

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302238
Decision Date:	7/6/2023	Hearing Date:	04/24/2023
Hearing Officer:	Mariah Burns	Record Open to:	05/22/2023

Appearance for Appellant:



Appearance for MassHealth:

Dr. Harold Kaplan for 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

Appeal Decision:	Denied	Issue:	Prior Authorization – Comprehensive Orthodontic Treatment
Decision Date:	7/6/2023	Hearing Date:	04/24/2023
MassHealth's Rep.:	Dr. Harold Kaplan	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 1	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 February 27, 2023, MassHealth denied the appellant's request for prior authorization for comprehensive orthodontic treatment because MassHealth determined that the appellant exceeded the age limit required by 130 CMR 420.431(C)(3). Exhibit 1. The appellant filed this appeal in a timely manner on March 20, 2023. 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is ineligible for coverage of comprehensive orthodontic treatment given his age.

Summary of Evidence

The appellant, an adult over the age of 21, was represented at hearing by a parent, his legal guardian. The MassHealth representative, a licensed orthodontist, appeared by telephone for MassHealth on behalf of DentaQuest, the MassHealth dental contractor. Below is a summary of each party's testimony and the information submitted for hearing:

The appellant's orthodontic provider ("the provider") submitted a prior authorization request for comprehensive orthodontic treatment to DentaQuest on behalf of the appellant on February 24, 2023. This request included the appellant's X-rays, photographs, and a completed MassHealth Handicapping Labio-Lingual Deviations (HLD) Form. The request was denied on February 27, 2023 because the appellant exceeds the age limit allowed by MassHealth regulations. The MassHealth representative reported that, but for the appellant's age, his malocclusion is otherwise severe enough to qualify for coverage of treatment.

The appellant's representative submitted evidence from several providers indicating that the appellant has extenuating medical circumstances that made treatment prior to the age of 21 impossible. She testified at hearing, to supplement that documentation, and reported that, as a teenager, the appellant was involved in a very serious sports-related accident that left him wheelchair-bound and with severe cognitive damage. He was on a feeding tube for several years and was not behaviorally or medically able to be evaluated for or receive treatment until recently. The appellant's representative asked that the appellant's individual circumstances be taken into consideration when making a coverage decision, and stated that it was not feasible for the appellant to have received treatment prior to this year.

The MassHealth representative indicated that he would consult with MassHealth and determine whether they would approve coverage in the appellant's case. The record was kept open to allow the MassHealth representative time to do so, and he did not report back with a response prior to the issuance of this decision.

Findings of Fact

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

1. The appellant is a MassHealth member who is an adult over the age of 21. Exhibit 4.
2. On February 24, 2023, the appellant's provider requested prior authorization for comprehensive orthodontic treatment on the appellant's behalf and submitted an Orthodontics Prior Authorization Form, an HLD Form, photographs, x-rays, and a medical necessity narrative. Exhibit 5.

3. On February 27, 2023, MassHealth denied the appellant's request because the appellant is over the age of 21 and exceeds the age requirements set forth by the regulations. Exhibit 1, Exhibit 5 at 3.
4. The appellant timely appealed the denial to the Board of Hearings. Exhibit 2.
5. The appellant suffered from a serious sports-related accident as a teenager that left him wheelchair-bound and with severe cognitive damage. He was on a feeding tube for several years and was not behaviorally or medically able to be evaluated for or receive comprehensive orthodontic treatment until recently. Testimony, Exhibit 6 at 1.
6. The appellant would otherwise qualify for coverage of comprehensive orthodontic treatment but for his age. Testimony.

Analysis and Conclusions of Law

MassHealth pays for dental services when they are medically necessary¹ and covered by MassHealth's dental program. 130 CMR 420.421(A)(1).² The MassHealth Dental Manual and the MassHealth Dental Program Office Reference Manual (ORM) contain information and guidance for providers in submitting claims to MassHealth. 130 CMR 420.410(C). MassHealth's coverage of specific services varies depending on whether a member is under the age of 21 or is a client eligible for adult services through Massachusetts' Department of Developmental Services (DDS).

MassHealth pays for orthodontic treatment, subject to prior authorization, when the service is deemed medically necessary, and when the "initial placement and insertion of orthodontic appliances and partial....or full banding [begins] prior to the member's 21st birthday." 130 CMR 420.431(A). The regulations reference the age requirements for comprehensive orthodontic

¹ Pursuant to 130 CMR 450.204(A),

(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 to aggravate a handicap, 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 through sources described in 130 CMR 450.317(C), 503.007, or 517.007

² Medically necessary treatments covered by the MassHealth dental program are "the services with codes listed in Subchapter 6 of the *Dental Manual*, in accordance with the service descriptions and limitations described in 130 CMR 420.422 through 420.456." 130 CMR 420.421(A)(1).

treatment in two other instances. See *Id.* at 420.431(C)(3) (“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,” and “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.”).

The ORM contains multiple references to the age limitation for comprehensive care. Sections 3.7 and 16.1 of the ORM state that eligible “members under age 21 may qualify for orthodontic care under the MassHealth Dental Program.” ORM at 14, 45. Section 16.1 provides that members age 21 and older may receive continuation of orthodontic treatment “if they have been fully banded prior to their 21st birthday and remain eligible for MassHealth dental benefits for the duration of the treatment.” *Id.* at 45. Service codes for comprehensive orthodontic treatment are only listed for members under 21. *Id.* at 105, 204.

The regulations and medical guidelines in the ORM are unwavering about the age limitation for orthodontic treatment for MassHealth members, requiring that a member be approved for and begin treatment prior to turning 21 years old. The only exception to a service limitation would be before a member eligible to receive Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT), for whom MassHealth would cover:

[A]ll services for EPSDT-eligible members, in accordance with 130 CMR 450.140 through 450.149, *without regard for the service limitations described in 130 CMR 420.422 through 420.456, or the listing of a code in Subchapter 6.* All such services are available to EPSDT-eligible members, with prior authorization, *even if the limitation specifically applies to other members younger than 21 years old.*

130 CMR 420.421(B) (emphasis added). Per this regulation, only exception to a service limitation would be for an EPSDT-eligible member, who must be under the age of 21 to meet the definition. See 130 CMR 420.402 (defining Early and Periodic Screening, Diagnostic and Treatment Services “as described in federal law at 42 U.S.C. §§1396d(a)(4)(B) and 1396d(r) and 42 CFR 441 Subpart B. In Massachusetts, EPSDT-eligible members are in MassHealth Standard or MassHealth CommonHealth categories of assistance and are younger than 21 years old”). In other words, the regulatory exception that would allow coverage of comprehensive orthodontic treatment over the age of 21 is only available to members under the age of 21.

Here, there is no dispute that the appellant clinically qualifies for orthodontic treatment. The appellant’s representative offered a reasonable and sympathetic basis for why appellant could not have been treated earlier, well supported by medical records. However, there is no exception in the regulations or ORM that would allow approval of comprehensive orthodontic treatment for a member of the appellant’s age.

The appellant's representative argued that the Board of Hearings should consider the appellant's situation and why it was not medically feasible for him to receive treatment prior to now. The appellant has certainly established a sufficient rationale as to why there was a delay in treatment, but the regulations afford no way for a hearing officer to take an appellant's individual circumstances into consideration in this case. A hearing officer must render decisions in accordance with the law. *See* 130 CMR 610.082(B). Unfortunately, the law offers no recourse to approve the appellant's appeal and order MassHealth to cover his comprehensive orthodontic treatment when it has not commenced prior to his 21st birthday. Accordingly, 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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: DentaQuest 1, MA