:</b>	11/24/2021
<b>MassHealth’s Rep.:</b>	Dr. Harold Kaplan	<b>Appellant’s Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy - Remote	<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 September 1, 2021, MassHealth denied the appellant’s prior authorization request for comprehensive orthodontia. Exhibit 2. The appellant filed this appeal in a timely manner on September 21, 2021.<sup>1</sup> Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied the appellant’s request for orthodontia because the agency determined the appellant’s Handicapping Labiolingual Deviations score did not total at least 22 points.

## 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.

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<sup>1</sup> This appeal designated Dr. Mouhab Rizkallah as the Appeal Representative. When he was called for the hearing, I was informed that he was on vacation and would not be available for hearings. The appellant requested to go forward with the hearing without their representative rather than have their appeal dismissed for not appearing.

## Summary of Evidence

On or around August 30, 2021, the appellant's provider submitted a prior authorization request on the appellant's behalf seeking MassHealth coverage for comprehensive orthodontic treatment. Along with photographs and x-rays, the provider submitted a Handicapping Labio-Lingual Deviations ("HLD") Form, with a total score of 35 points. Some of these x-rays include a measuring device with 10 mm marks to be used as reference. The provider's score consisted of the following points:

- Six points for six mm of overjet;
- Four points for four mm of overbite;
- Six points for two ectopic eruptions;
- Six points for six mm of labio-lingual spread;
- Four points for a posterior unilateral crossbite; and
- Nine points for three posterior impacted teeth.

The provider also attached a document labeled a "Medical Necessity Narrative Form" that set forth some of the regulatory language defining "medical necessity" and indicated that the crowding, crossbite, and ectopic teeth would cause gum and bone infirmity, tooth infirmity, and emotional infirmities, and that there is no alternative treatment for these conditions.

DentaQuest, MassHealth's dental contractor, reviewed the submitted images and determined that the appellant's HLD score was 16. This score was based upon

- Two points for two mm of overjet;
- Three points for three mm of overbite;
- Six points for ectopic eruptions; and
- Five points for five mm of labio-lingual spread.

Dr. Kaplan testified that the appellant did need braces, but he explained that MassHealth developed the HLD system to determine when it will pay for coverage. He explained that these limitations include only allowing orthodontia for children and requiring an HLD score of 22 or above or when an automatic qualifying characteristic exists. Dr. Kaplan testified that MassHealth usually does not pay for braces for children who need it, and that it is only covered when the child's bite is a handicap under the HLD metric. Dr. Kaplan's own score, based upon the submitted images, was 20 points, based upon the following:

- Two points for two mm of overjet;
- Three points for three mm of overbite;
- Six points for two ectopic eruptions;
- Five points for five mm of labiolingual spread; and
- Four points for a posterior unilateral crossbite.

Dr. Kaplan testified that his primary disagreement with the provider's score was that he could not confirm the posterior teeth were impacted based upon a single x-ray. He recommended that the appellant be seen after the new year, and if any of those posterior teeth were still not erupted, they should be considered impacted and she should be approved for coverage. Regarding the other measurements, he simply noted that his measurements comported with those made by the other DentaQuest orthodontist. Dr. Kaplan noted that if the appellant feels self-conscious about her teeth's appearance, she should address this with her pediatrician or a counselor. They could then write a letter indicating that orthodontia would be appropriate to treat this emotional condition, and that could be submitted as a medical necessity narrative. He testified that the provider's medical necessity narrative form did not qualify as such because a medical necessity form was intended to be submitted by a physician or a clinician in a different field than orthodontia or dentistry.

The appellant's mother was uncertain as to whether the appellant's posterior teeth had erupted yet. She was frustrated that the appellant was only two points away according to MassHealth's scoring and asked if MassHealth considered where the teeth would be if left untreated. Dr. Kaplan testified that they can only look at the present condition of the teeth to determine whether the HLD score qualified for coverage.

## **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 35 as detailed above. Exhibit 3, pp. 6, 8-15.
2. MassHealth denied comprehensive orthodontia, finding only 16 points on the HLD scale, as detailed above. Exhibit 3, pp. 3-5, 7, 12.
3. For the appeal, another orthodontist performed an independent evaluation and found a score of 20 points. Testimony by Dr. Kaplan.
4. The appellant's molars are not considered impacted at this time because they may still be in the process of erupting into the mouth. Otherwise, the appellant has five mm of labiolingual

spread, two mm of overjet, and three mm of overbite, two ectopic eruptions, and a posterior unilateral crossbite. 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). 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.<sup>3</sup> The HLD Form also allows a medical provider to explain how orthodontia is medically necessary, in the absence of a dental condition that is otherwise captured on the HLD Form.

Two orthodontists agreed that the appellant’s posterior teeth should not be considered impacted at this time. They also concurred that the provider’s measurement for overjet was off by four mm, and the measurements for overbite and labiolingual spread were off by a mm each. Dr. Kaplan further testified that the appellant’s teeth cannot be considered impacted based upon the submitted x-rays because they may still be in the process of erupting. He agreed that if the appellant’s teeth remain unerupted after six months, they should be considered impacted. In this event, the appellant should be automatically qualified for orthodontia under the new HLD Form, published October 15, 2021.

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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 November 24, 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>. This form was updated on October 15, 2021. The earlier iteration is no longer available at masshealth-dental.net The October 15, 2021 update provides additional avenues for qualifying for orthodontia, but requires more detailed images to be submitted with objective measuring tools in the images so that accurate measurements can be confirmed by looking at the images.

<sup>3</sup> This list has expanded as of October 15, 2021 and now includes any impactions, crowding of all teeth in one arch greater than 10 mm, crossbite of more than 3 teeth, two or more congenitally missing teeth, and an open bite involving four or more teeth.

Regarding the measurements, I find Dr. Kaplan's measurement more credible. In part, this is because they are supported by another independent orthodontist, but it is more based upon the submitted lateral cephalogram. This image includes a measuring tool that shows a scale for measuring in 10 mm increments. Though the method of taking measurements was not clearly detailed on the record, this image indicates that the appellant's overjet and overbite are closer to MassHealth's measurements than the provider's. In the absence of additional testimony regarding how to measure labiolingual spread, I infer that MassHealth's measurement of that is also more accurate. For these reasons, the appellant does not qualify for orthodontia according to the HLD scoring methodology. The submitted medical narrative is unpersuasive. It appears from the form that most of the clinical rationales are duplicative of the type captured by the HLD Form itself. To the extent that it also alleges a psycho-emotional basis for approval, the provider's qualification for providing this clinical opinion are not in the record.

For these reasons, this appeal is DENIED. The appellant is welcome to be reevaluated for orthodontia after six months from her past evaluation.

## **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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Hearing Officer  
Board of Hearings

cc: MassHealth Representative: DentaQuest 1, MA