

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: DENIED

Appeal Number: 2203567

Decision Date: 7/19/2022

Hearing Date: 06/15/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:

Appellant, with [REDACTED]
(Parent/Guardian)

Appearance for MassHealth:

David Cabeceiras, DMD, on behalf of
DentaQuest

Interpreter:

Ada of Interpreters and Translators, Inc.
(Spanish - ITI # 261928)



*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:	DENIED	Issue:	PA – Dental – Orthodontics
Decision Date:	7/19/2022	Hearing Date:	06/15/2022
MassHealth's Rep.:	D. Cabeceiras, 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 on or around February 17, 2022, MassHealth denied Appellant's request for prior authorization of full orthodontic treatment. See Exhibit 1; 130 CMR 420.431. Appellant telephonically filed with MassHealth a timely request for a Fair Hearing before the Board of Hearings on May 10, 2022. See Exhibit 1; 130 CMR 610.015(B).¹ 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

¹ This appeal is only "timely" and capable of being heard because (1) the usual 30-day filing period from the date of receipt of appealable action in 130 CMR 610.015(B) has been extended to 120 days during the federal emergency related to COVID-19, and (2) such federal public health emergency (FPHE) has not been lifted as of the date of Appellant's filing. See MassHealth Eligibility Operations Memo 21-14 (dated September 2021) (confirming this 120-day filing period for Fair Hearing requests before the Board of Hearings will continue until the FPHE ends).

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. Cabeceiras, an orthodontist and consultant from DentaQuest, the entity that has contracted with MassHealth agency to administer and run the agency's dental program for MassHealth members. All parties appeared in person.

Dr. Cabeceiras testified and explained that the MassHealth insurance does not cover orthodontics for every single child who is a MassHealth member with dental insurance. By law, the agency can only cover requests and pay 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 the member and their 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 enough discrepancies that it falls into the group of malocclusions with the most severe or handicapping issues.

Appellant's orthodontic provider submitted a prior authorization (PA) request for comprehensive orthodontic treatment, together with X-rays and photographs. As required, the Appellant's dental provider, Dr. Rizkallah of Somerville, Mass., completed the Handicapping Labio-Lingual Deviations (HLD) form and arrived at a score of 17.

MassHealth testified that, on the HLD point scale, 22 points is needed for approval. Dr. Cabeceiras testified that he found a similar score to that of Appellant's treating orthodontist of 16 points, but that his score was still below the necessary 22 point level. In addition, another DentaQuest orthodontic reviewer had looked at the request at the time of the original PA, and found 15 points.

Regardless of the HLD point total, it is also possible to qualify for orthodontic treatment if Appellant has (1) a condition deemed an automatic qualifier or (2) if an appropriate argument and request on medical necessity is made.

In this submission, Appellant's provider did not check off anything on the form indicating the presence or claim of any automatic qualifier, and the DentaQuest consultant at hearing also did not indicate any such qualifier (like a cleft palate, a deep impinging overbite, or an impacted canine tooth) existed.

As part of the PA submission sent on behalf of the Appellant, Dr. Rizkallah submitted a one page "medical necessity" flow chart (Exhibit 3, page 9) 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 has one handwritten notation regarding the Appellant from the provider, indicating that appellant has a Class III type of malocclusion, or bad bite.²

On Exhibit 3, page 11, 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 11 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.

Appellant’s mother stated that the teeth were not coming out properly and this was affecting or creating a bad bite. She also stated that the dentist who cleans Appellant’s teeth referred to an orthodontist and indicated this child would need or benefit from braces. Appellant recently had his four wisdom teeth removed, per Exhibit 4, and the family believes Appellant needs braces now.

Findings of Fact

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. There is no evidence of a HLD score of 22 or more points.
 - a. Appellant’s provider submitted the request with a HLD score of 17 points, and the two reviewing dentists for DentaQuest found scores of 16 points and 15 points respectively.
(Testimony and Exhibit 3)
3. There is no claim or evidence of an automatic qualifying conditions like a cleft palate, an impacted eye tooth, or a impinging overbite. (Testimony and Exhibit 3)
4. As part of the PA submission, Appellant’s provider submitted a flow chart he created which purported to be a claim for medical necessity. (Exhibit 3)
 - a. Appellant’s provider indicated that Appellant’s type of malocclusion was Class III.

² There are generally three types of malocclusions – Class I, Class II, and Class III. Neither party offered any documentation on the difference between these three and how it was relevant to the bite in question or the appeal issue. All types of malocclusions, regardless of Class, are capable of being considered for braces under the MassHealth program.

(Exhibit 3)

- b. The flow chart indicated that the harmful effects of non-treatment and non-orthodontics would include “*bone and tooth infirmity*”, “*tooth infirmity*” and “*TMJ infirmity*”. (Exhibit 3)
 - i. There is no evidence indicating or linking why this Appellant would be subject to these conditions, or why they would be avoided with braces. (Testimony and all exhibits)

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 42.421 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 within the current ORM), MassHealth approves comprehensive orthodontic treatment only when the member meets

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).

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.

There is no claim or issue related to an automatic qualifying condition in this appeal. Turning to the HLD scoring, the MassHealth standard for approval requires a current score of 22 on the HLD index. In this case, the record is clear that none of the three reviewing dentists who completed an HLD review, including the Appellant’s own orthodontic provider, found a score of 22 or more points needed for approval. Appellant’s mother offered her own opinion about the bite and the need and logical personal desire to try to straighten her son’s teeth and create a better bite through braces. While understandable, the discrepancies of this bite are not severe enough to create the qualifying HLD score.

That leaves the medical necessity argument. Although Appellant’s treating provider, Dr. Rizkallah, submitted a flow chart that tries to incorporate or touch on some of the elements of the “medical necessity” regulation, the chart itself is not sufficient. First the chart cites the beginning part of “medical necessity” in 130 CMR 450.204(A), but to better analyze the regulation it is worth looking at more of the regulatory text.

130 CMR 450.204 reads in its entirety as follows:

450.204: Medical Necessity

*The MassHealth agency **does not pay a provider** for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary*

(A) 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 the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth*

agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

(Bolded emphasis added.)

Upon review, 130 CMR 450.204 is written in the negative in the first sentence. Thus, if something is not medically necessary, it will not be paid for or approved. Logically, this does not mean the converse – i.e. that everything that is arguably medically necessary will be paid for or approved. It is more correct to say that “medical necessity” is a pre-requisite for a service subject to and one component needed for a prior authorization process, but “medical necessity” is not the only essential element. The flow chart from Appellant’s provider is thus misleading and not legally accurate, in that it has the text laid out and written like medical necessity to address the condition is the only requirement, and it just indirectly leaps in a conclusory manner to a result that the braces must be given.⁴ This chart is not compatible with the law, as 130 CMR 450.204(D) also specifically says that there may be other requirements, such as those in the Dental Manual. Within there, the restriction in 130 CMR 420.431 stating that full orthodontia approvals are limited to the “handicapping” type of malocclusion is one such other requirement, and this in turn refers to and incorporates the HLD standard which attempt to measure the severity and handicapping nature of a bad bite. Moreover, unlike other PAs, where MassHealth sometimes denies requests of the members on the grounds of medical necessity, here MassHealth denied it because it did not meet this “handicapping” requirement found in the service limitation regulation. Thus, the MassHealth decision to deny appears grounded and consistent with the agency’s regulations. I find no error with the agency’s reasoning, nor do I find any evidence of the Appellant’s teeth compelling a reversal of

⁴ Taken to an illogical extreme, Appellant’s provider’s flow chart could be inappropriately used to try to justify braces for any child, even if they had 2 or 3 slightly crooked teeth and a hypothetical HLD score of 3, because the crooked teeth and spacing aren’t going to simply fix themselves and make perfect occlusions without some form of orthodontic help. However, the MassHealth regulation and practice make it clear that only the most severe malocclusions are the ones for which MassHealth may approve and pay for under its federal Medicaid program.

this decision. This appeal is thus DENIED.

As was mentioned at hearing, so long as Appellant remains a MassHealth member under the age of 21, the Appellant may be reexamined by a MassHealth orthodontic provider and make a new Prior Authorization request for future consideration every six months. If the malocclusion worsens, the Appellant may be eligible for a different result and possible approval in the future. If the malocclusion stays the same or slightly improves on its own, Appellant will likely not have braces covered by MassHealth.

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest