

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved; Dismissed	<b>Appeal Number:</b>	2201953
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	04/20/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	04/21/2022

**Appellant Representative:**




**MassHealth Representative:**

Harold Kaplan, D.M.D., DentaQuest (by telephone)



*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; Dismissed	<b>Issue:</b>	Prior Authorization, Comprehensive Orthodontic Treatment
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	04/20/2022
<b>MassHealth Rep.:</b>	Dr. Kaplan	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

## 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 3, 2022, MassHealth denied the appellant's request for prior authorization (PA) for comprehensive orthodontic treatment because MassHealth determined that the appellant does not have a severe and handicapping malocclusion as is required by MassHealth regulations for orthodontic coverage (130 CMR 420.431; Exh. 1). The appellant, through his appeal representative, requested this appeal in a timely manner on March 15, 2022 (Exh. 2). A PA denial is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's PA request for comprehensive 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 comprehensive orthodontic treatment.

## Summary of Evidence

The appellant is a thirteen [REDACTED] year-old MassHealth member who was represented at hearing by his mother, who testified telephonically. The MassHealth representative, an orthodontist consultant with DentaQuest (the contracted agent of MassHealth that makes the dental prior authorization determinations), testified that the appellant's orthodontist, Dr. Ray Smith, submitted a PA request for comprehensive orthodontic treatment for the appellant on or about March 1, 2022. Dr. Smith completed an Orthodontics Prior Authorization Form and a MassHealth Handicapping Labio-Lingual Deviations (HLD) Form, submitting these to DentaQuest, along with photographs of the appellant's face and teeth, and two radiographs (Exh. 3).

On the HLD Form, the orthodontist indicates whether the child has a cleft palate, deep impinging overbite, anterior impactions, severe traumatic deviations, an overjet greater than 9 millimeters, a reverse overjet greater than 3.5 millimeters, or severe maxillary anterior crowding greater than 8 millimeters (mm.), collectively referred to as "autoqualifiers" (Testimony).

If any autoqualifiers are present, the request for orthodontic treatment is approved. If no autoqualifiers are present, the orthodontist measures overjet, overbite, mandibular protrusion, open bite, ectopic eruption, anterior crowding in the upper and lower mouth, labio-lingual spread, and posterior unilateral crossbite and gives each measurement a value based on the calculation worksheet on the HLD Form. An HLD score of 22 or over constitutes a severe and handicapping malocclusion (Testimony).

In the appellant's case, Dr. Smith documented that the appellant has an autoqualifier for treatment, *to wit*, an impinging overbite with evidence of occlusal contact into the opposing soft tissue. Because he located a purported autoqualifier, Dr. Smith did not go on to score other aspects of the appellant's bite, nor was he required to do so (Exh. 3).

The MassHealth representative testified that in order for MassHealth to cover orthodontic treatment, the member must have a severe, disfiguring and handicapping malocclusion. The MassHealth representative stated that an HLD score of 22 is the minimum score indicative of a severe, disfiguring and handicapping malocclusion, and this is noted on the HLD Form.

The MassHealth representative stated that based on the photographs and radiographs of the appellant in evidence, he did not agree that the appellant's overbite is causing soft tissue damage. The MassHealth representative went on to evaluate and measure other aspects of the appellant's bite, and he testified that the appellant has an overjet of 5 mm. (worth five points on the HLD Form), an overbite of 6 mm. (worth six points on the HLD Form), crowding of the appellant's anterior teeth on the mandible in an amount exceeding 3.5 mm. (worth five points on the HLD Form), and a labio-lingual spread of 4 mm. (worth four points on the HLD Form). The total HLD score calculated for the appellant by the MassHealth representative was 20 points (Testimony).

The appellant's mother testified that she has worked in the dental field for many years, and that the appellant definitely needs comprehensive orthodontic treatment. She asserted that the appellant has

been in speech therapy for eleven years, cannot close his mouth fully, cannot speak properly, cannot be understood by his peers, and needs a palate expander. She read into the record a portion of a report from a speech and language pathologist who treated the appellant, written in January, 2022, which states, among other things, that the appellant:

. . . demonstrates overall deficits in oral motor functioning. [The appellant's] oral motor/speech disorder is secondary to physiological dysfunction of the oral mechanism.  
...

(Exh. 5, p. 3)<sup>1</sup>

The appellant's mother submitted a copy of this evaluation by e-mail to the hearing officer.

The appellant's mother also submitted into the record, via e-mail, a second evaluation of the appellant by a licensed speech-language pathologist, reflecting the results of an evaluation conducted of the appellant on December 16, 2021 (Exh. 6).<sup>2</sup>

The hearing officer explained that he would keep the record of this appeal open for a week for the MassHealth representative to review the two evaluations and report back to the hearing officer whether MassHealth might alter its decision to deny the appellant's PA request.

On April 21, 2022, the hearing officer received the following e-mail from the MassHealth representative, which states in relevant part:

After reading the Medical Necessity Narrative from [the appellant's] Speech therapist, I have overturned Mass Health's denial for orthodontic treatment have recommended comprehensive orthodontic treatment for [the appellant] by MassHealth.

(Exh. 7)

## Findings of Fact

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

1. The appellant is a thirteen [REDACTED] year-old MassHealth member (Exh. 3).
2. The appellant's orthodontist, Dr. Smith, submitted a PA request for comprehensive orthodontic treatment for the appellant in March, 2022 (Exh. 3).

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<sup>1</sup> The appellant's mother stated that the author of the January, 2022 evaluation was hired by the public school system where the appellant lives.

<sup>2</sup> The hearing officer forwarded copies of both written evaluations to the MassHealth representative by e-mail.

3. Dr. Smith completed an Orthodontics Prior Authorization Form and a HLD Form, and submitted these along with photographs of the appellant's face and teeth, and two radiographs (Exh. 3).
4. Dr. Smith asserted on the HLD Form that the appellant has an autoqualifier for treatment, an impinging overbite with evidence of occlusal contact into the opposing soft tissue. (Exh. 3).
5. The MassHealth representative is licensed to practice dentistry in the Commonwealth.
6. The MassHealth representative, based on his review of the appellant's photos and radiographs, did not agree that the appellant's overbite is causing soft tissue damage.
7. The MassHealth representative, based on his review of the appellant's photos and radiographs, determined that the appellant has an overjet of 5 mm. (worth five points on the HLD Form), an overbite of 6 mm. (worth six points on the HLD Form), crowding of the appellant's anterior teeth on the mandible in an amount exceeding 3.5 mm. (worth five points on the HLD Form), and a labio-lingual spread of 4 mm. (worth four points on the HLD Form) (Testimony).
8. The MassHealth representative calculated a total HLD score of 20 points for the appellant (Testimony).
9. Following the hearing, the appellant's mother forwarded two evaluations of the appellant by licensed speech-language pathologists (Exhs. 5 and 6).
10. An evaluation by a speech-language pathologist dated January, 2022 states, among other things, that the appellant "demonstrates overall deficits in oral motor functioning. [The appellant's] oral motor/speech disorder is secondary to physiological dysfunction of the oral mechanism. . . ." (Exh. 5).
11. Following the hearing, the MassHealth representative, after reviewing the evaluations of the appellant, overturned Mass Health's denial for comprehensive orthodontic treatment (Exh. 7).

## **Analysis and Conclusions of Law**

130 CMR 420.431 contains the relevant MassHealth regulation addressing how a MassHealth member may receive approval on a prior authorization request for comprehensive orthodontic treatment. The regulation reads as follows:

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 months per member, and only for the purpose of determining whether orthodontic treatment is medically necessary, and can be initiated before the member's 21st 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 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 first 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-day) 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 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.

(Emphasis added)

MassHealth uses the HLD Form as a tool to determine if a member has a severe, disfiguring and handicapping malocclusion. If a member does not have an autoqualifier, then measurements are taken of the member's overjet, overbite, mandibular protrusion, open bite, ectopic eruption, anterior



crowding in the upper and lower arch, labio-lingual spread, and posterior unilateral crossbite, and each measurement is given a value based on the calculation worksheet on the HLD Form. A HLD score of 22 is the minimum score which indicates a severe, disfiguring and handicapping malocclusion.

Here, the appellant's treating orthodontist asserted that the appellant has an autoqualifier for treatment; based on his review of the appellant's photos and radiographs, the MassHealth representative did not agree.

However, following the hearing, the hearing officer and the MassHealth representative reviewed two written evaluations of the appellant by speech-language pathologists, attesting to an oral motor/speech disorder secondary to physiological dysfunction of the appellant's oral mechanism.

The MassHealth representative, based on his review of the two written evaluations of the appellant by speech-language pathologists, agreed to overturn MassHealth's denial of treatment.

Pursuant to the Fair Hearing Rules at 130 CMR 610.051(B):

The MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. BOH will not delay a fair hearing because a possible adjustment is under consideration, unless the appellant requests or agrees to such a delay.

The only issue in dispute has been resolved, and the appellant has been approved for treatment.

Therefore, the appeal is DISMISSED.

## **Order for MassHealth**

Rescind denial notice of March 3, 2022. Send notice to the appellant and his parent notifying them that the appellant is approved for comprehensive orthodontic treatment.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth customer service. If you experience problems with the implementation of this decision, you should report this in writing to the Acting Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: DentaQuest appeal representative