

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2203528

Decision Date: 7/19/2022

Hearing Date: 06/08/2022

Hearing Officer: Christopher Taffe

Appearances for Appellant:

[REDACTED] (Mother and Appeal
Representative) (by phone)

Appearance for MassHealth:

Carl Perlmutter, DMD, on behalf of
DentaQuest (by phone)

Interpreter:

Mars of Interpreters and Translators, Inc.
(Portuguese - ITI # 250780)



*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:	APPROVED	Issue:	PA – Dental – Orthodontics
Decision Date:	7/19/2022	Hearing Date:	06/08/2022
MassHealth's Rep.:	C. Perlmutter, DMD	Appellant's Rep.:	Mother
Hearing Location:	HarborSouth Tower, Quincy	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 April 25, 2022, MassHealth denied Appellant's request for prior authorization of full orthodontic treatment. See Exhibit 1; 130 CMR 420.431. A timely appeal was filed on Appellant's behalf with the Board of Hearings on May 10, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial of a MassHealth of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for approval of the prior authorization request for braces or full and comprehensive orthodontic treatment.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's bite or malocclusion did not currently qualify for approval of comprehensive orthodontic treatment.

Summary of Evidence

Appellant is currently a [REDACTED] MassHealth member who was represented at hearing by his mother. MassHealth was represented at hearing by Dr. Perlmutter, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer the agency's dental program for MassHealth members. All parties testified telephonically. Per the family's request, the Board of Hearings provided a Portuguese-speaking interpreter.

Dr. Perlmutter testified that the MassHealth insurance does not cover orthodontics for every single child who is a MassHealth member with dental insurance. By law, the agency only covers requests and pays for treatment for full orthodontics when the bad bite or "malocclusion" meets a certain high standard. It is not enough to say that the Appellant has imperfect teeth or that Appellant's family has been told by a dentist that the patient would generally need or benefit from braces. Instead to obtain approval, the bite or condition of the teeth must have a high amount of dental problems so that the bite falls into the group of malocclusions with the most severe or handicapping issues.

Appellant's orthodontic provider, Dr. Rizkallah through his Framingham office, submitted a prior authorization request for comprehensive orthodontic treatment, together with X-rays and photographs. As required, the Appellant's dental provider completed the Handicapping Labio-Lingual Deviations (HLD) form and arrived at a score of 23.

MassHealth testified that, on the HLD point scale, 22 points is generally needed for approval. However, Dr. Perlmutter testified that during the initial denial and review of the materials, DentaQuest found a HLD score of 18.¹ Dr. Perlmutter stated that he did his own second review for the hearing, and he also found discrepancies with a HLD score of 18.

Appellant's mother testified that she understood that the bite may not be as extreme as it needed to be to qualify, but it was close. She talked about how the canines overlap with other teeth, and that her child was at times ashamed of smiling. Appellant's mother does not have the money to pay for treatment without MassHealth and she really would appreciate the MassHealth assistance on this request.

The HLD scoring from the reviewing dentists are as follows:

¹ The last page of Exhibit 3 indicated a score of 13, but DentaQuest checked a box for 5 points for mandibular crowding but did not include the corresponding 5 points in the points column.

Condition observed	Rule to determine final score	Finding of Appellant's Provider	Final score of Appellant's Provider	Finding of first DQ reviewer	Final score of first DQ reviewer	Finding of Dr. Perlmutter	Final score of Dr. Perlmutter
Overjet in millimeters (mm)	# mm x 1	7 mm	7	5 mm	5	4 mm	5
Overbite in mm	# mm x 1	7 mm	7	5 mm	5	2 mm	5
Mandibular Protrusion in mm	# mm x 5	0 mm	0	0	0	0	0
Anterior Open Bite in mm	# mm x 4	0	0	0	0	0	0
# of teeth in Ectopic Eruption ²	# of teeth x 3	0	0	0	0	0	0
Anterior Crowding of more than 3.5 mm in the upper (Maxilla) jaw or lower (Mandible) jaw?	<i>If present, give 5 points for each jaw</i>	Lower jaw only	5	Lower jaw only	5	Lower jaw only	5
Labio-Lingual Spread ("Anterior Spacing") in mm	# mm x 1	4 mm	4	3 mm	3	3 mm	3
Posterior Unilateral Crossbite	<i>If present, give 4 points</i>	No	0	No	0	No	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	# of teeth x 3	None	0	None	0	None	0
TOTAL HLD SCORE	-----	n/a	23	n/a	18	n/a	18

Dr. Rizkallah submitted a one-page "medical necessity" flow chart (Exhibit 3, page 7) which cited the beginning part of MassHealth regulation 130 CMR 450.204, alleges such harmful effects of non-treatment would include "bone and tooth infirmity", "tooth infirmity" and "TMJ infirmity", and indicating that "...based on these checked off harmful conditions, harmful effects, and since there is no other medical service option, I am hereby certifying that the patient meets the threshold for coverage under The Medical Necessity Statute, which defines the service as Medically Necessary." The flow chart page had no handwritten notation regarding the Appellant or the type of malocclusion, but had a box checked off for the "harmful" condition of "crowding".

On Exhibit 3, page 10, Appellant's provider checked "yes" indicating the submission of a medical necessity in support of the request but did not submit anything else (beyond the flow chart page, which presumably was the "narrative"). Exhibit 3, page 10 also had checkmarks indicated that there would be no additional supporting documentation on medical necessity from another type of provider regarding a mental, emotional, behavioral, or other non-dental condition in support of a medical necessity argument.

The pictures in the record show a noticeable overbite, in that the top incisors in the front part of the mouth appear to cover over half of the corresponding lower incisors. The pictures from the side angle, and the lateral x-ray, also display a noticeable overjet (where the upper teeth extend beyond the lower teeth in the horizontal plane).

Findings of Fact

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

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

1. Appellant is currently a [REDACTED] MassHealth member who had a request for full or comprehensive braces denied by MassHealth. (Testimony and Exhibit 3)
2. A HLD score of 22 points is generally needed for approval.
 - a. Appellant's orthodontic provider submitted the request with a HLD score of 23 points.
 - b. DentaQuest, during the initial agency review prior to the denial notice in question, found an HLD score of 18 points.
 - c. At hearing, the MassHealth/DentaQuest representative testified that he too found an HLD score of 18 points. His breakdown of scoring matched that of the first DentaQuest reviewer.
(Testimony and Exhibit 3)
3. Appellant has at least 5 millimeters of both overjet and overbite. (Testimony and Exhibit 3)
 - a. Appellant's provider made a submission which stated that Appellant had 7 millimeters of both overjet and overbite. (Testimony and Exhibit 3)
 - i. Appellant's provider was the only one to review and see the teeth of Appellant in person. (Testimony and Exhibit 3)
 - b. The two reviewers from DentaQuest estimated the overjet and overbite to each be 5 millimeters. (Testimony and Exhibit 3)
 - i. The DentaQuest reviewers did not get to see the Appellant's bite in person but instead had two dimensional pictures and x-rays on which to base their measurement.
 - c. The remainder of Appellant's provider submission shows scores that were very consistent with the scope of severity found by the DentaQuest on the eight other characteristics making up the HLD calculation. The only other discrepancy was when Appellant's provider found one more millimeter of anterior spacing than the DentaQuest dentists. (Testimony and Exhibit 3)
4. There is no evidence or claim of an automatic qualifying condition. (Testimony and Exhibit 3)

Analysis and Conclusions of Law

As a rule, the MassHealth agency and its dental program pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 420.410. In addition to complying with the prior authorization requirements at 130 CMR 420.410 et seq.,³ covered services for certain dental treatments, including orthodontia, are subject to the relevant limitations of 130 CMR 420.421 through 420.456. See 130 CMR 420.421 (A) through (C).

130 CMR 420.431 contains the description and limitation for orthodontic services. As to comprehensive orthodontic requests, that regulation reads in relevant part as follows:

420.431: 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. ...

(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. ...

(Bolded emphasis added.)

Appendix D of the Dental Manual contains the current HLD Authorization Form found in Exhibit 3. As indicated by the paper record, the MassHealth testimony, and the relevant regulations, appendices, and manuals (including the HLD Authorization form), MassHealth approves comprehensive orthodontic treatment only when the member meets one of the three following requirements:

- (1) the member has an “auto qualifying” condition as described by MassHealth in the HLD Index;
- (2) the member meets or exceeds the threshold score (currently 22 points) listed by MassHealth on the HLD Index; or
- (3) comprehensive orthodontic treatment is medically necessary for the member, as demonstrated by a medical necessity narrative letter and supporting documentation submitted by the requesting provider. Usually this involves a severe medical condition that can include atypical or underlining health concerns which may be either dental or non- dental.

³ 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual (ORM) publication as a source of additional explanatory guidance beyond the regulations. It is noted that references in the regulations to the “Dental Manual” include the pertinent state regulations, the administrative and billing instructions (including the HLD form), and service codes found in related subchapters and appendices. See <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> and the ORM dated June 1, 2022 (available at <https://masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf>) (both last viewed on July 7, 2022).

There is no issue with an automatic qualifier.

Turning to the HLD, the scope of the dispute is relatively small as far as orthodontic appeals before the Board of Hearings go, as the parties' respective HLD scores range from 18 to 23, with 22 being the number needed to qualify. In looking at the differences, I have noted that the submission from Appellant's own provider has a relatively high air of credibility. Six of the nine characteristics are completely consistent between the three providers, and for one other issue related to the spacing issues of 12 anterior teeth, the two sides have the most minute difference possible on the HLD sheet of 1 millimeter. This consistency matters because, while there may be some cases where one may think the natural bias from a provider may have slightly inflated scores or measurements,⁴ I find that does not appear to be as much of an issue in this case due to the relatively consistency of the three dental reviewers.

With that in mind, this decision will turn on what finding is more correct as to the two key disputed discrepancies of the overjet and overbite. A finding in Appellant's favor on both issues would provide Appellant with the 4 additional points needed to be added to the DentaQuest scores to hit the 22-point mark. All three dentists agree that there is a significant overjet and overbite; based on the pictures available to me, I agree that this is relatively notable for bites seen in the Fair Hearing setting. The only disputes between the two sides are regarding the scope or measurement of those two issues with Appellant's provider finding 2 more millimeters on each discrepancy. If there are two differences of 2 millimeters for the factfinder to resolve, then, absent some compelling reason that might cause one to question the provider's credibility (which is not found to be of great extent here)⁵, I believe it makes sense to give some greater deference and weight in such a close case to the measurements submitted and attested to in writing by the provider who actually treated, saw, and measured this child in person. Through no fault of their own, the DentaQuest reviewers had to work with two dimensional and relatively small photographs and x-rays to come up with their measurements. I thus find there is enough evidence in the record to support the extra millimeters claimed in Appellant's PA submission for both the overjet and the overbite.

For those reasons, I conclude that Appellant has at least 7 millimeters of both overjet and overbite, and that this results in a HLD score with the needed 22 points. Accordingly, I find that Appellant has met the high standard set by MassHealth for a qualifying malocclusion, and this PA request should be granted. The appeal for comprehensive orthodontic treatment is thus APPROVED.

Order for MassHealth

⁴ To be fair, it is noted that this same argument regarding bias, may in turn be argued the other way, and have the same limited weight regarding MassHealth/DentaQuest and its desire to be more conservative with approvals. In short, both sides may or may not have subtle or even subconscious financial incentives to arrive at their positions.

⁵ I am however not persuaded in the slightest by the conclusory, partial, and somewhat misleading nature of the "medical necessity" flow chart offered by Appellant's provider. Although this may be related to possible bias from the Appellant's provider, I don't think it affects his credibility or the weight of his detailed measurements as much as it affects my opinion of his misunderstanding and misapplication of the medical necessity regulation. That said, I find that such a misapplication of 130 CMR 450.204 is not the fault of the MassHealth member and should not be held against him in this appeal, and I find no need to discuss this aspect further as approval can be granted in this very close dispute on separate and more substantive grounds.

DentaQuest and/or the agency must, no later than 30 days of the date of this decision, send notice of approval to both Appellant's family and his orthodontic provider (Dr. Rizkallah of Framingham) who submitted the PA request at issue in this appeal.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth Dental Customer Service at 1-800-207-5019. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest