

# **[Office of Medicaid BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2201124

**Decision Date:** 5/26/2022

**Hearing Date:** 05/18/2022

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**



**Appearance for MassHealth:**

Dr. Carl Perlmutter, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Orthodontic services
<b>Decision Date:</b>	5/26/2022	<b>Hearing Date:</b>	05/18/2022
<b>MassHealth's Rep.:</b>	Dr. Carl Perlmutter, DentaQuest	<b>Appellant's Rep.:</b>	Guardian
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 March 16, 2022, MassHealth denied the appellant's request for prior authorization for orthodontic treatment because MassHealth determined that MassHealth had paid for orthodontic treatment in the past and the service is limited to coverage once per lifetime per member. (Exhibit 1 and 130 CMR 420.431). The appellant filed this appeal in a timely manner on April 7, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Denial of prior authorization is valid grounds for appeal. (see 130 CMR 610.032). The appeal hearing was originally scheduled for March 16, 2022 and the appeal was dismissed when the appellant's representative failed to appear telephonically for the hearing. (Exhibits 6, 7). The appellant's representative submitted a request to vacate the dismissal and the request was approved by the Board of Hearings. (Exhibits 8, 9).

## Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for coverage of orthodontic treatment.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that the appellant does not meet the MassHealth requirements for coverage of orthodontic treatment.

## Summary of Evidence

The appellant is a child and was represented telephonically at the hearing by her guardian. MassHealth was represented telephonically at the hearing by an orthodontist consultant with DentaQuest, the contracted agent of MassHealth that makes the dental prior authorization determinations. The appellant is under age 21 and open on MassHealth Standard. (Exhibit 5). The appellant's orthodontist submitted a request for prior authorization for orthodontic treatment for the appellant on January 28, 2022. (Exhibit 4, p. 3). The appellant's orthodontist completed an Orthodontics Prior Authorization Form and a MassHealth Handicapping Labio-Lingual Deviations (HLD) Form and submitted these along with photographs and x-rays of the appellant's mouth. (Exhibit 4) The appellant's orthodontist noted that a medical necessity narrative would not be submitted. (Exhibit 4, p. 9). The HLD form states that treatment will be authorized for cases with verified autoqualifiers or verified scores of 22 and above. (Exhibit 4, p. 9). The HLD form lists 13 autoqualifiers and 9 characteristics, such as bite and crowding, with corresponding numerical values. (Exhibit 4, p. 8). If a member has any of the 13 autoqualifiers or a HLD score of 22 or higher, the member meets the criteria for a handicapping malocclusion. (Testimony, exhibit 4, p. 8). The 13 autoqualifiers are a cleft lip/palate; impinging overbite with evidence of occlusal contact into the opposing soft tissue; impactions where eruption is impeded but extraction is not indicated (excluding 3<sup>rd</sup> molars); severe traumatic deviations; overjet greater than 9 millimeters; reverse overjet greater than 3.5 millimeters; crowding of 10 mm or more, in either the maxillary or mandibular arch (excluding 3<sup>rd</sup> molars); spacing of 10 mm or more, in either the maxillary or mandibular arch (excluding 3<sup>rd</sup> molars); anterior crossbite of 3 or more maxillary teeth per arch; posterior crossbite of 3 or more maxillary teeth per arch; two or more congenitally missing teeth (excluding 3<sup>rd</sup> molars) of at least one tooth per quadrant; lateral open bite: 2 mm or more of 4 or more teeth per arch; and anterior open bite: 2 mm or more of 4 or more teeth per arch. (Exhibit 4, p. 8). If none of these are present, the orthodontist measures overjet, overbite, mandibular protrusion, open bite, ectopic eruption, anterior crowding in the upper and lower mouth, labio-lingual spread or anterior spacing, posterior unilateral crossbite, and posterior impactions or congenitally missing posterior teeth, and gives each measurement a value based on the calculation worksheet on the HLD Form. (Exhibit 4, p. 8). The appellant's orthodontist noted that the appellant did not have any autoqualifiers; the appellant's orthodontist calculated a HLD score of 12. (Exhibit 4, p. 8).

The MassHealth representative stated that according to DentaQuest notes, MassHealth previously approved the appellant for orthodontic treatment and she was banded on June 14, 2012 by Dr. Pham-Nguyen. (Exhibit 4, p. 1). The MassHealth representative stated that MassHealth covers orthodontic treatment once per member, per lifetime and thus the request was denied based on this limitation in MassHealth's regulations. The MassHealth representative stated further that based on the HLD score calculated by the appellant's orthodontist, the appellant does not meet the medical necessity criteria for coverage of orthodontic treatment by MassHealth. The MassHealth representative stated that he examined the photographs and x-rays submitted by the appellant's

orthodontist and he calculated a HLD score of 14. The MassHealth representative testified that a HLD score of 22 or higher was necessary to meet the criteria for MassHealth coverage of orthodontic treatment. The MassHealth representative noted that even if MassHealth had not already covered orthodontic treatment in the past, the request would be denied because the appellant does not meet the medical necessity criteria necessary for MassHealth coverage of orthodontic treatment.

The appellant's guardian stated that the appellant was with her parents when she had the braces put on when she was younger. The appellant's guardian noted that the appellant needed the braces at that time and had them on for around 5 years. The appellant's representative stated that the appellant did not receive a retainer when the braces were removed. The appellant's guardian noted that the appellant's parents had mental health issues and were not helpful with regard to the appellant's orthodontic treatment. The appellant's representative stated that she does not believe the previous orthodontist did a good job treating the appellant and she has filed a grievance against him. The appellant's guardian stated that the appellant needs braces now to correct her teeth.

## **Findings of Fact**

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

1. The appellant's orthodontist submitted a request for prior authorization for orthodontic treatment for the appellant.
2. The appellant's orthodontist completed an Orthodontics Prior Authorization Form and a HLD Form and submitted these, along with photographs and x-rays of the appellant's mouth, to DentaQuest.
3. The appellant's orthodontist calculated an HLD score of 12.
4. The MassHealth representative calculated an HLD score of 14 after reviewing the photographs and x-rays.
5. A HLD score of 22 is the minimum score indicative of a handicapping malocclusion.
6. The appellant was banded by Dr. Pham-Nguyen on June 14, 2012 and MassHealth paid for this treatment.
7. The appellant is under age 21 and open on MassHealth Standard.

## **Analysis and Conclusions of Law**

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. 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 member's 21st birthday.

(B) Definitions.

- (1) Pre-orthodontic Treatment Examination – includes the periodic observation of the member's dentition at intervals established by the orthodontist to determine when orthodontic treatment should begin.
- (2) Interceptive Orthodontic Treatment – includes treatment of the primary and transitional dentition to prevent or minimize the development of a handicapping malocclusion and therefore, minimize or preclude the need for comprehensive orthodontic treatment.
- (3) 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.
- (4) Orthodontic Treatment Visits – periodic visits which may include but are not limited to updating wiring, tightening ligatures or otherwise evaluating and updating care while undergoing comprehensive orthodontic treatment.

(C) Service Limitations and Requirements.

- (1) Pre-orthodontic Treatment Examination. The MassHealth agency pays for a pre-orthodontic treatment examination for members younger than 21 years old, once per six (6) months per member, and only for the purpose of determining whether orthodontic treatment is medically necessary, and can be initiated before the member's twenty-first birthday. The MassHealth agency pays for a pre-orthodontic treatment examination as a separate procedure (see 130 CMR 420.413). The MassHealth agency does not pay for a pre-orthodontic treatment examination as a separate procedure in conjunction with pre-authorized ongoing or planned orthodontic treatment.
- (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 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.

(3) Comprehensive Orthodontics. The MassHealth agency pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime for a member 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 (3) 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. Comprehensive orthodontic care should commence when the first premolars and 1st permanent molars have erupted. It should only include the transitional dentition in cases with craniofacial anomalies such as cleft lip or cleft palate. Comprehensive treatment may commence with second deciduous molars present. Subject to prior authorization, the MassHealth agency will pay for more than one comprehensive orthodontic treatment for members with cleft lip, cleft palate, cleft lip and palate, and other craniofacial anomalies to the extent treatment cannot be completed within three years.

(4) Orthodontic Treatment Visits. The MassHealth agency pays for orthodontic treatment visits on a quarterly (90-days) basis for ongoing orthodontic maintenance and treatment beginning after the initial placement, and insertion of the orthodontic fixed and removable appliances. If a member becomes inactive for any period of time, prior authorization is not required to resume orthodontic treatment visits and subsequent

billing, unless the prior authorization time limit has expired. The provider must document the number and dates of orthodontic treatment visits in the member's orthodontic record.

(5) Orthodontic Case Completion. The MassHealth agency pays for orthodontic case completion for comprehensive orthodontic treatment which includes the removal of appliances, construction and placement of retainers and follow-up visits. The MassHealth agency pays for a maximum of five (5) visits for members whose orthodontic treatment begins before their 21st birthday, consistent with 130 CMR 420.431(A). The MassHealth agency pays for the replacement of lost or broken retainers with prior authorization.

(6) Orthodontic Transfer Cases. The MassHealth agency pays for members who transfer from one orthodontic provider to another for orthodontic services subject to prior authorization to determine the number of treatment visits remaining. Payment for transfer cases is limited to the number of treatment visits approved. Providers must submit requests using the form specified by MassHealth.

(7) Orthodontic Terminations. The MassHealth agency requires providers to make all efforts to complete the active phase of treatment before requesting payment for removal of brackets and bands of a noncompliant member. If the provider determines that continued orthodontic treatment is not indicated because of lack of member's cooperation and has obtained the member's consent, the provider must submit a written treatment narrative on office letterhead with supporting documentation, including the case prior authorization number.

(8) Radiographs. Payment for Cephalometric and radiographs used in conjunction with orthodontic diagnosis is included in the payment for comprehensive orthodontic treatment (see 130 CMR 420.423(D)). The MassHealth agency pays for radiographs as a separate procedure for orthodontic diagnostic purposes only for members younger than 21 years old if requested by the MassHealth agency.

(9) Oral/Facial Photographic Images. The MassHealth agency pays for digital or photographic prints, not slides, only to support prior-authorization requests for comprehensive orthodontic treatment. Payment for digital or photographic prints is included in the payment for comprehensive orthodontic treatment or orthognathic treatment. The MassHealth agency does not pay for digital or photographic prints as a separate procedure (see 130 CMR 420.413). Payment for orthodontic treatment includes payment for services provided as part of the pre-orthodontic treatment examination, unless the MassHealth agency denies the prior authorization request for interceptive or comprehensive orthodontic treatment. The MassHealth agency pays for the pre-orthodontic treatment examination if prior authorization is denied for interceptive or comprehensive orthodontic treatment.

#### 130 CMR 420.431.

The MassHealth agency pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime under the age of 21 and only when the member has a handicapping malocclusion. 130 CMR 420.431(C)(3). MassHealth approved the appellant for orthodontic treatment in 2012 and she had braces put on in June, 2012.

#### Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services

The MassHealth agency pays for all medically necessary dental services for EPSDT-eligible

members in accordance with 130 CMR 450.140: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction, without regard to service limitations described in 130 CMR 420.000, and with prior authorization.

(130 CMR 420.408).

Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction

(A) Legal Basis. (1) In accordance with federal law at 42 U.S.C. 1396d(a)(4)(b) and 1396d(r), and 42 CFR 441.50, and notwithstanding any limitations implied or expressed elsewhere in MassHealth regulations or other publications, the MassHealth agency has established a program of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) for MassHealth Standard and MassHealth CommonHealth members younger than 21 years old, including those who are parents.

(130 CMR 450.140(A)(1)).

Providers of Dental Services. (1) Dental care providers must offer to provide services listed in Appendix W: EPSDT Services: Medical and Dental Protocols and Periodicity Schedules of all MassHealth provider manuals to all members younger than 21 years of age (except members enrolled in MassHealth Limited) in accordance with the Dental Schedule, and must provide or refer such members to assessment, diagnosis, and treatment services. (2) The dental services described in the Dental Schedule are payable when provided by dental providers as described in 130 CMR 420.000: Dental Services.

(130 CMR 450.142(B)).

Because the appellant is under the age of 21 and on MassHealth Standard, she is an EPSDT member. (See 130 CMR 450.140(A)(1)). Because orthodontic treatment of individuals of the appellant's age are among the services listed in the Appendix W referenced in 130 CMR 450.142, I find the service limitation of "once per lifetime" does not apply to this case. MassHealth pays for all medically necessary dental services for EPSDT-eligible members in accordance with 130 CMR 450.140, without regard to service limitations described in 130 CMR 420.000, and with prior authorization.

However, MassHealth has determined that the appellant's request for prior authorization for comprehensive orthodontic treatment does not meet medical necessity criteria. Neither the appellant's orthodontist nor the MassHealth representative found that the appellant has any of the autoqualifiers listed on the HLD form, nor does she have a HLD score of 22 or higher. There is no evidence to support that the appellant has a handicapping malocclusion as is required for MassHealth coverage of orthodontic treatment.

MassHealth's action is upheld and the 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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: DentaQuest