

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200781
Decision Date:	5/19/22	Hearing Date:	3/2/2022
Hearing Officer:	Cynthia Kopka	Record Open to:	4/1/2022

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

Appeal Decision:	Denied	Issue:	Prior authorization – orthodontia
Decision Date:	5/19/22	Hearing Date:	3/2/2022
MassHealth’s Rep.:	Dr. Kaplan	Appellant’s Rep.:	POA
Hearing Location:	Quincy (remote)	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

By notice dated January 14, 2022, MassHealth denied Appellant's prior authorization request for comprehensive orthodontic treatment. Exhibit 1. Appellant filed this appeal in a timely manner on February 3, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the denial of a request for assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through April 1, 2022 for the submission of additional evidence. Exhibit 5.

Action Taken by MassHealth

MassHealth denied Appellant's prior authorization request for comprehensive orthodontic treatment.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431(E), in determining that Appellant is ineligible for comprehensive orthodontic treatment.

Summary of Evidence

Appellant, a MassHealth member over the age of 21, was represented at hearing by his power of attorney. The MassHealth representative, a licensed orthodontist, appeared for MassHealth on behalf of DentaQuest. DentaQuest is the third-party contractor that administers and manages the

dental program available to MassHealth members. Below is a summary of each party's testimony and the information submitted for hearing.

On or about January 14, 2022, Appellant's orthodontic provider ("the provider") submitted a request for prior authorization of comprehensive orthodontic treatment on behalf of Appellant. The provider completed an Orthodontics Prior Authorization Form and a MassHealth Handicapping Labio-Lingual Deviations (HLD) Form and submitted these documents with supporting photographs and x-rays to DentaQuest. Exhibit 4.

On January 14, 2022, MassHealth denied Appellant's prior authorization request because the service is not covered. The determination states "[p]lease refer to your Office Reference Manual for definition of covered teeth/quad/arch, patient ages, and procedure codes." Exhibit 4 at 2. The MassHealth representative testified at hearing that Appellant was [REDACTED] at the time the request was filed. MassHealth does not cover comprehensive orthodontic treatment for members over the age of 21. However, the MassHealth representative testified that Appellant qualified clinically for treatment, based on both HLD score and autoqualifying conditions of anterior overbite of 4 upper incisors and posterior cross-bite. The only basis for the denial was Appellant's age.

Appellant's representative testified that Appellant was born with congenital abnormalities including bilateral hemifacial microsomia and cleft palate. Appellant has had several surgeries and orthodontic procedures already to address the congenital anomalies to improve function of Appellant's airway, speech, and chewing. The requested treatment is not cosmetic in nature. In 2017, Appellant was orthodontically ready to start comprehensive orthodontic treatment, but he needed another major surgery to release fused jawbone. Unfortunately, he developed gastroparesis and colonic inertia in 2018, giving him failure to thrive, anorexia, malnutrition, and chronic pain. Appellant would not have been able to tolerate comprehensive orthodontic treatment at this time. When Appellant normalized from these conditions, it was March 2020 and the Covid-19 pandemic shut down offices. Appellant was [REDACTED] in March 2020. Now that Appellant has stabilized and has access to the medical care he needs, he is [REDACTED].

Appellant's representative argued that the requested orthodontic treatment is necessary to align Appellant's teeth to then have another, final, surgery on the jaws and palate. This treatment is a necessary component of another major facial surgery. Appellant was recently seen by a craniofacial surgeon, who determined that Appellant would need another surgery on his soft palate. This will need to be done before the requested orthodontic work. Appellant's representative acknowledged that an approval for comprehensive orthodontic treatment would expire at a future date if treatment did not begin immediately.¹ The MassHealth representative inquired as to whether MassHealth was covering the new surgery. Appellant has Blue Cross Blue Shield (BCBS) as primary coverage. However, BCBS does not cover orthodontics.

Appellant's representative provided medical records supporting the delay in seeking orthodontic

¹ Section 16.3 of the Office Reference Manual (ORM) provides that the "initial prior authorization approval for comprehensive orthodontics (D8080/D8070) and first two (2) years of treatment visits (D8670 x 8 units) will expire three (3) years from the date of the authorization.

treatment. Exhibits 6 and 7. MassHealth reviewed the records but was not able to overturn the denial due to Appellant's age. Exhibit 8.

Findings of Fact

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

1. On January 14, 2022, Appellant's orthodontist requested prior authorization for comprehensive orthodontic treatment on Appellant's behalf and submitted an Orthodontics Prior Authorization Form, an HLD Form, photographs and x-rays. Exhibit 4.
2. At the time of the request, Appellant was [REDACTED].
3. On January 14, 2022, MassHealth denied Appellant's prior authorization request and Appellant timely appealed the denial to the Board of Hearings. Exhibits 1 and 2.
4. The records demonstrate that Appellant qualified clinically for comprehensive orthodontic treatment, based on both HLD score and autoqualifying conditions of anterior overbite of 4 upper incisors and posterior cross-bite.
5. Appellant's representative submitted medical records demonstrating that it was not medically appropriate for Appellant to undergo comprehensive orthodontic treatment prior to January 2022. Exhibits 6 and 7.

Analysis and Conclusions of Law

MassHealth pays for dental services when they are medically necessary² and covered by MassHealth's dental program. 130 CMR 420.421(A)(1).³ The MassHealth Dental Manual and the MassHealth Dental Program Office Reference Manual (ORM) contain information and guidance for providers in submitting claims to MassHealth. 130 CMR 420.410(C). MassHealth's coverage of

² Pursuant to 130 CMR 450.204(A),

(A) A service is "medically necessary" if:

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007

³ Medically necessary treatments covered by the MassHealth dental program are "the services with codes listed in Subchapter 6 of the *Dental Manual*, in accordance with the service descriptions and limitations described in 130 CMR 420.422 through 420.456." 130 CMR 420.421(A)(1).

specific services varies depending on whether a member is under the age of 21 or is a client eligible for adult services through Massachusetts' Department of Developmental services (DDS).

Regarding orthodontic treatment, 130 CMR 420.431 states, in relevant part, as follows:

(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. The provider **must seek prior authorization for orthodontic treatment and begin initial placement and insertion of orthodontic appliances and partial banding or full banding and brackets prior to the members 21st birthday.**

(B) Definitions.

...

(3) Comprehensive Orthodontic Treatment. Comprehensive orthodontic treatment includes a coordinated diagnosis and treatment leading to the improvement of a member's craniofacial dysfunction and/or dentofacial deformity which may include anatomical and/or functional relationship. Treatment may utilize fixed and/or removable orthodontic appliances and may also include functional and/or orthopedic appliances. Comprehensive orthodontics may incorporate treatment phases including adjunctive procedures to facilitate care focusing on specific objectives at various stages of dentofacial development. Comprehensive orthodontic treatment includes the transitional and adult dentition.

(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. Upon the completion of orthodontic treatment, the provider must take post treatment photographic prints and maintain them in the member's dental record. The MassHealth agency pays for the office visit, radiographs and a record fee of the pre-orthodontic treatment examination (alternative billing to a contract fee) when the MassHealth agency denies a request for prior authorization for comprehensive orthodontic treatment or when the member terminates the planned treatment. The payment for a pre-orthodontic treatment consultation as a separate procedure does not include models or photographic prints. The MassHealth agency may request additional consultation for any orthodontic procedure.

Payment for comprehensive orthodontic treatment is inclusive of initial placement, and insertion of the orthodontic fixed and removable appliances (for

example: rapid palatal expansion (RPE) or head gear), and records. Comprehensive orthodontic treatment may occur in phases, with the anticipation that full banding must occur during the treatment period. The payment for comprehensive orthodontic treatment covers a maximum period of three calendar years. **The MassHealth agency pays for orthodontic treatment as long as the member remains eligible for MassHealth, if initial placement and insertion of fixed or removable orthodontic appliances begins before the member reaches 21 years of age.**

(emphasis added).

The ORM contains multiple references to the age limitation for comprehensive care. Sections 3.7 and 16.1 of the ORM state that eligible “members under age 21 may qualify for orthodontic care under the MassHealth Dental Program.” ORM at 14, 45. Section 16.1 provides that members age 21 and older may receive continuation of orthodontic treatment “if they have been fully banded prior to their 21st birthday and remain eligible for MassHealth dental benefits for the duration of the treatment.” *Id.* at 45. Service codes for comprehensive orthodontic treatment are only listed for members under 21. *Id.* at 105, 204.

The regulations and medical guidelines in the ORM are unwavering about the age limitation for orthodontic treatment for MassHealth members, requiring that a member be approved for and begin treatment prior to turning 21 years old. The only exception to a service limitation would be for a member eligible to receive Early and Periodic Screening, Diagnostic, and Treatment Services, for whom MassHealth would cover

all services for EPSDT-eligible members, in accordance with 130 CMR 450.140 through 450.149, **without regard for the service limitations described in 130 CMR 420.422 through 420.456, or the listing of a code in Subchapter 6.** All such services are available to EPSDT-eligible members, with prior authorization, **even if the limitation specifically applies to other members younger than 21 years old.**

130 CMR 420.421(B) (emphasis added). Per this regulation, only exception to a service limitation would be for an EPSDT-eligible member, who must be under the age of 21 to meet the definition. *See* 130 CMR 420.402 (defining Early and Periodic Screening, Diagnostic and Treatment Services “as described in federal law at 42 U.S.C. §§1396d(a)(4)(B) and 1396d(r) and 42 CFR 441 Subpart B. In Massachusetts, EPSDT-eligible members are in MassHealth Standard or MassHealth CommonHealth categories of assistance and are younger than 21 years old”). In other words, the regulatory exception that would allow coverage of comprehensive orthodontic treatment over the age of 21 is only available to members under the age of 21.

Here, there is no dispute that Appellant qualifies clinically for orthodontic treatment. Appellant’s representative offered a reasonable and sympathetic basis for why Appellant could not have been treated earlier, well supported by medical records. However, there is no exception in the regulations or ORM that would allow approval of comprehensive orthodontic treatment for a member

Appellant's age. Accordingly, this appeal is denied.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: DentaQuest Appeals Coordinator

[REDACTED]