

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2204318
<b>Decision Date:</b>	8/9/2022	<b>Hearing Date:</b>	08/01/2022
<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>	Dismissed	<b>Issue:</b>	Prior Authorization
<b>Decision Date:</b>	8/9/2022	<b>Hearing Date:</b>	08/01/2022
<b>MassHealth's Rep.:</b>	Dr. Harold Kaplan	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 January 31, 2022, MassHealth denied a prior authorization request for orthodontic treatment. (130 CMR 420.431; Exhibit 1). Board of Hearings received a request for hearing form on June 6, 2022. (Exhibit 2).

Before an intended appealable action, MassHealth must send a timely notice to the member. (130 CMR 610.015). If a member or applicant does not agree with the decision made by MassHealth, they can seek administrative review of the decision by the Board of Hearings. (130 CMR 610.010).

Pursuant to 130 CMR 610.035(A), the Board of Hearings will dismiss a request for hearing when:

- (1) the request is not received within the time frame specified in 130 CMR 610.015;
- (2) the request is withdrawn by the appellant;
- (3) the sole issue is one of state or federal law requiring automatic change in assistance for classes of members;
- (4) the stated reason for the request does not constitute grounds for appeal as set forth in 130 CMR 610.032;

- (5) the stated reason for the hearing request is outside the scope of 130 CMR 610.000 as set forth in 130 CMR 610.003;
- (6) BOH has conducted a hearing and issued a decision on the same appealable action arising out of the same facts that constitute the basis of the request;
- (7) the party requesting the hearing is not an applicant, member, or resident as defined in 130 CMR 610.004;
- (8) BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties;
- (9) BOH learns that the applicant or member has passed away before or after the date of filing and there is no full compliance with 130 CMR 610.016(B) within ten days of a BOH request;
- (10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B); or
- (11) the appellant fails to appear at a scheduled hearing.

Records indicate that the initial filing received on June 6, 2022, was a copy of a request for hearing form alone. Upon receiving this form, the Board of Hearings determined that the appeal should be dismissed as the party filing the appeal did not demonstrate that there was an appealable action; the appeal was timely; or the appellant was a MassHealth applicant/member, nursing home resident or appeal representative. (130 CMR 610.035(A); Exhibit 2; Exhibit 3).

When the Board of Hearings determines that the appeal shall be dismissed:

- (1) The appellant will be informed by written notice of the dismissal and of the procedures for requesting that the dismissal be vacated.
- (2) A request to vacate a dismissal must be in writing and must be signed by the appellant. Such request must be received by BOH within ten days of the date of the dismissal notice. If the dismissal is for failure to appear at a hearing, such a dismissal will be vacated by the BOH Director or his or her designee upon a finding that the appellant has shown good cause for
  - a) failure to appear at a scheduled hearing; and
  - b) failure to inform BOH before the date of a scheduled hearing of his or her inability to appear at that hearing. (130 CMR 610.048(C)).

On June 16, 2022, the Board of Hearings issued written notice of the dismissal that

included the procedures for requesting that the dismissal be vacated. (130 CMR 610.048(C); Exhibit 3). On June 22, 2022, the appellant filed a timely request to vacate the dismissal. (130 CMR 610.048(C); Exhibit 1; Exhibit 4). The request included a copy of the notice issued on January 31, 2022 as well as a letter regarding the reasons for the appeal. (Exhibit 1; Exhibit 4).

Upon receiving the request to vacate the dismissal with a copy of the notice on appeal, the Board of Hearings scheduled a hearing for August 1, 2022. (Exhibit 5). This decision was made in error as the appeal was not timely. (130 CMR 610.015(B); Exhibit 1; Exhibit 2).

For a case where an applicant or member receives notice on an action taken by MassHealth, the Board of Hearings must receive the request for a fair hearing within 30 days after an applicant or member receives the written notice from MassHealth of the intended action. (130 CMR 610.015(B)(1)). 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. (130 CMR 610.015(B)(1)).

In April 2020, in response to the Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth implemented new protocols to support public health efforts for both new MassHealth members and existing members that include providing individuals up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns. (130 CMR 610.015; Eligibility Op. Memo 20-09). In this case, it is presumed that the appellant received the notice on appeal on or before February 2, 2022. Under the regulations governing the appeal process, the initial filing was well beyond the required 30 days to file an appeal. Additionally, under protocols related to the national emergency, the Board of Hearings should have received a request for hearing on or before June 2, 2022. (130 CMR 610.015; Eligibility Op. Memo 20-09). The first document sent to the Board of Hearings was dated June 6, 2022. (Exhibit 2). As the appeal was not timely, it is dismissed.

Even if this appeal was not dismissed, it would be denied as the appellant did not demonstrate that they met the requirements to obtain prior authorization for orthodontic treatment.

Pursuant to 130 CMR 420.431(C)(3), MassHealth pays for comprehensive orthodontic treatment, subject to prior authorization, once per member per lifetime under the age of 21 and only when the member has a handicapping malocclusion. MassHealth determines whether a malocclusion is handicapping based on clinical standards for medical necessity as described in Appendix D of the Dental Manual. (130 CMR 420.431(C)(3)).

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 allows for the identification of certain autoqualifying conditions and provides a single score, based on a series of measurements, which represent the presence, absence, and degree of handicap. (MassHealth Dental Manual, Appendix D). Treatment will be authorized for cases with a verified autoqualifier or verified score of 22 and above. (MassHealth Dental Manual, Appendix D; 130 CMR 420.431(C)(3)). Autoqualifiers include a cleft palate deformity, deep impinging overbite, anterior impaction, an overjet greater than 9 millimeters or severe traumatic deviation. (MassHealth Dental Manual, Appendix D).

While the appellant may benefit from orthodontic treatment, the regulations clearly limit eligibility for such treatment to patients with handicapping malocclusions. (130 CMR 420.431(C)(3)). The MassHealth representative noted all three orthodontists, including the appellant's orthodontist, scored below the required 22 points. Additionally, while the appellant's orthodontist indicated that the appellant met the autoqualifying condition of having an overjet greater than 9 millimeters, the HLD scoring form shows the same individual providing a measurement of 9 millimeters for an overjet, not greater than 9 millimeters. The MassHealth representative at hearing noted that neither the initial reviewing orthodontist nor the one present at hearing found an overjet greater than 9 millimeters. As measurements recorded by all three orthodontists do not indicate an overjet greater than 9 millimeters, the appellant did not meet the requirements for that autoqualifying condition.

In addition to the scoring system noted above, MassHealth allows providers to submit a medical necessity narrative (along with the required completed HLD) 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). 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(C); 130 CMR 450.204). As noted

above, if this appeal was not dismissed it would be denied as the decision by MassHealth denying prior authorization for comprehensive orthodontic treatment was correct.

As the MassHealth representative indicated at hearing, if the appellant's dental condition should worsen or the 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 1, MA