

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** APPROVED

**Appeal Number:** 2178334

**Decision Date:** 12/13/2021

**Hearing Date:** 12/06/2021

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**



**Appearance for MassHealth:**

Carl Perlmutter, DMD, on behalf of  
DentaQuest (by phone)



*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>	APPROVED	<b>Issue:</b>	PA – Dental – Orthodontics
<b>Decision Date:</b>	12/13/2021	<b>Hearing Date:</b>	12/06/2021
<b>MassHealth's Rep.:</b>	C. Perlmutter, DMD	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<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 October 11, 2021, MassHealth denied Appellant's request for prior authorization of full orthodontic treatment. See Exhibit 1; 130 CMR 420.431. A timely appeal was filed on Appellant's behalf with the Board of Hearings on October 29, 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 braces or full and comprehensive orthodontic treatment.

## Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's bite or malocclusion did not currently qualify for approval of comprehensive orthodontic treatment.

## Summary of Evidence

Appellant is currently a ■-year old MassHealth member who was represented at hearing by her mother. MassHealth was represented at hearing by Dr. Perlmutter, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer the agency's dental program for MassHealth members. All parties testified telephonically.

Dr. Perlmutter testified that the MassHealth insurance does not cover orthodontics for every single child who is a MassHealth member with dental insurance. By law, the agency only covers requests and pays for treatment for full orthodontics when the bad bite or "malocclusion" meets a certain high standard. It is not enough to say that the Appellant has imperfect teeth or that Appellant's family has been told by a dentist that the patient would generally need or benefit from braces. Instead to obtain approval, the bite or condition of the teeth must have a high amount of dental problems so that the bite falls into the group of malocclusions with the most severe or handicapping issues.

Appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment, together with X-rays and photographs. As required, the Appellant's dental provider completed the Handicapping Labio-Lingual Deviations (HLD) form and arrived at a score of 31.

MassHealth testified that, on the HLD point scale, 22 points is generally needed for approval. However, Dr. Perlmutter testified that most recently, during the initial denial and review of the materials, DentaQuest found a HLD score of 17.

Dr. Perlmutter did mention that Appellant's orthodontist had submitted two Prior Authorization ("PA") requests during the fall of 2021 and that this was evidence in the DentaQuest packet. The two PA's are #202128110007900 (reviewed by DentaQuest in October 2021) and #202126320106500 (reviewed by DentaQuest in September 2021). A review of Exhibit 3 shows that DentaQuest reviewed the materials and found a score of 17 in response to the October 2021 request and a score of 20 in response to the September 2021 request. Both PA's were submitted by the same provider (Dr. Hannawi of Attleboro Family Dental Care).

Dr. Perlmutter stated that he did his own second review for the hearing, and he found discrepancies with a HLD score of 18. Dr. Perlmutter mentioned twice during his testimony that the pictures he had to review were very small and smaller than usual.<sup>1</sup>

Appellant's mother stated that she has concerns about her child being bullied for her bad bite and that she has crowding and a noticeable overbite, and was told her child may have to have four teeth extracted at some point (2 upper and 2 lower) in order to fix her bite.

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<sup>1</sup> The Hearing Officer agrees that these pictures, found in Exhibit 3, are relatively much smaller than those usually seen in orthodontic-related appeals at the Board of Hearings.

The HLD scoring from the reviewing dentists are as follows:

<b>Condition observed</b>	<b>Rule to determine final score</b>	<b>Finding of Appellant's Provider</b>	<b>Final score of Appellant's Provider</b>	<b>Finding of first DQ<sup>2</sup> reviewer</b>	<b>Final score of first DQ reviewer</b>	<b>Finding of Dr. Perlmutter</b>	<b>Final score of Dr. Perlmutter</b>
Overjet in millimeters (mm)	<b># mm x 1</b>	2 mm	<b>2</b>	4 mm	<b>4</b>	4 mm	<b>4</b>
Overbite in mm	<b># mm x 1</b>	2 mm	<b>2</b>	3 mm	<b>3</b>	2 mm	<b>2</b>
Mandibular Protrusion in mm	<b># mm x 5</b>	3 mm	<b>15</b>	0	<b>0</b>	0	<b>0</b>
Anterior Open Bite in mm	<b># mm x 4</b>	0	<b>0</b>	0	<b>0</b>	0	<b>0</b>
# of teeth in Ectopic Eruption <sup>3</sup>	<b># of teeth x 3</b>	0	<b>0</b>	0	<b>0</b>	0	<b>0</b>
Anterior Crowding of more than 3.5 mm in the upper (Maxilla) jaw or lower (Mandible) jaw?	<b>If present, give 5 points for each jaw</b>	Both jaws	<b>10</b>	Both jaws	<b>10</b>	Both jaws	<b>10</b>
Labio-Lingual Spread ("Anterior Spacing") in mm	<b># mm x 1</b>	2 mm	<b>2</b>	3 mm	<b>3</b>	3 mm	<b>2</b>
Posterior Unilateral Crossbite	<b>If present, give 4 points</b>	No	<b>0</b>	No	<b>0</b>	No	<b>0</b>
Posterior Impactions or congenitally missing posterior teeth (excluding 3 <sup>rd</sup> molars)	<b># of teeth x 3</b>	None	<b>0</b>	None	<b>0</b>	None	<b>0</b>
<b>TOTAL HLD SCORE</b>	<b>-----</b>	<b>n/a</b>	<b>31</b>	<b>n/a</b>	<b>20</b>	<b>n/a</b>	<b>18</b>

Appellant's provider also submitted a form indicating that the provider believed Appellant had an automatic qualifying condition, of severe maxillary crowding of more than 8 mm for teeth in the anterior part of the upper jaw. Dr. Perlmutter testified that he believed there was only 5 to 6 mm of crowding in the upper anterior teeth, as well as 3.5 to 5 millimeters of crowding in the bottom anterior teeth. Dr. Perlmutter testified that he could not see any evidence of mandibular protrusion in the teeth in the back part of the mouth on the "very small" photographs he had for review.

## Findings of Fact

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

1. Appellant is currently a ■-year old MassHealth member who had a request for full or comprehensive braces denied by MassHealth. (Testimony and Exhibit 3)
2. A HLD score of 22 points is generally needed for approval.
  - a. Appellant's orthodontic provider submitted the request with a HLD score of 31 points.
  - b. DentaQuest, during two initial review made in September 2021 and October 2021

<sup>2</sup> DentaQuest provided a score breakdown of both the 17 and 20. As the 20 is more in Appellant's favor and because the submission from the Appellant's provider is dated from September 2021, the scoring from DentaQuest for the 20 points is shown in the chart as opposed to the 17.

<sup>3</sup> The HLD Form instructs the user to record the more serious condition (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores.

- prior to the denial notice in question, found HLD scores of 20 points and then 17 points.
- c. At hearing, the MassHealth/DentaQuest representative testified that he found an HLD score of 18 points.  
(Testimony and Exhibit 3)
3. Appellant has at least one millimeter of mandibular protrusion. (Testimony and Exhibit 3)
- a. Appellant's provider made a submission which stated that Appellant had 3 millimeters of mandibular protrusion. None of the reviewing dentists from DentaQuest indicated that there was any mandibular protrusion. (Testimony and Exhibit 5)
  - b. Appellant's orthodontic provider had a chance to see the patient in person prior to his submission while the reviewing dentists from DentaQuest had photographs of the bite that were described at hearing as being relatively small. (Testimony and Exhibit 3)
  - c. The remainder of Appellant's provider submission shows scores that were either consistent with, or less than, the scope of severity found by the DentaQuest on the 8 other characteristics making up the HLD calculation. (Testimony and Exhibit 3)

## 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. In addition to complying with the prior authorization requirements at 130 CMR 420.410 et seq.,<sup>4</sup> covered services for certain dental treatments, including orthodontia, are subject to the relevant limitations of 130 CMR 42.421 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 comprehensive 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.*

...

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<sup>4</sup> 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 December 7, 2021).

*(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**. ...*

(**Bolded** emphasis added.)

Appendix D of the Dental Manual contains the current HLD Authorization Form found in Exhibit 3. As indicated by the paper record, the MassHealth testimony, and the relevant regulations, appendices, and manuals (including the HLD Authorization form), MassHealth approves comprehensive orthodontic treatment only when the member meets one of the three following requirements:

- (1) the member has an “auto qualifying” condition as described by MassHealth in the HLD Index;
- (2) the member meets or exceeds the threshold score (currently 22 points) listed by MassHealth on the HLD Index; or
- (3) comprehensive orthodontic treatment is medically necessary for the member, as demonstrated by a medical necessity narrative letter and supporting documentation submitted by the requesting provider. Usually this involves a severe medical condition that can include atypical or underlining health concerns which may be either dental or non-dental.

Although there was a claim and an issue of dispute as to whether an auto qualifying condition exists, I find it unnecessary to address this issue, as I believe a review of the HLD scores reveals that the Appellant’s bad bite or malocclusion is severe enough to qualify as a handicapping malocclusion.

In this close case, the HLD scores range from 17 to 32, with 22 being the number needed to qualify. In looking at the differences, I have noted that the submission from Appellant’s own provider has a relatively high air of credibility. For 8 of the 9 characteristics making up the HLD index, the score or measurements from the treating provider either match or are less than that found by MassHealth. As there may be some natural bias to have a provider inflate scores or measurements (or vice versa from MassHealth) I find that especially does not appear to be the case here due to the consistency among all parties, which adds further credibility to the one key disputed discrepancy of mandibular protrusion asserted by the treating provider.

It is also noted that if Appellant has even one millimeter of mandibular protrusion,<sup>5</sup> that would be enough to qualify, as this would result in adding 5 more points for mandibular protrusion which would in turn bring all of MassHealth’s scores to or above the 22-point bar needed for approval. As to that issue of a millimeter, the two DentaQuest reviews done prior to hearing show how unscientific this process of measuring millimeters from photographs may be, as DentaQuest itself found scores 3 points apart for the same mouth one month apart, and based on a review of the two DentaQuest scoresheets in Exhibit 3, there were 3 issues where one greater millimeter (and point)

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<sup>5</sup> One millimeter is roughly the size of a pencil tip or a credit card width.

were found. Finally and perhaps most notably, if there is a difference of 1 millimeter for the factfinder to resolve, absent some compelling reason that might cause one to question the provider's credibility (which is not found here), I believe it makes sense to give some greater deference to the provider who actually treated, saw, and measured this child in person as opposed to those reviewers who had to work with two dimensional and very small photographs to come up with their measurements.

For those reasons, I conclude that Appellant has at least 1 millimeter of mandibular protrusion and that the presence of such a characteristic should result in a HLD score of at least 22. Accordingly, I find that Appellant has met the high standard set by MassHealth for a qualifying malocclusion, and this PA request should be granted. The appeal and PA for comprehensive orthodontic treatment is thus APPROVED.

## **Order for MassHealth**

DentaQuest and/or the agency must, no later than 30 days of the date of this decision, send notice of approval to both Appellant's family and her orthodontic provider (Dr. Hannawi of Attleboro Family Dental Care) who submitted the two PA requests discussed in the summary.

## **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.

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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: DentaQuest