

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2207826
Decision Date:	1/17/2023	Hearing Date:	11/23/2022
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Dr. Carl Perlmutter, D.M.D.



*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:	Orthodontic Services
Decision Date:	1/17/2023	Hearing Date:	11/23/2022
MassHealth's Rep.:	Carl Perlmutter, D.M.D.	Appellant's Rep.:	Father
Hearing Location:	Remote (telephone)	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 September 22, 2022, MassHealth informed the Appellant, a minor, that it denied her prior authorization request for comprehensive orthodontic treatment because MassHealth determined that the service exceeds the benefit allowance in that it is limited to once per lifetime per member (See, Ex. 4). The Appellant's father filed a timely appeal on her behalf on October 18, 2022 (See, 130 CMR 610.015(B); Ex. 2). Denial of assistance is valid grounds for appeal (See, 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's Prior Authorization request for comprehensive orthodontic treatment.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant is precluded from authorization for comprehensive orthodontic treatment, because she was authorized for such treatment in the past.

Summary of Evidence

The Appellant is a minor child and MassHealth recipient who was represented telephonically at the hearing by her father. MassHealth was represented telephonically by Dr. Carl Perlmutter, D.M.D. a licensed orthodontist consultant from Dentaquest. Dentaquest is the third-party contractor that administers and manages the MassHealth dental program. On September 20, 2022, the Appellant's orthodontist submitted a request for prior authorization, seeking coverage for comprehensive orthodontic treatment (D8080) with periodic orthodontic treatment visits (D8670). (Ex. 3, p. 1; Ex. 4, p. 3). The Appellant's orthodontist completed an Orthodontics Prior Authorization Form and a MassHealth Handicapping Labio-Lingual Deviations (HLD) Form and submitted these, in addition to photographs and x-rays of the appellant's mouth (Exhibit 4). The Appellant's orthodontist checked off "yes" in his findings of two (2) autoqualifiers present, namely: Impinging overbite with evidence of occlusal contact into the opposing soft tissue and an Overjet of greater than 9 millimeters. (Ex. 4, p. 7). Further, the Appellant's orthodontist checked off "yes" to the question as to whether a medical necessity narrative was being submitted, including a letter explaining that the [REDACTED] were evaluated for orthognathic surgery and it was determined that the best course of action was to wait for growth to stop to resume surgically. (Ex. 4, pp. 8-10). On September 22, 2022, MassHealth denied the request based on a finding that service exceeds the benefit allowance. (Testimony, Ex. 4.).

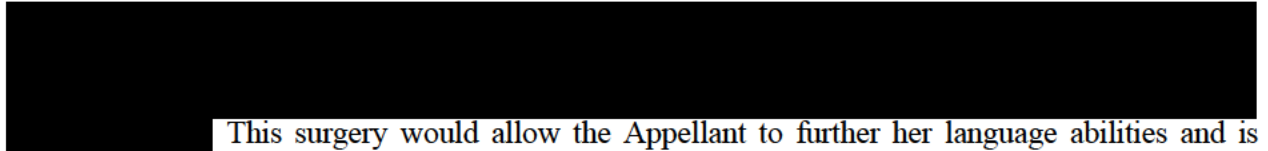
Dr. Perlmutter explained that, per regulation, MassHealth can only provide coverage for comprehensive orthodontic treatment of MassHealth members under the age of 21 only once per member per lifetime. (Testimony). Thus, MassHealth denied the appellant's Prior Authorization request because the Appellant already received comprehensive orthodontic treatment provided by Dr. Cordes and through the MassHealth program in or around November of 2016 (Testimony, Ex. 4, p. 1).

The Appellant's father did not contest the fact that the Appellant previously received orthodontic treatment covered by MassHealth. He testified that under normal circumstances that would make sense. However, here it was determined the Appellant got to a certain place where braces could not correct the extraordinary overbite therefore orthognathic surgery was required. Thus, the braces were taken off of her teeth for a period of time and she would need them to be put back on again to affect the surgery that is needed. (Testimony, Ex. 2). Further, the Appellant's orthodontist's assistant explained to the Appellant's father that this procedure would be considered a continuation of services because once the braces were put on, it was determined that the Appellant needed surgery so the braces were taken off to affect the surgery, part of which includes re-applying the braces. (Testimony) The Appellant's father also testified that while it may be a break in service, it continues as a one time need for braces as determined by the Appellant's orthodontist, in partnership with the surgical group. Specifically, it was determined as the best course of action because leaving the braces on would only be a superficial fix since it impacts the Appellant's speech. The Appellant's father explained that the Appellant still receives speech services, he adopted her at a young age and she was born with neurological issues. (Testimony).

Dr. Perlmutter agreed that braces would need to re-applied because they will be used to stabilize the

[REDACTED]

Appellant's jaws after surgery. (Testimony). Further, Dr. Perlmutter testified that the Appellant does need to have the braces put back and does need surgery. However, Dr. Perlmutter stated that he can only go by the regulations. (Testimony). When asked at the hearing to explain why the medical necessity narrative submitted would not override the fact that the Appellant had braces put on previously, Dr. Perlmutter responded that he can only go by the regulation. Dr. Perlmutter further testified that he understands surgery is required in this instance and said surgery is quite complicated and expensive. Finally, Dr. Perlmutter testified that whether this will be considered a Phase 2 or whether this was approved prior to taking the braces off knowing the braces would need to be put back on are questions that he is unable to answer. (Testimony).

 This surgery would allow the Appellant to further her language abilities and is critical for phonetic and enunciation purposes. (Testimony). The Appellant is open on MassHealth Standard as a child under the age of 21. (Exhibit 3).

Findings of Fact

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

1. The Appellant's orthodontist submitted a request for Prior Authorization for orthodontic treatment for the Appellant.
2. The Appellant previously received orthodontic treatment.
3. The Appellant's orthodontist completed an Orthodontics Prior Authorization Form and a HLD form and submitted these, along with photographs and x-rays of the Appellant's mouth to Dentaquest.
4. In his submission, the Appellant's orthodontist also included findings of two (2) autoqualifiers present and a medical necessity narrative for orthognathic surgery.
5. The Appellant is open on MassHealth Standard as a child under the age of 21.

Analysis and Conclusions of Law

The MassHealth regulation in 130 CMR 420.453(G) titled "Orthognathic Surgery" states the following:

- (1) The MassHealth agency pays for orthognathic surgery, including select surgical procedures related to Temporomandibular Joint Disorder or Obstructive Sleep Apnea.
- (2) Any proposed orthognathic treatment must meet all the criteria described at **130 CMR 420.431**.

(130 CMR 420.453(G)). (Emphasis added).

130 CMR 420.431 titled “Service Descriptions and Limitations: Orthodontic Services” discusses the specific standard and limits for when the agency may consider and find whether orthodontic treatments are medically necessary, as outlined below.

(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. The provider must seek prior authorization for orthodontic treatment and begin initial placement and insertion of orthodontic appliances and partial banding or full banding and brackets prior to the member’s 21st birthday.

(B) Definitions.

(1) Pre-orthodontic Treatment Examination – includes the periodic observation of the member’s dentition at intervals established by the orthodontist to determine when orthodontic treatment should begin.

(2) Interceptive Orthodontic Treatment – includes treatment of the primary and transitional dentition to prevent or minimize the development of a handicapping malocclusion and therefore, minimize or preclude the need for comprehensive orthodontic treatment.

(3) Comprehensive Orthodontic Treatment – includes a coordinated diagnosis and treatment leading to the improvement of a member’s craniofacial dysfunction and/or dentofacial deformity which may include anatomical and/or functional relationship. Treatment may utilize fixed and/or removable orthodontic appliances and may also include functional and/or orthopedic appliances. Comprehensive orthodontics may incorporate treatment phases including adjunctive procedures to facilitate care focusing on specific objectives at various stages of dentofacial development.

(4) Orthodontic Treatment Visits – periodic visits which may include but are not limited to updating wiring, tightening ligatures or otherwise evaluating and updating care while undergoing comprehensive orthodontic treatment.

(C) Service Limitations and Requirements.

(1) Pre-orthodontic Treatment Examination. The MassHealth agency pays for a pre-orthodontic treatment examination for members younger than 21 years old, once per six (6) months per member, and only for the purpose of determining whether orthodontic treatment is medically necessary, and can be initiated before the member’s twenty-first birthday. The MassHealth agency pays for a pre-orthodontic treatment examination as a separate procedure (see 130 CMR 420.413). The MassHealth agency does not pay for a pre-orthodontic treatment examination as a separate procedure in conjunction with pre-authorized ongoing or planned orthodontic treatment.

(2) Interceptive Orthodontics.

(a) The MassHealth agency pays for interceptive orthodontic treatment once per member per lifetime. The MassHealth agency determines whether the treatment will prevent or minimize a handicapping malocclusion based on the clinical

standards described in Appendix F of the Dental Manual.

(b) The MassHealth agency limits coverage of interceptive orthodontic treatment to primary and transitional dentition with at least one of the following conditions: constricted palate, deep impinging overbite, Class III malocclusion including skeletal Class III cases as defined in Appendix F of the Dental Manual when a protraction facemask/reverse pull headgear is necessary at a young age, craniofacial anomalies, anterior cross bite, or dentition exhibiting results of harmful habits or traumatic interferences between erupting teeth.

(c) When initiated during the early stages of a developing problem, interceptive orthodontics may reduce the severity of the malformation and mitigate its causes. Complicating factors such as skeletal disharmonies, overall space deficiency, or other conditions may require subsequent comprehensive orthodontic treatment. Prior authorization for comprehensive orthodontic treatment may be sought for Class III malocclusions as defined in Appendix F of the Dental Manual requiring facemask treatment at the same time that authorization for interceptive orthodontic treatment is sought. For members with craniofacial anomalies, prior authorization may separately be sought for the cost of appliances, including installation.

(3) Comprehensive Orthodontics. 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. Upon the completion of orthodontic treatment, the provider must take post treatment photographic prints and maintain them in the member's dental record. The MassHealth agency pays for the office visit, radiographs and a record fee of the pre-orthodontic treatment examination (alternative billing to a contract fee) when the MassHealth agency denies a request for prior authorization for comprehensive orthodontic treatment or when the member terminates the planned treatment. The payment for a pre-orthodontic treatment consultation as a separate procedure does not include models or photographic prints. The MassHealth agency may request additional consultation for any orthodontic procedure. Payment for comprehensive orthodontic treatment is inclusive of initial placement, and insertion of the orthodontic fixed and removable appliances (for example: rapid palatal expansion (RPE) or head gear), and records. Comprehensive orthodontic treatment may occur in phases, with the anticipation that full banding must occur during the treatment period. The payment for comprehensive orthodontic treatment covers a maximum period of three (3) calendar years. The MassHealth agency pays for orthodontic treatment as long as the member remains eligible for MassHealth, if initial placement and insertion of fixed or removable orthodontic appliances begins before the member reaches 21 years of age. Comprehensive orthodontic care should commence when the first premolars and 1st permanent molars have erupted. It should only include the transitional dentition in cases with craniofacial anomalies such as cleft lip or cleft palate. Comprehensive treatment may commence with second deciduous molars present. Subject to prior authorization, the MassHealth agency will pay for more than one comprehensive orthodontic treatment for

members with cleft lip, cleft palate, cleft lip and palate, and other craniofacial anomalies to the extent treatment cannot be completed within three years.

(4) Orthodontic Treatment Visits. The MassHealth agency pays for orthodontic treatment visits on a quarterly (90-days) basis for ongoing orthodontic maintenance and treatment beginning after the initial placement, and insertion of the orthodontic fixed and removable appliances. If a member becomes inactive for any period of time, prior authorization is not required to resume orthodontic treatment visits and subsequent billing, unless the prior authorization time limit has expired. The provider must document the number and dates of orthodontic treatment visits in the member's orthodontic record.

(5) Orthodontic Case Completion. The MassHealth agency pays for orthodontic case completion for comprehensive orthodontic treatment which includes the removal of appliances, construction and placement of retainers and follow-up visits. The MassHealth agency pays for a maximum of five (5) visits for members whose orthodontic treatment begins before their 21st birthday, consistent with 130 CMR 420.431(A). The MassHealth agency pays for the replacement of lost or broken retainers with prior authorization.

(6) Orthodontic Transfer Cases. The MassHealth agency pays 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. Providers must submit requests using the form specified by MassHealth.

(7) Orthodontic Terminations. The MassHealth agency requires providers to make all efforts to complete the active phase of treatment before requesting payment for removal of brackets and bands of a noncompliant member. If the provider determines that continued orthodontic treatment is not indicated because of lack of member's cooperation and has obtained the member's consent, the provider must submit a written treatment narrative on office letterhead with supporting documentation, including the case prior authorization number.

(8) Radiographs. Payment for Cephalometric and radiographs used in conjunction with orthodontic diagnosis is included in the payment for comprehensive orthodontic treatment (see 130 CMR 420.423(D)). The MassHealth agency pays for radiographs as a separate procedure for orthodontic diagnostic purposes only for members younger than 21 years old if requested by the MassHealth agency.

(9) Oral/Facial Photographic Images. The MassHealth agency pays for digital or photographic prints, not slides, only to support prior-authorization requests for comprehensive orthodontic treatment. Payment for digital or photographic prints is included in the payment for comprehensive orthodontic treatment or orthognathic treatment. The MassHealth agency does not pay for digital or photographic prints as a separate procedure (see 130 CMR 420.413). Payment for orthodontic treatment includes payment for services provided as part of the pre-orthodontic treatment examination, unless the MassHealth agency denies the prior authorization request for interceptive or comprehensive orthodontic treatment. The MassHealth agency pays for the pre-orthodontic treatment examination if prior authorization is denied for interceptive or comprehensive orthodontic treatment.

(130 CMR 420.431). (Emphasis added).

MassHealth covers comprehensive orthodontic treatment if the MassHealth member evidences a handicapping malocclusion either by having one of the autoqualifiers listed on the HLD form or by meeting a HLD score of 22 or higher. Comprehensive orthodontic treatment is also covered by MassHealth if it is medically necessary for the member as evidenced by a medical necessity narrative and supporting documentation.

The regulatory definition of “medical necessity” for MassHealth providers can be found at 130 CMR 450.204, which states in pertinent part, the following:

130 CMR 450.204: Medical Necessity

- (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 aggravate a hardship, 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 described in 130 CMR 450.371(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Benefits.

(130 CMR 450.204).

In this case, MassHealth denied the appellant’s request for prior authorization because MassHealth determined that the Appellant had already received orthodontic treatment and coverage is limited to once per member per lifetime. However, at the hearing, MassHealth did not dispute the autoqualifiers submitted by the Appellant’s orthodontist. Further, MassHealth did not dispute the medical need for the Appellant’s orthognathic surgery. Indeed, the MassHealth representative, Dr. Perlmutter, testified at the hearing that the Appellant **does need orthognathic surgery and needs braces put back on to stabilize the Appellant’s jaws after surgery.** (Emphasis added).

Moreover, the MassHealth agency pays for all medically necessary dental services for EPSDT-eligible members in accordance with 130 CMR 450.140: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction, without regard to service limitations described in 130 CMR 420.000 and with prior authorization.

(130 CMR 420.408)

Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction

- (A) Legal Basis. (1) In accordance with federal law at 42 U.S.C. 1396d(a)(4)(b) and 1396d(r), and 42 CFR 441.50, and notwithstanding any limitations implied or expressed elsewhere in MassHealth regulations or other publications, the MassHealth agency has

established a program of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) for **MassHealth Standard and MassHealth CommonHealth members younger than 21 years old**, including those who are parents.

(130 CMR 450.140(A)(1). (Emphasis added).

Providers of Dental Services. (1) Dental care providers must offer to provide services listed in Appendix W: EPSDT Services: Medical and Dental Protocols and Periodicity Schedules for all MassHealth provider manuals to all members younger than 21 years of age (except members enrolled in MassHealth Limited) in accordance with the Dental Schedule, and must provide or refer such members to assessment, diagnosis, and treatment services. (2) The dental services described in the Dental Schedule are payable when provided by dental providers as described in 130 CMR 420.000: Dental Services.

(130 CMR 450.142(B)).

Because the Appellant is under the age of 21 and on MassHealth Standard, she is an EPSDT member. (See, 130 CMR 450.140(A)(1), above). Because orthodontic treatment of individuals of the appellant's age are among the services listed in the Appendix W referenced in 130 CMR 450.142, I find the service limitation of "once per lifetime" does not apply to this case. MassHealth pays for all medically necessary dental services for EPSDT-eligible members in accordance with 130 CMR 450.140, without regard to service limitations described in 130 CMR 420.000 and with prior authorization. As noted above, MassHealth did not dispute the autoqualifiers found by the Appellant's orthodontist, nor did MassHealth dispute that orthognathic surgery is medically necessary for the Appellant. Therefore, I find that the Appellant meets medical necessity criteria. This appeal is approved.

Order for MassHealth

Rescind the notice dated September 22, 2022 and approve the appellant's request for prior authorization for comprehensive orthodontic treatment.

Within no later than 30 days of the date of this decision and as soon as possible, DentaQuest must issue an approval to both the Appellant's parent and the Appellant's orthodontic provider for full comprehensive orthodontic treatment on PA # 202226300296900.

As needed, DentaQuest may also work together with the Appellant's current orthodontic provider to supply, prepare, and/or obtain any "continuity of care" paperwork that is appropriate and would assist in generating the approval notice.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: DentaQuest 1, MA