

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2203411
<b>Decision Date:</b>	6/28/2022	<b>Hearing Date:</b>	06/08/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**  
[Redacted] (mother)

**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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Authorization
<b>Decision Date:</b>	6/28/2022	<b>Hearing Date:</b>	06/08/2022
<b>MassHealth's Rep.:</b>	Dr. Harold Kaplan	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

## 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 April 21, 2022, MassHealth denied appellant's prior authorization request for comprehensive orthodontic treatment. (Exhibit 1). The appellant filed an appeal in a timely manner on May 5, 2022. (Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

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

## Issue

Whether MassHealth was correct in denying the appellant's prior authorization request for comprehensive orthodontic treatment.

## Summary of Evidence

All parties appeared by telephone. The appellant submitted a prior authorization request for orthodontic treatment. MassHealth denied this request as the appellant's condition did not rise to the level that would allow MassHealth to authorize coverage for treatment.

In determining whether a member will qualify for MassHealth coverage of orthodontic treatment, the agency uses the Handicapping Labio-Lingual Deviations Form (HLD). The HLD is a quantitative, objective method for measuring a malocclusion. The HLD provides a single score, based on a series of measurements that represent the degree to which a case deviates from normal alignment and occlusion. For MassHealth to approve prior authorization for treatment, the patient would have to have a severe and handicapping malocclusion. Such patients need to have a HLD score of 22 or higher to meet that requirement. Additionally, individuals with cleft palate deformities, deep impinging overbites or anterior impaction are considered to have a handicapping malocclusion.

The appellant's provider gave a score of 23. An orthodontist from DentaQuest, the agency that oversees the MassHealth Dental Program, reviewed the records and gave a score of 19. The MassHealth representative at hearing, a licensed orthodontist, reviewed the records and gave a score of 19.

The MassHealth representative testified that the scoring differences involved an overjet that the orthodontist said was 3 millimeters and both MassHealth representatives found an overjet of only 2 millimeters. Additionally, the orthodontist provided a score of 10 for both maxillary and mandibular crowding and both MassHealth representatives found crowding only in the maxillary or upper jaw for a total score of 5 points. The MassHealth representative noted that these changes resulted in scores below the necessary 22 points. (Testimony; Exhibit 4).

The appellant's mother testified that the MassHealth representative could not likely see all of the problems as he was not face-to-face with the appellant. The appellant's mother testified that she does not agree with the decision or process. The appellant's mother testified that the appellant lost a tooth at 6 years old due to a cavity and crowding. The appellant's mother felt that the appellant's oral health is in jeopardy due to this history of crowding. The appellant's mother testified that if the appellant does not receive orthodontic treatment at this time, MassHealth will likely pay more to address oral health issues in the future. The appellant's mother testified that the appellant needs orthodontic treatment due to speech issues. The appellant has not received

speech therapy in more than two years. The appellant's mother testified that the appellant does not receive speech therapy at this time because she cannot pay for it.

The MassHealth representative noted that the appellant would benefit from orthodontic treatment. However, his condition did not rise to the level for MassHealth to pay for the treatment. The MassHealth representative encouraged the appellant to continue to visit the orthodontist and should his condition change, MassHealth may authorize payment for the treatment. The MassHealth representative also noted that losing a baby tooth at 6 years old does not demonstrate that the appellant has severe crowding at this time. The MassHealth representative noted that he had photographs, X-rays and other documentation clearly showing a condition that did not rise to the level for MassHealth to pay for treatment. The photographs and X-rays showed crowding in the upper jaw but not the lower jaw.

## **Findings of Fact**

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

1. The appellant requested prior authorization for comprehensive orthodontic treatment.
2. The appellant is under 21 years of age.
3. The appellant's orthodontist gave an HLD score of 23 and did not indicate any other type of handicapping malocclusion or medically-related need.
4. An orthodontist from DentaQuest, performing a review of the appellant's records gave a score of 19.
5. Reviewing the records submitted by the appellant's orthodontist, the MassHealth representative at hearing gave the appellant an HLD score of 19.
6. The appellant's provider gave a score of 5 for mandibular (lower jaw) crowding.
7. Two orthodontists for MassHealth found no crowding in the lower jaw.

8. The appellant's orthodontist noted an overjet of 3 millimeters.
9. Two orthodontists for MassHealth found an overjet of 2 millimeters.
10. The appellant's provider did not submit a narrative that included a diagnosis, opinion or expertise of a licensed clinician to demonstrate that orthodontic treatment is medically necessary.
11. The appellant received speech therapy in the past.
12. The appellant has not received speech therapy in more than two years.

## **Analysis and Conclusions of Law**

MassHealth pays only for medically necessary services to eligible MassHealth members and may require that medical necessity be established through the prior authorization process. (130 CMR 420.410(A)(1)). 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 MassHealth. (130 CMR 450.204(A)).

Services requiring prior authorization are identified in Subchapter 6 of the Dental Manual, and may also be identified in billing instructions, program regulations, associated lists of service codes and service descriptions, provider bulletins, and other written issuances. (130 CMR 420.410(A)(2)). The Dental Manual indicates that Orthodontic Treatment requires prior authorization. (MassHealth Dental Manual Subchapter 6).

Pursuant to 130 CMR 420.431(E), comprehensive orthodontic treatment is reimbursable only for members under the age of 21, and only when the member has a severe and handicapping malocclusion. MassHealth determines whether a malocclusion is severe and handicapping based on the clinical standards

described in Appendix D of the Dental Manual. (130 CMR 420.431(E)).

Appendix D of the MassHealth Dental Manual provides a copy of the Handicapping Labio-Lingual Deviations Form (HLD) which is a quantitative, objective method for measuring malocclusion. (MassHealth Dental Manual, Appendix D). The HLD 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 Dental Manual, Appendix D). Providers are required to use this form and a Boley Gauge which is used for measurements that are scaled in millimeters. (MassHealth Dental Manual, Appendix D). A score of 22 and above constitutes a severe and handicapping malocclusion. (MassHealth Dental Manual, Appendix D; 130 CMR 420.431(E)). Additionally, conditions such as a cleft palate deformity, deep impinging overbite and anterior impaction are considered handicapping malocclusions. (MassHealth Dental Manual, Appendix D).

While the appellant may benefit from orthodontic treatment, the regulations clearly limit eligibility for such treatment to patients with severe and handicapping malocclusions. (130 CMR 420.431(E)). As stated above, to have a severe and handicapping malocclusion, an individual must have an HLD score of 22 or higher or have one of the other conditions listed above.

The MassHealth representative noted at least two discrepancies in the scoring of the appellant's provider with those of two orthodontists reviewing records for MassHealth. These discrepancies include scoring for mandibular (lower jaw) crowding, and an overjet. While the appellant's mother argued that seeing the appellant in-person and having the opportunity to conduct an exam would impact the decision, she did not present sufficient evidence to demonstrate that this would be necessary. Additionally, the MassHealth representative noted at hearing that the documents, pictures and X-rays were sufficient for MassHealth to make a determination. Both representatives from MassHealth provided the same measurements and scores in more than one area that were below that of the treating provider. This consistency in scoring provides more weight to MassHealth's decision than the submission of the treating orthodontist.

The regulations at 130 CMR 610.013(A) state that a fair hearing may be conducted face-to-face, whether in person or by video conferencing; or telephonically, if the party appearing telephonically agrees to such an appearance. In response to the current Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth implemented protocols to support the public health efforts including a requirement that all hearings be telephonic. (Eligibility Op. Memo 20-09). There has been no official change to these protocols since

their implementation. While the Board of Hearings has begun to engage in the practice of scheduling hearings in-person should the appellant make such a request prior to the hearing date, the appellant did not make such a request prior to the hearing date. Therefore, the hearing was scheduled to be held by telephone according to the new protocols. As noted above, there has been no official change to these protocols. Additionally, at hearing, the appellant's mother did not sufficiently demonstrate how such an appearance would impact a decision. MassHealth is not obligated to send an orthodontist to the hearing to perform an examination which appears to be the expectation of the appellant's mother. As noted above, two separate orthodontists score below the required 22 points to authorize MassHealth coverage for treatment.

In addition to the HLD scoring process, MassHealth allows providers to submit a medical necessity narrative in any case where, in the professional judgment of the requesting provider and any other involved clinician(s), comprehensive orthodontic treatment is medically necessary to treat a handicapping malocclusion. (MassHealth Dental Manual, Appendix D). Providers must submit this narrative in cases where the patient does not have an autoqualifying condition or meet the threshold score on the HLD, but where, in the professional judgment of the requesting provider and any other involved clinician(s), comprehensive orthodontic treatment is medically necessary to treat a handicapping malocclusion. (MassHealth Dental Manual, Appendix D). The medical necessity narrative must clearly demonstrate why comprehensive orthodontic treatment is medically necessary for the patient. (MassHealth Dental Manual, Appendix D).

If any part of the requesting provider's justification of medical necessity involves a mental, emotional, or behavioral condition; a nutritional deficiency; a speech or language pathology; or the presence of any other condition that would typically require the diagnosis, opinion, or expertise of a licensed clinician other than the requesting provider, then the narrative and any attached documentation must:

- i. clearly identify the appropriately qualified and licensed clinician(s) who furnished the diagnosis or opinion substantiating the condition or pathology (e.g., general dentist, oral surgeon, physician, clinical psychologist, clinical dietitian, speech therapist);
- ii. describe the nature and extent of the identified clinician(s) involvement and interaction with the patient, including dates of treatment;
- iii. state the specific diagnosis or other opinion of the patient's condition furnished by the identified clinician(s);
- iv. document the recommendation by the clinician(s) to seek orthodontic

- evaluation or treatment (if such a recommendation was made);
- v. discuss any treatments for the patient's condition (other than comprehensive orthodontic treatment) considered or attempted by the clinician(s); and
- vi. provide any other relevant information from the clinician(s) that supports the requesting provider's justification of the medical necessity of comprehensive orthodontic treatment. (MassHealth Dental Manual, Appendix D).

The medical necessity narrative must be signed and dated by the requesting provider and submitted on the office letterhead of the provider. (MassHealth Dental Manual, Appendix D). If applicable, any supporting documentation from the other involved clinician(s) must also be signed and dated by such clinician(s) and appear on office letterhead of such clinician(s). (MassHealth Dental Manual, Appendix D). The requesting provider is responsible for coordinating with the other involved clinician(s) and is responsible for compiling and submitting any supporting documentation furnished by other involved clinician(s) along with the medical necessity narrative. (MassHealth Dental Manual, Appendix D).

The appellant's orthodontist did not provide a narrative or records from another clinician to demonstrate that comprehensive orthodontic treatment was medically necessary. (130 CMR 420.410; 130 CMR 420.431(E); 130 CMR 450.204). While the appellant's mother testified that the appellant had a history of receiving speech therapy, this treatment stopped more than 2 years prior to the submission of this prior authorization request. The decision by MassHealth denying prior authorization for comprehensive orthodontic treatment was correct.

This appeal is denied.

As noted at the hearing, if the appellant's dental condition should worsen or his orthodontist is able to provide the necessary documentation to demonstrate that the treatment is medically necessary, a new prior authorization request can be filed at that time.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

CC:  
MassHealth Representative: DentaQuest 2, MA