

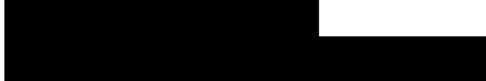
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2300871
Decision Date:	4/5/2023	Hearing Date:	03/08/2023
Hearing Officer:	Christopher Taffe	Record Closed:	04/03/2023

Appearance for Appellant:



Appearance for MassHealth:

Carl Perlmutter, DMD, Consultant for
DentaQuest (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

Appeal Decision:	DENIED	Issue:	PA – Orthodontia – Impacted Tooth
Decision Date:	4/5/2023	Hearing Date:	03/08/2023
MassHealth's Rep.:	C. Perlmutter, DMD	Appellant's Rep.:	[REDACTED]
Hearing Location:	HarborSouth Tower, Quincy	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 November 29, 2022, MassHealth denied Appellant's request for Prior Authorization ("PA") of full orthodontic treatment. See Exhibit 1; 130 CMR 420.431. Appellant filed a timely appeal with the Board of Hearings on January 31, 2023. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial of a MassHealth of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

As discussed in the Summary, the Record was left open post-hearing to allow the parties time to submit evidence not provided for or available at hearing, and to receive, review, and respond to new evidence, and exchange correspondence. See 130 CMR 610.081 and Exhibits 4 through 13. The record was closed on April 3, 2023 when Appellant's final correspondence (dated Sunday, April 2, 2023) was received. See Exhibit 13.

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 an [REDACTED] MassHealth member who was represented at hearing by his mother. MassHealth was represented at hearing by Dr. Perlmutter, 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.

Dr. Perlmutter testified that the MassHealth insurance does not typically 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 subgroup of malocclusions with the most severe or handicapping issues.

Appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment, together with one X-ray (a cephalometric) and photographs. The Appellant's dental provider completed the Handicapping Labio-Lingual Deviations (HLD) form and arrived at a score of 25.

The MassHealth Representative testified that, on the HLD point scale, 22 points is needed for approval. The record reveals that DentaQuest found a score of 10 points when they denied it, and Dr. Perlmutter testified that he wasn't sure how they did it, as it was difficult for him to do a score because there was no submission of a panoramic x-ray from the front, and the cephalometric x-ray submitted was not a good enough x-ray to judge because the back teeth weren't properly touching or in occlusion.¹ It was discussed that Appellant could ask the orthodontist to resubmit a new PA request (with proper and additional x-rays), but Appellant's mother indicated a desire to work with the current appeal and a Record Open period was allowed to allow the mother to obtain and submit the x-rays to the Hearing Officer, and in turn this would be forwarded to DentaQuest. At hearing, as there was testimony about an impacted tooth, and the paperwork suggested that there was an impaction, there was an emphasis on obtaining the panoramic x-ray which would best reveal the impaction.

During the Record Open period, Appellant's family obtained and submitted x-rays, including a

¹ The submission in Exhibit 3 shows no panoramic x-ray, and the cephalometric x-ray does reveal the teeth not touching.

panoramic. See Exhibit 7. Dr. Perlmutter did a scoring at that time, and he obtained a score of 10 points, identical to that of DentaQuest initially.

The HLD scoring from the reviewing dentists are as follows:

<i>Condition observed</i>	<i>Rule to determine final score</i>	<i>Finding of Appellant's Provider</i>	<i>Final score of Appellant's Provider</i>	<i>Finding of first DQ reviewer</i>	<i>Final score of first DQ reviewer</i>	<i>Finding of Dr. Perlmutter</i>	<i>Final score of Dr. Perlmutter</i>
Overjet in millimeters (mm)	# mm x 1	4 mm	4	3 mm	3	3 mm	3
Overbite in mm	# mm x 1	6 mm	6	5 mm	5	5 mm	5
Mandibular Protrusion in mm	# mm x 5	1 mm	5	0	0	0	0
Anterior Open Bite in mm	# mm x 4	0	0	0	0	0	0
# of teeth in Ectopic Eruption ²	# of teeth x 3	0	0	0	0	0	0
Anterior Crowding of more than 3.5 mm in the upper (Maxilla) jaw or lower (Mandible) jaw?	<i>If present, give 5 points for each jaw</i>	Both jaws	10	None	0	None	0
Labio-Lingual Spread ("Anterior Spacing") in mm	# mm x 1	0	0	2 mm	2	2 mm	2
Posterior Unilateral Crossbite	<i>If present, give 4 points</i>	No	0	No	0	No	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	# of teeth x 3	None	0	None	0	None	0
TOTAL HLD SCORE	-----	n/a	25	n/a	10	n/a	10

The scoring from Appellant's provider, and the first DentaQuest reviewer are found in Exhibit 3. Dr. Perlmutter's scoring and summary is found in Exhibit 9, and confirmed in Exhibit 10.

Regardless of point total, it is also possible to qualify for orthodontic treatment if Appellant has a condition deemed an automatic qualifier.³ In this submission, Appellant's provider indicated the presence of an automatic qualifier; that condition was an impacted tooth that was not a 3rd molar (wisdom tooth) and where eruption would be impeded but extraction is not indicated. See Exhibit 3. Dr. Perlmutter testified at hearing that this is where the panoramic x-ray would be most useful in supporting the claim, in that it would show the erupting teeth and the roots of other teeth.

Appellant's mother thought there was more than one tooth impacted and that without braces, the teeth would not have room to come in. On the original PA submission, Appellant's orthodontist

² The HLD Form instructs the user to record the more serious condition (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores.

³ As indicated by Exhibit 3, there is also a third way of possible approval, involving a medical necessity narrative. See Exhibit 3, pages 13-14. This is often used if there is either: a severe skeletal deviation; a diagnosed mental, emotional, or behavioral condition caused by the malocclusion; a diagnosed nutritional deficiency and/or a substantiated inability to eat or chew; a diagnosed speech or language pathology caused by the malocclusion; or a diagnosed condition caused by the malocclusion. Such cases usually require the involvement and written support of another physician, therapist, or clinician beyond a dental provider. There was indication in the written record of any such severe condition. Appellant's dental provider did not check off any of the boxes on Exhibit 3, page 13, indicating a medical necessity narrative would be submitted or pursued.

indicated that a single tooth, tooth # 6 (the upper right cuspid, or upper right canine), was impacted. See Exhibit 3, page 10.

After the x-rays and photographs were submitted during the Record Open period, the consultant from DentaQuest was asked for a review and response. See Exhibit 8. The Consultant response, from Exhibit 9, reads as follows:

*to: Hearing Officer Christopher Taffe
re [APPELLANT]
APPEAL #2300871*

*THANK YOU FOR FORWARDING THE NEW RADIOGRAPHS AND CLINICAL PHOTOGRAPHS. I have carefully reviewed the entire records submitted by MASS HEALTH AND THE ORTHIDONYTIST (sic) REQUESTING PAYMENT FOR BRACES by Mass Heath (sic). It continues to remain that I was able to achieve (sic)⁴ the required 22 points on the HDL score. **I determined that I was able to get 10 points on the HDL score; 3 points for OVERJET, 5 points for OVERBITE, and 2 points for LABIO-LINGUAL SPREAD.** This totals only 10 which is significantly less than required for approval of payment for orthodontic treatment by Mass Health. Therefor, (sic) I AM UPHOLDING THE DENIAL OF PAYMENT FOR THE ORTHODONTIC TREATMENT. **PLEASE NOTE that I was unable to find an impaction anywhere on the panoramic radiograph.***

*Respectfu;lly (sic) submitted,
Carl Perlmutter, D,M,D,, F.A.C.D.
consultant,Dentaquest
(**Bolded** emphasis added.)*

The Hearing Officer forwarded the entirety of the correspondence with the DentaQuest consultant to Appellant's mother. See Exhibits 11 and 12. The mother's final correspondence in this matter, from Exhibit 13, reads as follows:

⁴ This use of the word "able" in Exhibit 9 appears to be a typographical error; and that the consultant likely meant to type "unable". This was confirmed when the Consultant sent a follow-up email the next day clarifying the email and using the word "unable"; the entirety of that corrective email (Exhibit 10), reads as follows:

CORRECTION

I WAS UNABLE TO FIND 22 POINTS OR AUTOQUALIFER FOR [Appellant]. I AM UPHOLDING THE DENIAL Of ORTHODONTIC TREATMENT PAYMENT FOR THIS PATIENT. PLEASE CORECT THIS ERROR ON MY PART.

THANKS, CARL J. PERLMUTTER, DMD,FACD Consultant, Dentaquest

Hello [Hearing Officer],

*I just received your email. I DO NOT agree with this decision at all. I am very confused as to how [Appellant's] orthodontist has stated several times that he clearly needs braces due to the overcrowding, or the impacted teeth will to become a very big problem & will not come in at all without braces. This is very concerning. Never mind that he is special needs & has 26 diagnosis to date. He is in a lot of pain now, depressed, stressed out, lots of anxiety, very emotional & self conscious. This is going to be a big problem since I am on a fixed income. How can I fight this again, or what can I do next?
Thank you so much for your help.*

The scoring between the two sides on the HLD scale have some differences, with the most notable difference between anterior crowding (which Appellant's provider says is present, but DentaQuest's scorers do not) and anterior spacing (which, conversely, DentaQuest's scorers say is a scorable condition present in the bite, but which Appellant's provider says does not exist).⁵

As to these conditions, the pictures in Exhibit 3 show a tiny bit of spacing issues, and very little crowding. Specifically, in the photos in Exhibit 3 (page 16) there is a little bit of anterior crowding in the lower four incisors, but it does not appear to be extensive enough to show a total of more than 3.5 millimeters. Moreover, there is no sign of crowding in the four upper incisors in either Exhibit 3, page 16 (the original submission from Appellant's provider), nor is there any such crowding evident in the photos (taken from March 2023) received during the Record Open submission in Exhibit 7.

With regard to the impacted tooth, tooth #6 (the upper right canine/cuspid) appears in the panoramic x-ray in Exhibit 7 as the least erupted anterior tooth. The tip of the tooth is pointing mostly down in a near vertical angle towards the lower jaw, and the tip of the erupting tooth # 6 does not appear to be hitting the root of either the upper right lateral incisor tooth # 7 or the neighboring bicuspid on the other side (tooth #5). The photographs in Exhibit 7 show some significant space in the gums of the upper right jaw between the incisors and bicuspids on that right side.

Findings of Fact

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

1. Appellant is currently an [REDACTED] MassHealth member whose request for orthodontic treatment was denied by DentaQuest and was timely appealed. (Exhibits 1 and 3)
2. Appellant's provider did not submit a medical necessity narrative in support of approval. (Exhibit 3)

⁵ Anterior teeth refer to the six teeth in the center of each jaw, usually consisting of the four incisors and the two cuspids (a/k/a canine) teeth.

3. The initial PA request from Appellant's provider claimed an impacted upper right cuspid, but the submission did not include a panoramic x-ray depicting the impacted tooth. (Testimony and Exhibit 3)
4. The initial PA submission from Appellant's reviewed Appellant's bite on the HLD index and indicated an HLD score of 25 points. (Exhibit 3)
5. Two people from DentaQuest reviewed the materials submitted either before or during the hearing, and both DentaQuest reviewers found HLD scores of 10. (Testimony and Exhibits 3, 9 and 10)
6. The scoring from the parties was as follows:

Condition observed	Rule to determine final score	Finding of Appellant's Provider	Final score of Appellant's Provider	Finding of first DQ reviewer	Final score of first DQ reviewer	Finding of Dr. Perlmutter	Final score of Dr. Perlmutter
Overjet in millimeters (mm)	# mm x 1	4 mm	4	3 mm	3	3 mm	3
Overbite in mm	# mm x 1	6 mm	6	5 mm	5	5 mm	5
Mandibular Protrusion in mm	# mm x 5	1 mm	5	0	0	0	0
Anterior Open Bite in mm	# mm x 4	0	0	0	0	0	0
# of teeth in Ectopic Eruption ⁶	# of teeth x 3	0	0	0	0	0	0
Anterior Crowding of more than 3.5 mm in the upper (Maxilla) jaw or lower (Mandible) jaw?	<i>If present, give 5 points for each jaw</i>	Both jaws	10	None	0	None	0
Labio-Lingual Spread ("Anterior Spacing") in mm	# mm x 1	0	0	2 mm	2	2 mm	2
Posterior Unilateral Crossbite	<i>If present, give 4 points</i>	No	0	No	0	No	0
Posterior Impactions or congenitally missing posterior teeth (excluding 3 rd molars)	# of teeth x 3	None	0	None	0	None	0
TOTAL HLD SCORE	-----	n/a	25	n/a	10	n/a	10

(Exhibits 3 and 9)

7. There is no evidence of significant crowding in the upper anterior incisors and the upper left cuspid which has erupted. (Exhibits 3, 7, and 9)
8. The upper left cuspid, tooth # 6, does not appear to be impacted. (Exhibits 7 and 9)
 - a. The erupting tooth is descending at a near vertical angle. (Exhibit 7)
 - b. There is space between the upper right incisors and the upper right bicuspid for a tooth to begin erupting. (Exhibit 7)

⁶ The HLD Form instructs the user to record the more serious condition (i.e., higher score) of either the ectopic eruption **or** the anterior crowding, but not to count both scores.

- c. The tip of the erupting tooth is not pointing at the root of a neighboring tooth. (Exhibit 7)

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.,⁷ 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 and 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 found in Exhibit 3. 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 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

⁷ 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual publication as a source of additional explanatory guidance beyond the regulations. It is noted that references in the regulations to the “*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 <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on March 31, 2023).

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.

Looking at the three roads to approval in reverse order, this analysis will start with the reverse.

First this case did not involve or include a medical necessity letter or claim, so that avenue for potential approval is closed.⁸

As to the HLD scoring, I find the overall scoring by DentaQuest, finding scores below 22 points, to be more persuasive and supported by the record. That is because I find the record does not support the Appellant's provider's claim for crowding in both the upper anterior jaw and the lower anterior jaw (which resulted in a significant discrepancy of 10 points). Looking at the photographs in Exhibits 3 and 7, I do not see any significant upper crowding at all, and it is noted that there must be ample crowding of at least 3.5 millimeters in a jaw to get 5 points for crowding. It is also noted that two different DentaQuest reviewers found no such crowding. Without that upper crowding present,⁹ the loss of 5 points would reduce Appellant's provider's score to 17, and would essentially put all parties below the qualifying amount of 22 points. Thus, I don't believe the record shows support to approve this case based on the HLD scale.

With regard to the question of whether a impacted tooth exists, it was a bit strange and frustrating that no panoramic x-ray was initially provided by the Appellant's orthodontist as part of the initial PA request,¹⁰ as that created delay and limited specific substantive discussion that could have been had with all parties and the Hearing Officer present as to what "impacted" means in this context. Nevertheless, the x-ray was eventually provided, and the DentaQuest orthodontist offered his opinion that it was not impacted and that, thus, no automatic qualifying condition exists. See Exhibit 12.

Based on the evidence available to me, I find no reason to overrule that factual statement that this

⁸ Appellant's mother submitted several emails during the Record Open period. See Exhibits 4, 5, 6, 11, and 13. During the last email she mentioned Appellant has "*special needs & has 26 diagnoses to date*". It is unclear to what the number of diagnoses are referring but, if it is believed in the future that these conditions matter and are affected by the occlusion, Appellant's family may talk to an orthodontist as to whether there is a medical necessity argument that could be made in a future PA request. See fn. 3, *supra*.

⁹ While there is arguably a greater claim of there being some scorable crowding in the lower teeth, I find no need to determine which side is correct on that issue, as even taken everything else suggested by the Appellant's provider taken in the light most favorable to the Appellant would still not be enough to make the 22 point score qualify.

¹⁰ Although Appellant's orthodontist is technically correct, that Appendix B with the Authorization Form for Comprehensive Treatment does not specifically list a panoramic, see Exhibit 3, page 11, I have never seen proof of an impacted tooth without a panoramic and I think this falls under the more general medical necessity rule of substantiating one's claim with adequate proof. See 130 CMR 450.204(B) which applies to all MassHealth providers, including dentists, and which says:

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request.

tooth is not impacted. Over the years, I have presided over hundreds of orthodontic appeals and over multiple dozens where there has been a question of whether a tooth is impacted.¹¹ In many of those cases, I have seen DentaQuest consultants approve cases based on x-rays showing impacted cuspids, and in almost all of those, the impacted canine is erupting at a much more horizontal angle, heading towards the root of a neighboring tooth. That is not the case here. There is space in the gums for the tooth to start erupting, and the angle of the upper right cuspid is nearly aligned with the vertical plane, and it is not heading towards the root or midpart of a neighboring tooth which is what creates the “impaction”. This does not appear to be what is usually seen with impacted cuspids, and I thus find the decision to not find this tooth to be impacted to be correct. This appeal is DENIED at the present time.

Even though it is a denial today, Appellant and his family should note that there are future options that may make sense with this case. First it is noted that so long as Appellant remains a MassHealth member under the age of 21, the Appellant may be reexamined by a MassHealth orthodontic provider and make a new Prior Authorization request for future consideration every six months. See 130 CMR 420.431(C). Specifically, the PA request at issue in this appeal was submitted to DentaQuest during the last week of November 2022. **Thus Appellant may go for a re-review and submit materials in late May 2023 or early June 2023.** Considering the Appellant is not yet a teenager, and many of his adult teeth have not yet come in, it may make sense for him to have his bite reevaluated.

Moreover, if the most significant part of the basis of the conclusion for this decision is wrong (i.e. if the upper right cuspid is in fact impacted), then that impacted condition would be more evident then, and Appellant would have a stronger argument for an automatic approval in the future if this tooth does not show greater signs of eruption. Further, it is also noted that in the more likely event of the tooth erupting, then that cuspid and its effect on the bite and other teeth may alter or increase the HLD score, particularly if the tooth does not erupt perfectly. As Appellant’s score is arguably close to 22 points, the presence of the newly erupted tooth may make a difference in seeing whether Appellant’s occlusion qualifies for treatment. See Procedure #7 in Exhibit 3, page 11, which says, when doing the HLD index calculation, that “*Deciduous teeth and teeth not fully erupted should not be scored.*” (**Bolded and underlined** emphasis added.) Thus, this Appellant may be one of those MassHealth members where it makes the most sense to have the orthodontic case reevaluated at least one more time to see if he can become entitled to orthodontic treatment in the future.

Order for MassHealth

¹¹ The DentaQuest Consultant’s opinion would have been stronger if it better detailed and explained its conclusion as to what makes a tooth impacted or not. Had that statement been made at hearing, it would have been followed up with questioning to elaborate on that conclusion, but such avenue was not possible post-hearing, due in part to the lack of a panoramic x-ray available at hearing. Appellant was informed in the February 6, 2023 Scheduling Letter that x-rays can should have been obtained and submitted prior to the Fair Hearing to assist with discussion. See Exhibit 2. Nevertheless, based on experience and the record available to me, I believe the record is sound and reasonably complete and that this analysis is proper, and I find bringing the parties back per 130 CMR 610.073 to debate the standard would neither be in the best interest nor be the best use of time for either party, and it would make no substantive difference in this current appeal on the current finding that this tooth is not impacted.

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