

Office of Medicaid BOARD OF HEARINGS

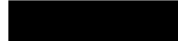
Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2203150
Decision Date:	7/21/2022	Hearing Date:	07/06/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

, Mother

Appearance for MassHealth:

Via telephone:

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:	Dismissed	Issue:	Prior Authorization – Orthodontics
Decision Date:	7/21/2022	Hearing Date:	07/06/2022
MassHealth’s Rep.:	Dr. Harold Kaplan	Appellant’s Rep.:	Mother
Hearing Location:	Quincy Harbor South 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

Through a notice dated October 5, 2021, MassHealth denied the appellant’s request for prior authorization of comprehensive orthodontic treatment (Exhibit 1). The appellant filed this appeal on April 27, 2022, which was not timely (Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

On May 18, 2022, the Board of Hearings dismissed the appeal because it was not received within the time specified by 130 CMR 610.015 or the extended time implemented due to COVID-19.¹ The appellant sent in a written request to vacate the dismissal, which was received on May 31, 2022. It is not clear why from documentation or testimony, but the request to vacate the dismissal was granted and the appeal was scheduled for and held on July 6, 2022.

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that the appellant is ineligible for comprehensive orthodontic treatment.

Summary of Evidence

The appellant is a minor MassHealth member whose mother appeared at hearing via telephone. MassHealth was represented at hearing via telephone by Dr. Harold Kaplan, an orthodontic consultant from DentaQuest, the MassHealth dental contractor.

The appellant's provider submitted a prior authorization request for comprehensive orthodontic treatment, including photographs and x-rays, on October 5, 2021. As required, the provider completed the MassHealth Handicapping Labio-Lingual Deviations ("HLD") Form, which requires a total score of 22 or higher for approval or that the appellant has one of the conditions that warrant automatic approval of comprehensive orthodontic treatment. The provider did not find any of the conditions that warrant automatic approval of comprehensive orthodontic treatment. The provider's HLD Form indicates that he found a total score of 17, broken down as follows:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	5	1	5
Overbite in mm	4	1	4
Mandibular Protrusion in mm	0	5	0
Anterior Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	1	3	3
Anterior Crowding ²	Maxilla: n/a Mandible: x	Flat score of 5 for each ³	5
Labio-Lingual Spread, in mm (anterior spacing)	0	1	0

² The HLD Form instructs the user to record the more serious (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores.

³ The HLD scoring instructions state that to give points for anterior crowding, arch length insufficiency must exceed 3.5 mm.

Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	0	3	0
Total HLD Score			17⁴

When DentaQuest evaluated this prior authorization request on behalf of MassHealth, its orthodontists did not perform an HLD score because it determined that MassHealth had already paid for comprehensive orthodontic treatment for the appellant.

At hearing, Dr. Kaplan arrived at the same conclusion and explained that MassHealth will only pay for comprehensive orthodontic treatment once per lifetime per patient. MassHealth paid for comprehensive orthodontic treatment for the appellant on July 9, 2018.

The appellant's mother testified that she received the MassHealth notice dated October 5, 2021 in a timely fashion in October 2021. When questioned by this hearing officer why she did not appeal the notice until April 27, 2022, she stated that her orthodontist told her he would appeal the decision. She stated that when the orthodontist told it was appealed and denied, she appealed it to the Board of Hearings herself.⁵

The appellant's mother explained that her daughter was approved for braces and began treatment at one provider in their former town. When they moved to a new city, it was no longer practical to travel to the original orthodontist's office and she looked to switch her daughter to a different practice. The appellant's mother stated that she called MassHealth and spoke to multiple people to determine whether the appellant's braces would still be covered if they switched practices. She was assured that it would be. The appellant's mother testified that the new orthodontist's office told her that the appellant's braces would have to be removed by her former orthodontist before beginning treatment at the new practice.⁶

Findings of Fact

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

1. On October 5, 2022, the appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment to MassHealth (Exhibit 4).

⁴ The provider indicated a total HLD score of 16, but it appears there was a math error as the numbers used by the provider indicate a total HLD score of 17.

⁵ There is no record of an earlier orthodontic appeal for the appellant in the Board of Hearings system.

⁶ The notes provided by the requesting orthodontist states the following: "Patient's mother explained that patient had comprehensive ortho tx at [former orthodontist's office] and the patient was in braces for 2 years. Mother stated that she had to interrupt the patient's ortho tx and asked her previous orthodontist to remove braces because the family moved permanently... and the distance was a deterrent to completing tx at her previous dental home. Mother stated that she would like to resume ortho tx..."

2. On April 27, 2022, the appellant filed an appeal which was not timely (Exhibit 2).
3. On May 18, 2022, the Board of Hearings dismissed the appeal because it was not timely received (Exhibit 3).
4. The appellant sent in a written request to vacate the dismissal, which was received on May 31, 2022 and granted by the Board of Hearings (Exhibit 3).
5. The provider completed a Handicapping Labio-Lingual Deviations Form for the appellant and calculated an overall score of 17 (Exhibit 4).
6. The provider did not find any of the conditions that warrant automatic approval of comprehensive orthodontic treatment (Exhibit 4).
7. When DentaQuest evaluated the prior authorization request on behalf of MassHealth, its orthodontists did not complete an HLD form because it determined that MassHealth had already paid for comprehensive orthodontic treatment (Testimony and Exhibit 4).
8. At hearing, a MassHealth orthodontic consultant reviewed the appellant's paperwork and also determined that MassHealth had already paid for comprehensive orthodontic treatment for the appellant (Testimony).
9. MassHealth paid for comprehensive orthodontic treatment for the appellant on July 9, 2018 (Testimony and Exhibit 4).

Analysis and Conclusions of Law

The Board of Hearings must receive the request for a fair hearing within the following time limits:

- (1) **30 days after an applicant or member receives written notice from the MassHealth agency of the intended action.** Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the third day after mailing;
- (2) unless waived by the Director or his or her designee, 120 days from
 - (a) the date of application when the MassHealth agency fails to act on an application;
 - (b) the date of request for service when the MassHealth agency fails to act on such request;
 - (c) the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action; or
 - (d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit

with the Director...

130 CMR 610.015(B) (emphasis added).

Computation of this period of time is made on the basis of calendar days except where expressly provided otherwise. Time periods will expire on the last day of such periods unless the day falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed, in which event the last day of the time period will be deemed to be the following business day. See 130 CMR 610.015(C).

Due to COVID-19, MassHealth has granted certain flexibilities, including allowing **up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns**. (MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020)(emphasis added).

In this case, the appellant's mother testified that she received the October 5, 2021 notice in a timely manner, which is presumed to be October 8, 2021. 120 days from October 8, 2021 is February 5, 2022, which is a Saturday. Thus, the request for a fair hearing should have been received by Monday, February 7, 2022. Instead, the appellant's request for a fair hearing was not received until April 27, 2022, far outside the 120 days allowed by the COVID-19 flexibilities. The appellant's mother testified that she did not appeal it sooner because she believed her orthodontist was appealing it on her behalf; however, there is nothing in the Board of Hearings system regarding another appeal for the appellant and this is insufficient to get around the time frame specified by 130 CMR 610.015 and the MassHealth Eligibility Operations Memo.

As the fair hearing request was not received until April 27, 2022, it was not timely under the regulations and **this appeal is dismissed**.

While the appeal is dismissed, it should be noted that were it not dismissed, the appeal would be a clear denial.

130 CMR 420.431(C)(3) states, in relevant part, as follows:

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.

(Emphasis added).

Appendix D of the Dental Manual is the "Handicapping Labio-Lingual Deviations Form" (HLD), which is described as a quantitative, objective method for measuring malocclusion. The HLD index provides a single score, based on a series of measurements that represent the degree

to which a case deviates from normal alignment and occlusion. MassHealth has determined that **a score of 22 or higher signifies a handicapping malocclusion**. MassHealth will also approve a prior authorization request, without regard for the HLD numerical score, if there is evidence of cleft palate, impinging overbite, impaction where eruption is impeded, severe traumatic deviation, overjet greater than 9 mm, reverse overjet greater than 3.5 mm, crowding of 10mm or more, spacing of 10mm or more, anterior crossbite, posterior crossbite, two or more congenitally missing teeth, lateral open bite 2mm or more, anterior open bite 2mm or more.

MassHealth already paid for comprehensive orthodontic treatment for the appellant on July 9, 2018 and the appellant did not dispute that. MassHealth will only pay for comprehensive orthodontic treatment once per member per lifetime. While the appellant's mother may have misunderstood what would be covered when she switched providers and how to go about doing so, the appellant's own requesting orthodontist did not find any automatic qualifier and only scored 17 points on the HLD form, less than the 22 or more is needed for approval. Thus, even if MassHealth had not already paid for treatment, it would be unable to approve treatment based on the HLD score.⁷

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: DentaQuest 1, MA

⁷ Pursuant to 130 CMR 420.431(C)(6), MassHealth will pay "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." But the appellant's provider requested comprehensive orthodontic treatment in whole, which was already paid for, and did not request a continuation of treatment.