

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2208505

**Decision Date:** 12/28/2022

**Hearing Date:** 12/14/2022

**Hearing Officer:** Marc Tonaszuck

**Appearance for Appellant:**



**Appearance for MassHealth:**

Dr. Carl Perlmutter, DentaQuest



*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>	Orthodontic Services
<b>Decision Date:</b>	12/28/2022	<b>Hearing Date:</b>	12/14/2022
<b>MassHealth's Rep.:</b>	Dr. Carl Perlmutter, DentaQuest	<b>Appellant's Rep.:</b>	Guardian
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 10/24/2022, MassHealth denied the appellant's request for prior authorization of comprehensive orthodontic treatment (see 130 CMR 420.431 and Exhibits 1 and 4). On 11/07/2022 a timely appeal was filed on the appellant's behalf (see 130 CMR 610.015(B) and Exhibit 2)<sup>1</sup>. Denial of a request for prior approval is a valid basis for appeal (see 130 CMR 610.032).

---

<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

## Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization of comprehensive orthodontic treatment.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431(C), in determining that the appellant is ineligible for comprehensive orthodontic treatment.

## Summary of Evidence

The appellant is a minor MassHealth member whose guardian appeared as the appeal representative at hearing via telephone. MassHealth was represented at hearing by Dr. Carl Perlmutter, also by telephone, an orthodontic consultant from DentaQuest, the MassHealth dental contractor.

The appellant's provider ("provider") submitted a prior authorization request for comprehensive orthodontic treatment, including photographs and X-rays on 10/21/2022. As required, the provider completed the MassHealth Handicapping Labio-Lingual Deviations ("HLD") Form, which requires a total score of 22 or higher for approval or that the appellant has one of the conditions that warrant automatic approval of comprehensive orthodontic treatment ("autoqualifier"). The provider indicated that the appellant has an HLD score of 23, as follows:

Conditions Observed	Raw Score	Multiplier	Weighted Score
Overjet in mm	4	1	4
Overbite in mm	3	1	3
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	2	3	6
Anterior Crowding	Maxilla: 5 Mandible: 5	Flat score of 5 for each	10
Labio-Lingual Spread, in mm (anterior spacing)	0	1	0
Posterior Unilateral Crossbite	0	Flat score of 4 for each	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 <sup>rd</sup> molars)	0	3	0

<b>Total HLD Score</b>			<b>23</b>
------------------------	--	--	-----------

The appellant's orthodontist also identified two autoqualifiers; specifically, that the appellant has an anterior impacted tooth and that she has more than 10 mm of crowding on an arch. The appellant's provider did not include a medical necessity narrative.

When DentaQuest evaluated this prior authorization request on behalf of MassHealth, its orthodontists determined that the appellant had an HLD score of 7. The DentaQuest HLD Form reflects the following scores:

<b>Conditions Observed</b>	<b>Raw Score</b>	<b>Multiplier</b>	<b>Weighted Score</b>
Overjet in mm	2	1	2
Overbite in mm	2	1	2
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0
Ectopic Eruption (# of teeth, excluding third molars)	0	3	0
Anterior Crowding	Maxilla: 0 Mandible: 0	Flat score of 5 for each	0
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 <sup>rd</sup> molars)	0	3	0
<b>Total HLD Score</b>			<b>7</b>

DentaQuest did not find an autoqualifier. Because it found an HLD score below the threshold of 22 and no autoqualifier, MassHealth denied the appellant's prior authorization request on 10/24/2022.

At hearing, Dr. Perlmutter testified that the appellant has an HLD score of 7, as follows:

<b>Conditions Observed</b>	<b>Raw Score</b>	<b>Multiplier</b>	<b>Weighted Score</b>
Overjet in mm	2	1	2
Overbite in mm	2	1	2
Mandibular Protrusion in mm	0	5	0
Open Bite in mm	0	4	0

Ectopic Eruption (# of teeth, excluding third molars)	0	3	0
Anterior Crowding	Maxilla: 0 Mandible: 0	Flat score of 5 for each	0
Labio-Lingual Spread, in mm (anterior spacing)	3	1	3
Posterior Unilateral Crossbite	0	Flat score of 4	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 <sup>rd</sup> molars)	0	3	0
<b>Total HLD Score</b>			<b>7</b>

The MassHealth orthodontist also testified that there are no autoqualifiers. He stated that he believes the appellant's treating orthodontist did not follow the HLD Index rules when scoring the appellant's malocclusion. First, he addressed the issue of crowding. He stated that the appellant has no crowding of her teeth. As a result, he had to deduct 10 points from the treating orthodontist's score – five points for each arch. Because the appellant has no crowding, he stated that the autoqualifier for crowding more than 10 mm is not appropriate. Next, he addressed what the treating orthodontist scored for ectopic eruption. Dr. Perlmutter stated that an ectopic eruption is a condition where the tooth erupts from the side of the gum, either toward the inside of the mouth or outwards towards the cheek or lips. He testified that the appellant has no tooth that meets the HLD definition of an ectopic eruption. Finally, Dr. Perlmutter testified that the appellant has a tooth that has not yet erupted, as shown in the photographs and the X-ray. Dr. Perlmutter testified that it is too soon to make a determination that the tooth is "impacted." The term "impacted" means that the tooth will not erupt into the mouth, although it can be seen under the gum. In this case, due to the appellant's age, the amount of space that exists for the tooth to erupt, and the direction the tooth is pointed, as evidenced by the X-ray, the appellant's tooth has enough room to erupt and will likely erupt in the near future. He testified that if the tooth does not erupt in the next six months, it could be determined to be "impacted"; however, at this point it is premature to call that tooth impacted. He concluded that his measurements do not support an HLD score of 22 and the appellant's malocclusion does not have any autoqualifiers. Therefore, MassHealth cannot approve the appellant's request for comprehensive orthodontics.

The appellant's guardian testified that this is the second denial the appellant has received for comprehensive orthodontics. The guardian testified that at the first hearing, she was told that the appellant was "still growing," and her teeth would change. The guardian stated that the appellant's teeth are "getting worse." She is concerned about the tooth that will need to be extracted so that the appellant's teeth are not crowded. The appellant is "not in extreme pain," but she is uncomfortable when she eats. She is also "conscious of her teeth."

## Findings of Fact

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

1. On 10/21/2022 the appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment to MassHealth (Exhibit 4).
2. The provider completed a Handicapping Labio-Lingual Deviations Form for the appellant, calculated an HLD score of 23 points (Testimony; Exhibit 4).
3. The provider noted that the appellant has two autoqualifiers; specifically, an anterior impacted tooth and more than 10 mm of crowding on an arch (Exhibit 4).
4. The provider did not include a medical necessity narrative with the prior authorization request (Exhibit 4).
5. When DentaQuest evaluated the prior authorization request on behalf of MassHealth, its orthodontists determined that the appellant had an HLD score of 7, with no automatic qualifying condition (Exhibit 4).
6. MassHealth approves requests for comprehensive orthodontic treatment when the member has an HLD score of 22 or more (Testimony).
7. On 10/24/2022, MassHealth notified the appellant that the prior authorization request had been denied (Exhibits 1 and 4).
8. On 11/07/2022, the appellant filed a timely appeal of the denial (Exhibit 2).
9. On 12/14/2022, a fair hearing took place before the Board of Hearings (Exhibit 3).
10. At the fair hearing, a MassHealth orthodontic consultant reviewed the provider's paperwork, photographs, and X-rays and found an HLD score of 7 (Testimony).
11. In order to score 5 points for "anterior crowding," on either the upper (maxillary) or lower (mandibular) arch, a member must have at least 3.5 mm of crowding among the front (anterior) six teeth (Testimony).
12. The appellant does not have at least 3.5 mm of crowding among the anterior teeth on the maxillary or mandibular arch (Testimony).
13. The appellant has no crowding among her teeth on either arch (Testimony).
14. An ectopic eruption is defined as when a member has a tooth that has erupted through the side of the gum, either towards the inside of the mouth or towards the

cheek or lip (Testimony; Exhibit 4).

15. The appellant does not have an ectopic eruption (Testimony).
16. The appellant has an anterior tooth that has not yet erupted (Testimony; Exhibit 4).
17. The tooth that has not yet erupted has adequate space to erupt and is in the correct position to eventually erupt (Testimony).
18. The appellant's HLD score is below 22.
19. The appellant does not have any of the conditions that warrant automatic approval of comprehensive orthodontic treatment (e.g., cleft palate, impinging overbite, impaction, severe traumatic deviation, overjet greater than 9 mm, reverse overjet greater than 3.5 mm, crowding greater than 10 mm on either arch, or spacing greater than 10 mm on either arch, anterior or posterior crossbite of 3 or more teeth, 2 or more congenitally missing teeth, or an anterior open bite greater than 2 mm. involving 4 or more teeth).

## **Analysis and Conclusions of Law**

130 CMR 420.431(C) states, in relevant part, as follows:

The MassHealth agency 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. The MassHealth agency determines whether a malocclusion is handicapping based on the clinical standards for medical necessity as described in Appendix D of the Dental Manual.

Appendix D of the Dental Manual is the "Handicapping Labio-Lingual Deviations Form" (HLD), which is described as a quantitative, objective method for measuring malocclusion. The HLD index provides a single score, based on a series of measurements that represent the degree to which a case deviates from normal alignment and occlusion. MassHealth has determined that a score of 22 or higher signifies a severe and handicapping malocclusion. MassHealth will also approve a prior authorization request, without regard for the HLD numerical score, if there is evidence of a cleft palate, deep impinging overbite, impactions, severe traumatic deviation, overjet greater than 9 mm, reverse overjet greater than 3.5 mm, crowding or spacing greater than 10 mm, anterior or posterior crossbite of three or more teeth on either arch, two or more congenitally missing teeth, or lateral open bite greater than 2 mm of four or more teeth ("autoqualifiers").

The appellant's provider documented that the appellant has an HLD score of 23 with two

autoqualifiers; specifically, an anterior impaction and crowding of more than 10 mm on one arch. Upon receipt of the PA request and after reviewing the provider's submission, MassHealth found an HLD score of 7 and no autoqualifier. At hearing, upon review of the prior authorization documents, a different orthodontic consultant found an HLD score of 7 and no automatic qualifying condition.

The principle differences between the appellant's provider's score and Dr. Perlmutter's score are the scoring of the anterior crowding, the ectopic eruption, and the anterior impaction. First, Dr. Perlmutter addressed the issue of the crowding. For the malocclusion to score in the category of anterior crowding, there must be at least 3.5 mm of crowding in the anterior (front) six teeth on either arch. The appellant's orthodontist checked off that the appellant has at least 3.5 mm of crowding on both the top and the bottom arches, scoring 10 points (5 for each arch). Dr. Perlmutter testified that the appellant does not have at least 3.5 mm of crowding in the anterior region of either arch. In fact, she has no crowding at all among any of her teeth on either arch. Therefore, he could not score points for anterior crowding, as documented by the treating orthodontist. Additionally, the autoqualifier for crowding of more than 10 mm does not apply. He explained his scores to the appellant's guardian and to the hearing officer, referencing the photographs of the appellant's teeth that were included with the PA request.

Dr. Perlmutter next addressed the treating orthodontist's assertion that the appellant has an ectopic eruption. Dr. Perlmutter testified that he reviewed the appellant's submission carefully with the use of electronic images and a magnifying glass. He stated he could find no instance of an ectopic eruption. Except for the tooth that has not yet erupted, all the other teeth have erupted in the appropriate place in the mouth. As a result, he could not score 3 points for this condition. Without the scores for anterior crowding (10 points) and an ectopic eruption (3 points), the appellant's HLD Index score falls significantly below the 22 point threshold needed for MassHealth to pay for the comprehensive orthodontic services.

Finally, Dr. Perlmutter addressed what the appellant's provider scored as an anterior impacted tooth. Dr. Perlmutter stated that one tooth has yet to erupt; however, it is premature to call it "impacted," because it has adequate room to erupt and it is in a position to eventually erupt. If the tooth does not erupt in about six months, it may be determined to be "impacted"; but at this point, it cannot be scored as an impacted tooth.

Dr. Perlmutter's score is supported by the photographs and X-rays. He is a licensed orthodontist and he demonstrated a familiarity with the HLD Index. His measurements are credible and his determination of the overall HLD score is consistent with the evidence. Moreover, he was available to be questioned by the hearing officer and cross-examined by the appellant's representative.

The appellant's guardian testified credibly that the appellant would benefit from orthodonture; however, she was unable to show that the appellant met the requirements set out by MassHealth for approval for payment of the orthodonture. Additionally, the



guardian asserted that the appellant has difficulty eating; however, he did not draw a connection between the appellant's inability to chew appropriately and her malocclusion. The guardian failed to present evidence that the appellant has a medical condition associated with her malocclusion. Absent from the hearing record is evidence that comprehensive orthodonture is medically necessary to improve the appellant's alleged medical condition. Accordingly, MassHealth's testimony is given greater weight. As the appellant does not qualify for comprehensive orthodontic treatment under the HLD guidelines, MassHealth was correct in determining that she does not have a severe and handicapping malocclusion. Accordingly, MassHealth correctly denied this request for comprehensive orthodontic services and this appeal is denied.

## **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.

---

Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: DentaQuest 1, MA