

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2178412

Decision Date: 01/26/2022

Hearing Date: 12/06/2021

Hearing Officer: Christopher Taffe

Record Open to: 01/12/2022

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

Appeal Decision:	APPROVED	Issue:	PA – Dental – Orthodontics
Decision Date:	01/26/2022	Hearing Date:	12/06/2021
MassHealth's Rep.:	C. Perlmutter, 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 on or around October 6, 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 November 1, 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.

At the conclusion of the hearing the record was left open for a period per Appellant's request to submit additional material; Appellant completed the submission of such material by January 6, 2022. See 130 CMR 610.081; Exhibits 4 through 6. The material was forwarded to the MassHealth Representative for review and the MassHealth response was completed and received on January 12, 2022. See Exhibits 7 and 8.¹

Action Taken by MassHealth

MassHealth denied Appellant's request for approval of the prior authorization request for braces or full and comprehensive orthodontic treatment.

¹ The substance of the Record Open submissions and response is discussed in greater detail within the decision Summary.

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 his 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 14.

MassHealth testified that, on the HLD point scale, 22 points is typically needed for approval. However, Dr. Perlmutter testified that DentaQuest, during the initial denial and review of the materials, also found an HLD score of 14 and he too found a similar score of 13 points. See Exhibits 3 and 8.

Appellant's mother testified at hearing about how Appellant had sores inside his cheeks, and that he is constantly biting his cheek and that the child's jaw is sore. His orthodontist submitted material indicating the patient had a Class II malocclusion with mandibular retrusion, and that special problems including a tongue-thrusting habit, a nail biting habit, and night grinding and clenching of the teeth were also evident with the Appellant.

The submission from Appellant's orthodontic provider did not indicate a claim for an automatic qualifying condition (for example, a cleft palate), nor did Appellant's provider submit a separate medical necessity narrative from another appropriate medical provider in accordance with the instructions on the latter pages of the HLD form. MassHealth's testimony and packet within Exhibit 3 indicated that those were other alternatives (beyond meeting the HLD score) for possible approval. Both testimony and Exhibit 3 suggest that medical providers, beyond the orthodontist who submitted the prior authorization request, could submit documentation that, if

relevant, could justify consideration on the grounds of medical necessity.

Appellant asked for additional time to submit a claim for medical necessity. During the record open period, the Appellant's mother submitted documentation on multiple dates, including January 6, 2022. See Exhibits 5 and 6. The January 6, 2022 submission (Exhibit 6) included a letter from Appellant's pediatrician at the Dimock Center. The pediatrician's letter reads in relevant part as follows:

"[Appellant] is my patient. I saw him today, 12/20/21 for a primary care visit. This letter is in support of his having comprehensive orthodontic treatment. He has had years-long persistent and significant issues with his bite - causing trouble chewing (he has lost 7 pounds in the last month), emotional distress due to bullying about the way he bites down and the appearance of his teeth, and he consistently bites his left in her cheek which is painful. This has led to a significant impact on his wellbeing, and getting appropriate treatment would be of great benefit to him."

A close-up color photograph showing the inner left cheek area was included with the Exhibit 6 submission.

The material was forwarded to the DentaQuest representative for review and a written response on January 10, 2022. See Exhibit 7. The DentaQuest response on January 12, 2022 (marked as Exhibit 8) indicated it would uphold the denial decision and not reverse it based on the submission; the response stated in relevant part the following:

" [Appellant's mother] then requested that she would have a letter(s) of medical necessity submitted. Letters were received from [Appellant's mother], Kadin's orthodontist and his physician. [Appellant's mother's] letter again reexplained her position as she stated at the hearing with no new additions. The letter from Dr. Ding explained his finding which were not different from our findings and there were no additional problems from what was established at the Hearing. Dr. Samantha Baras, [Appellant's] pediatrician, letter said that his bite has been causing trouble such as chewing his food, emotional distress, bullying and cheek biting and weight loss. There is no evidence from looking at all the records submitted that his bite was causing these problems."

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. There is no evidence of a HLD score of 22 or more points. (Testimony and Exhibit 3)

3. There is no claim of an automatic qualifying condition, such as a cleft palate or a deep impinging overbite. (Testimony and Exhibit 3)

4. During the appeal process, Appellant submitted a letter of support from Appellant's pediatrician to prove the medical necessity for this request. (Testimony and Exhibits 6 and 7)

a. Appellant has suffered problems related to his bite for years, which include bullying and emotional distress from his peers due to the appearance of his teeth and bite. (Exhibit 7)

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.,² 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.

...
(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

² 130 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 January 24, 2022).

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.

In this matter, it is undisputed that there are no grounds for approval based on either an HLD score or the presence of an “auto-qualifying” condition. There is however a dispute as to whether there is a medical necessity and whether orthodontic treatment can be used to correct or ameliorate a deviation or condition. Based on how MassHealth lays out the standard in Exhibit 3, page 9, the agency opens the door to allowing an appropriate non-dental provider to weigh in and offer their medical opinion.

In this case, Appellant’s own pediatrician opined, in writing, that her patient the Appellant has had years-long persistent issues related to the malocclusion, and that the Appellant has suffered, among other issues, emotional distress and mental health problems as a result. In response, MassHealth took the position that the appellant’s bite was not the cause of such problems, implying that the problems were caused by something else. MassHealth offered no evidence as to what this hypothetical alternative cause of the emotional problems could be, nor did MassHealth question the basis for the pediatrician’s conclusion or challenge her qualifications or ability to weigh in on Appellant’s mental health as it relates to his bite. Based on the issue of causality of the mental health issue, there are two different medical opinions as to the cause, and I find no reason not to defer to the written opinion of Appellant’s own pediatrician, especially because unlike MassHealth the pediatrician has followed the Appellant for several years. Both opinions have some tinge of being conclusory opinions, but the Appellant’s pediatrician at least has the ability to base her statements and conclusions on her long-term and direct care relationship with the child.

Accordingly, I find that Appellant’s side has established that orthodontic treatment is medically necessary to treat the malocclusion in this question, and that it will help to ameliorate the mental health issue cited by the pediatrician. Therefore, I conclude that Appellant qualifies under the current MassHealth standards for approval of this request. This appeal is 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 of comprehensive orthodontic treatment to both Appellant's family and the orthodontic provider (Dr. Ding of Align Orthodontics LLC of Quincy) who submitted the PA 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