

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DENIED

**Appeal Number:** 2209499

**Decision Date:** 3/16/2023

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

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**



**Appearance for MassHealth:**

Harold Kaplan, DMD, Consultant on behalf  
of DentaQuest (by phone)

**Interpreter:**

Fikire, of CLI (Amharic, 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 – Interceptive Orthodontics
<b>Decision Date:</b>	3/16.2023	<b>Hearing Date:</b>	02/22/2023
<b>MassHealth’s Rep.:</b>	H. Kaplan, DMD	<b>Appellant’s Rep.:</b>	Father, pro se
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<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 December 1, 2022, MassHealth denied Appellant’s Prior Authorization (PA) request for interceptive orthodontic treatment. See Exhibit 1; 130 CMR 420.431. An appeal was timely filed on behalf of Appellant, a minor child), by her father, over the phone on December 21, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth denial of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

The appeal was originally scheduled to take place on February 1, 2022, but the appeal was postponed, rescheduled for, and subsequently heard on February 22, 2023 so that an Amharic-speaking interpreter could be provided for Appellant. See Exhibit 2; 130 CMR 610.017.

## Action Taken by MassHealth

MassHealth denied Appellant’s PA request for interceptive orthodontic treatment.

## Issue

Is there sufficient and appropriate evidence which can allow Appellant to be approved for interceptive treatment at the current time?

## Summary of Evidence

Appellant is currently an [REDACTED] MassHealth member who was represented at hearing by her father. 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. Per Appellant's request, an Amharic interpreter was also present to assist with testimony at hearing. All parties testified telephonically.

Appellant's dental provider at Boston Children Hospital submitted a PA request for interceptive orthodontic treatment. The provider submitted a written form letter stating Appellant's name, and that Appellant needed treatment, that proper restorative care had been completed, and that Appellant's level of cooperation and hygiene were acceptable. See Exhibit 3, page 5. At the bottom of this letter, in the patient-specific text, it reads:

**MEDICAL NECESSITY AND DIAGNOSIS**

*Flared maxillary right lateral incisor*

*Peer group teasing with psychosocial need for treatment, Max 2x4 appliance*

*Requesting D8020 with 5 units of adjust*

See Exhibit 3, page 5 (**Bolded** and CAPITALIZED emphasis in original).<sup>1</sup>

Photographs and x-rays were submitted with the PA submission.

Dr. Kaplan explained that MassHealth usually only approves interceptive treatment if certain criteria are met. Per Dr. Kaplan, interceptive treatment is most commonly approved if one of three conditions exist, and they are:

1. A constricted upper jaw (or upper maxilla);
2. An anterior or posterior crossbite; and
- 3 .a Class III malocclusion.

Dr. Kaplan stated that while Appellant's teeth and occlusion were certainly far from perfect, none of the three conditions above existed. In response to questioning, Dr. Kaplan opined<sup>2</sup> that, if nothing was done to treat the current bite, Appellant would likely qualify for comprehensive orthodontic treatment under the current MassHealth standards in the future, as it was likely her bite, if untreated, would be considered severe and handicapping. Although Appellant is at or approaching the pre-teen age when, on average, adult dentition is reasonably complete and when commencement of comprehensive orthodontic treatment may be commenced, Appellant has a relatively "young" dentition which means that her teeth are erupting at a relatively slower pace

---

<sup>1</sup> D8020 is the Service Code signifying interceptive orthodontic treatment.

<sup>2</sup> Dr. Kaplan was clear that this was a prediction but not a guarantee, and he was consistently clear throughout the hearing that he was not Appellant's treating dentist, and that his opinions about future treatment options and possible personal treatment for this child should be weighed appropriately especially when compared to that of the treating dental providers who had seen the Appellant face to face over the years and whose opinion should be more heavily considered as to certain aspects.

that her peers of the same age. In response to questioning, Dr. Kaplan estimated that based on the x-rays, the time period for that comprehensive treatment may be 12 to 18 months away. Dr. Kaplan estimated that he would think extraction of some teeth would be needed at some point before any type of orthodontic treatment (interceptive or comprehensive) could be started.

When asked to offer his opinion on the three line of phrases typed in the letter from Appellant's orthodontist, Dr. Kaplan testified that he did not think it met or satisfied the medical necessity standard. In particular, Dr. Kaplan explained that the plan called for banding certain incisors (as evidenced by the "Max 2 x 4 appliance") and he thought that aligning the front incisors, as part of a plan that did not also include pulling any corresponding back or more posterior teeth would potentially be more damaging to the roots of the anterior teeth.<sup>3</sup> Dr. Kaplan stated that Appellant had a very crowded mouth, and that any such plan for her would require space (by possibly pulling the baby molars), which would in turn create more room for the bicuspid, cuspids, and incisors. Dr. Kaplan also indicated that if the interceptive orthodontic request medical necessity "narrative" had indicated a plan to extract such teeth, it may have been a different income, and he encouraged the Appellant's father to talk about this possibility with his dentist.

Appellant's father stated that he did not recall any specific discussion about extraction. During the hearing Appellant's father also did not dispute the contention that there was no crossbite, Class III malocclusion, or a constricted upper jaw. He stated that he and his daughter's caretakers and providers were more concerned with the emotional and psychological toll that her current bite was taking on Appellant. Despite that, Appellant's father indicated he understood and appreciated the explanation and opinion from Dr. Kaplan but wanted a written decision so he could discuss the next steps with his provider.

## Findings of Fact

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

1. Appellant is an [REDACTED] MassHealth member who applied for Prior Authorization of interceptive orthodontic treatment. The request was denied by DentaQuest on behalf of MassHealth, and the denial was timely appealed. (Testimony and Exhibits 1 and 3)
2. At the time of the PA request, Appellant's adult dentition was not as reasonably complete as the typical child of her age. There are multiple adult teeth which need to erupt or be closer to eruption to have a more complete adult dentition. (Testimony and Exhibit 3)
3. Appellant does not have a crossbite, a class III malocclusion or a constricted upper jaw. (Testimony and Exhibit 3).
4. Appellant's orthodontic provider submitted a medical necessity "narrative" which consisted of

---

<sup>3</sup> Dr. Kaplan repeated this concern about the risk of damage to the roots of the adult dentition multiple times, suggesting he was very concerned about this particular treatment plan, at least as how it was laid out in the form letter and brief text given by the submitting orthodontist.

three lines of text laid out at the bottom of a form letter used by this provider when submitting PA requests for orthodontia treatment to MassHealth. Those three lines of text read:

**MEDICAL NECESSITY AND DIAGNOSIS**

*Flared maxillary right lateral incisor*

*Peer group teasing with psychosocial need for treatment, Max 2x4 appliance*

*Requesting D8020 with 5 units of adjust*

(Testimony and Exhibit 3)

5. There is no detail or information about what plans for extraction, if any, would be done as part of the interceptive orthodontic treatment in this submission. (Testimony and Exhibit 3)

## **Analysis and Conclusions of Law**

Federal law requires that Medicaid agencies provide “[d]ental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health.” 42 CFR § 441.58; see also 42 U.S.C. § 1396d(r)(3)(B). Orthodontic services are generally provided as “discretionary,” under federal law. See 42 CFR § 441.57. MassHealth has chosen to provide orthodontic services when it determines them to be medically necessary.

Medical necessity for dental and orthodontic treatment must be shown in accordance with the regulations governing dental treatment, 130 CMR 420.000, and the MassHealth Dental Manual. 130 CMR 450.204.<sup>4</sup> MassHealth will not cover comprehensive orthodontia for the appellant because she has yet to get most of her permanent teeth. See 130 CMR 420.431(C)(3) (stating “Comprehensive orthodontic care should commence when the first premolars and first permanent molars have erupted”). For children who do not have all of their permanent teeth yet, MassHealth covers interceptive orthodontia on a limited basis, with the goal of “reducing the severity of any malformation” of a bite with primary and transitional dentition and “mitigating its causes”. See 130 CMR 420.431(C)(2). Lastly when a request for service is made, in addition to complying with the Prior Authorization requirements at 130 CMR 420.410 et seq.,<sup>5</sup> covered services for certain dental treatments, including orthodontia, may be subject to the relevant limitations of 130 CMR 420.421 through 420.456. See 130 CMR 420.421 (A) through (C). In looking at how those regulations and standards apply to this Appellant’s case, the MassHealth Dental Program Office Reference Manual (ORM) may be relevant to this analysis.

Pages 52-53 of the ORM lays out the standard for when the agency thinks interceptive treatment is

---

<sup>4</sup> The Dental Manual is available on MassHealth’s website, in the MassHealth Provider Library. Available at <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last visited March 14, 2023).

<sup>5</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 14, 2023). The “Dental Program Office Reference Manual” is different from the term “Dental Manual” found elsewhere in the 130 CMR 420.000 regulations, but both are relevant sources of guidance for analyzing this matter and the agency decision. See 130 CMR 610.082; 450.204(D).

appropriate and necessary.<sup>6</sup> It reads in relevant part:

*The process for requesting authorization and billing for interceptive orthodontic treatment is described below:*

*a. Provider performs pre-orthodontic treatment examination to determine if orthodontic treatment is necessary.*

*b. Provider completes and submits the following documentation:*

- 2012 or newer ADA Form requesting authorization for interceptive orthodontic treatment. The form must include:*

- 1. The code for the appliance being used (D8010, D8020, D8030, D8040)*
- 2. The code (D8999) for and number of treatment visits you are requesting for adjustments, up to a maximum of 5.*

*c. A detailed medical necessity narrative establishing that interceptive orthodontic treatment is medically necessary to prevent or minimize the development of a handicapping malocclusion or will preclude the need for comprehensive orthodontic treatment. This narrative must be submitted on the provider's office letterhead and any supporting documentation or imaging supporting medical necessity of the treatment should be attached.*

*If any part of the requesting provider's justification of medical necessity involves a mental, emotional, or behavioral condition; a nutritional deficiency; a speech or language pathology; or the presence of any other condition that would typically require the diagnosis, opinion, or expertise of a licensed clinician other than the requesting provider, then the medical necessity narrative and any attached documentation must:*

*i. clearly identify the appropriately qualified and licensed clinician(s) who furnished the diagnosis or opinion substantiating the condition or pathology (e.g., general dentist, oral surgeon, physician, clinical psychologist, clinical dietitian, speech therapist).*

*ii. describe the nature and extent of the identified clinician(s) involvement and interaction with the patient, including dates of treatment.*

*iii. state the specific diagnosis or other opinion of the patient's condition furnished by the identified clinician(s).*

*iv. document the recommendation by the clinician(s) to seek orthodontic evaluation or treatment (if such a recommendation was made).*

*ix. (sic) discuss any treatments for the patient's condition (other than interceptive orthodontic treatment) considered or attempted by the clinician(s); and*

---

<sup>6</sup> Part of this was also submitted by Appellant's provider in the PA submission. See Exhibit 3, pages 6-7 (quoting the following and including text from MassHealth Dental Transmittal Letter DEN-111 from October 25, 2021).

x. (sic) provide any other relevant information from the clinician(s) that supports the requesting provider's justification of the medical necessity of interceptive orthodontic treatment.

*The medical necessity narrative must be signed and dated by the requesting provider and submitted on the office letterhead of the provider. If applicable, any supporting documentation from the other involved clinician(s) must also be signed and dated by such clinician(s) and appear on office letterhead of such clinician(s). The requesting provider is responsible for coordinating with the other involved clinician(s) and is responsible for compiling and submitting any supporting documentation furnished by other involved clinician(s) along with the medical necessity narrative.*

d. The following is a non-exclusive list of medical conditions that may, if documented, be considered in support of a request for PA for interceptive orthodontics:

i. Two or more teeth numbers 6 through 11 in crossbite with photographic evidence documenting 100% of the incisal edge in complete overlap with opposing tooth/teeth.

ii. Crossbite of teeth numbers 3, 14 or 19, 30 with photographic evidence documenting cusp overlap completely in fossa, or completely buccal-lingual of opposing tooth;

iii. Crossbite of teeth number A, T or J, K with photographic evidence documenting cusp overlap completely in fossa, or completely buccal or lingual of opposing tooth;

iv. Crowding with radiographic evidence documenting current bony impaction of teeth numbers 6 through 11 or teeth numbers 22 through 27 that requires either serial extraction(s) or surgical exposure and guidance for the impacted tooth to erupt into the arch;

v. Crowding with radiographic evidence documenting resorption of 25% of the root of an adjacent permanent tooth.

vi. Class III malocclusion, as defined by mandibular protrusion of greater than 3.5mm, anterior crossbite of more than 1 tooth/ reverse overjet, or Class III skeletal discrepancy, or hypoplastic maxilla with compensated incisors requiring treatment at an early age with protraction facemask, reverse pull headgear, or other appropriate device.

Appellant's malocclusion or bite exhibited none of these conditions needed to qualify for treatment, many of which were summarized or testified to in part by Dr. Kaplan. Lastly, although there is a separate medical necessity avenue for potential approval, Dr. Kaplan raised some concerns at hearing that I found compelling about the lack of space to allow the interceptive treatment (as described by Appellant's provider) to be potentially worthwhile in the long-run. Essentially, MassHealth thought the utility of the interceptive plan, described in Exhibit 3, did not address the spacing needs or concern. The Appellant's provider's submission's plan was very bare in details, and did not indicate a plan of removal of impacted teeth. I thus find MassHealth's decision at this

time to be supported by the record and consistent with the record and written source of guidance. This appeal is therefore DENIED.

As stated at hearing and in the typical denial notice issued by the MassHealth dental program, the Appellant may be periodically reexamined by a MassHealth orthodontic provider and submit a new Prior Authorization request for future consideration.<sup>7</sup>

## **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

---

<sup>7</sup> Based on the discussion during the 45+ minutes of hearing, the MassHealth testimony suggested that another or future PA request for interceptive treatment may be considered, and potentially approved, if it addresses the agency's concern about the lack of spacing and removal of certain teeth. In that case, a more detailed narrative and plan of what the treating provider is willing to do, may be helpful.