

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DENIED

**Appeal Number:** 2208028

**Decision Date:** 3/7/2023

**Hearing Date:** 02/22/2023

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**



**Appearance for MassHealth:**

Harold Kaplan, DMD, Consultant for  
DentaQuest (by phone)

**Interpreter:**

Elizabeth – CLI – Portuguese/Cape  
Verdean Creole (by phone)



*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>	PA – Orthodontics
<b>Decision Date:</b>	3/7/2023	<b>Hearing Date:</b>	02/22/2023
<b>MassHealth's Rep.:</b>	H. Kaplan, DMD	<b>Appellant's Rep.:</b>	Mother, pro se
<b>Hearing Location:</b>	Quincy Harbor South 1	<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 June 29, 2022, MassHealth denied Appellant's Prior Authorization (PA) request for comprehensive orthodontic treatment. See 130 CMR 610.015(B) and Exhibit 1. Appellant filed an appeal in a timely manner<sup>1</sup> with the Board of Hearings on October 26, 2022. See Exhibit 1.

On October 28, 2022, the Board of Hearings (BOH) dismissed without prejudice Appellant's appeal because BOH could not determine the appealable action. See Exhibit 1; 130 CMR 610.035. Appellant vacated the dismissal by filing a response on January 18, 2023, which BOH accepted, indicating that the appeal was for braces for a child. See id.; 130 CMR 610.048. On January 20, 2023, BOH confirmed the vacate and scheduled the appeal for a hearing on February 22, 2023. See id.; Exhibit 2.

Challenging an adverse MassHealth determination of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

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<sup>1</sup> By law, Fair Hearing requests of adverse MassHealth decisions must usually be filed in a shorter time frame from the date of receiving notice; that time frame is currently 60 days. See 130 CMR 610.015(B)(1). However, because of the ongoing and still-current Federal Public Health Emergency (FPHE) related to COVID-19, that time period in which one can appeal has been extended to 120 days during the FPHE. See MassHealth Eligibility Operations Memo 22-10 (dated August 2022) (confirming 120-day period for making timely request of hearings will remain in place until the federal state of emergency ends).

## 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 her mother. MassHealth was represented at hearing by Dr. Kaplan, 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 testified telephonically. Per Appellant's request and 130 CMR 610.017, BOH provided a Portuguese (Cape Verdean Creole) interpreter to assist with testimony at hearing.

Dr. Kaplan 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 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 issues or discrepancies that it falls into the group of malocclusions with the most severe issues.

Appellant's orthodontic provider 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 filled out the form indicating that the provider believed Appellant's occlusion was consistent with a HLD score of 12. See Exhibit 3, page 9.

MassHealth testified that, on the HLD point scale, 22 points is needed for approval. Dr. Kaplan testified that during the initial denial and review of the materials, DentaQuest found a HLD score of 11. See Exhibit 3, page 14. Dr. Kaplan stated that he took a second review for the hearing, and he found discrepancies with a HLD score of 11.

Exhibit 3 and Dr. Kaplan also indicated that, in addition to the HLD score, there are other avenues for approval, which can happen if there is either (1) an automatic qualifying condition or (2) appropriate letters supporting a separate medical necessity basis demonstrating the need for braces. In this matter, there was no medical necessity letter, and Appellant's orthodontic

provider did not include any page or check any box indicating a desire to claim medical necessity as a basis for the PA request.

The submission of Appellant's provider did indicate a possible automatic qualifier; the box for "Anterior Open Bite: 2 mm or more; 4 or more teeth" was checked. Dr. Kaplan indicated he saw this but indicated there was no open bite of that magnitude. Dr. Kaplan explained that if there was an open bite, there would be a more noticeable gap (in the vertical dimension) between the bottom of the upper teeth and the top of the lower front teeth, but the pictures in Exhibit 3 showed no such sufficient gap. Dr. Kaplan's testimony is consistent with the pictures in Exhibit 3, page 11, as some parts of the incisors and cuspids in the upper jaw overlap with the bottom of their counterpart teeth.

Because there was neither any evidence of an HLD score at or above 22, nor evidence of a separate basis for approval, Dr. Kaplan testified that he had to uphold the denial of the PA request as this showed that the malocclusion was not severe enough at the present time.

Appellant's mother testified that she understood the testimony decision and did not dispute it or raise any substantive issue. She testified that she just wanted to do what was best for her daughter and her daughter's bite.

## 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 that Appellant has an HLD score of 22 or more points.
  - a. Appellant's provider submitted the request with a HLD score of 12 points.
  - b. DentaQuest, during the initial review leading to the denial notice, found an HLD score of 11 points.
  - c. At hearing, the DentaQuest representative testified that he found an HLD score of 11 points.  
(Testimony and Exhibit 3)
3. There is no evidence of an automatic qualifying condition such as an open bite of more than 2 millimeters involving 4 anterior teeth. (Testimony and Exhibit 3)
  - a. Pictures in Exhibit 3 of Appellant's bite show no open bite between her upper anterior teeth or lower anterior teeth. (Testimony and Exhibit 3)
4. Appellant's orthodontic provider did not submit any separate documentation or claim related to a basis of whether the orthodontic treatment could be medically necessary due to

some other non-dental or related 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.,<sup>2</sup> 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 of such 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, a version of which is also found in Exhibit 3.<sup>3</sup>

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

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<sup>2</sup> 130 CMR 420.410(C) references and incorporates the MassHealth Dental Program Office Reference Manual publication as a source of additional explanatory guidance beyond the regulations. It can be found at <https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf> (last viewed on March 2, 2023). It is also noted that references in the regulations to the MassHealth term “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 also <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on March 2, 2023).

<sup>3</sup> Upon post-hearing review, Appellant’s provider who submitted the request did not appear to use or submit the complete version of most current Authorization Form for Comprehensive Orthodontic Treatment, in that the form (found in Appendix B) is supposed to have 4 pages, not the 3 that were submitted. The missing page is the page titled “Medical Necessity”. See Exhibit 3. I do not find this error or oversight in the submission to be too relevant or problematic, as no unusual condition or need was evident in the record or described at hearing.

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.

In this case, Appellant’s dentist did not indicate the presence of an automatic qualifier condition, nor did the orthodontist submit an appropriate and separate set of medical necessity documentation to justify the need for the request for braces.

That leaves only a need to review the HLD scores to see if Appellant’s bad bite or malocclusion is severe enough to qualify as a handicapping malocclusion. The MassHealth standard 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 arguments about how Appellant would need or benefit from the treatment unfortunately do not serve as a separate basis for approval at the current time. As evidenced by the double-digit HLD scores, the Appellant has a malocclusion, but it is simply not severe enough at the present time under the current legal standard to be treated. For these reasons, I conclude that there is no basis to rescind or overrule the MassHealth decision. This appeal is DENIED.

## Order for MassHealth/DentaQuest

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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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: DentaQuest