

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306462
<b>Decision Date:</b>	10/19/2023	<b>Hearing Date:</b>	09/11/2023
<b>Hearing Officer:</b>	Thomas Doyle	<b>Record Open to:</b>	

**Appearance for Appellant:**

Pro se



**Appearance for MassHealth:**

Dr. Harold Kaplan, D.M.D.

**Interpreter:**



*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>	10/19/2023	<b>Hearing Date:</b>	09/11/2023
<b>MassHealth's Rep.:</b>	Dr. Harold Kaplan	<b>Appellant's Rep.:</b>	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 July 13, 2023, MassHealth denied appellant's prior authorization for total orthodontics. (Ex.1). The appellant filed this appeal in a timely manner on July 31, 2023. (130 CMR 610.015(B); Ex. 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied appellant's request for approval of the prior authorization for braces or full and comprehensive orthodontic treatment.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining appellant does not meet the MassHealth requirements for coverage of orthodontic treatment.

### Summary of Evidence

Appellant is currently a ■-year-old MassHealth member who appeared at hearing held in Quincy, with his mother. MassHealth was represented by Dr. Harold Kaplan, a board-certified 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.

Dr. Kaplan testified that MassHealth 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 or handicapping issues.

Appellant's orthodontic provider submitted a prior authorization request for comprehensive orthodontic treatment, together with X-rays and photographs. Appellant's dental provider completed the Handicapping Labio-Lingual Deviations (HLD) form and found a score of 27. (Ex. 4, p. 7). Dr. Kaplan testified that, on the HLD point scale, 22 points is needed for approval. Dr. Kaplan testified that he found a score of 15 on the scale. (Testimony). DentaQuest reached a score of 14. (Ex. 4, p. 14). Specifically, Dr. Kaplan testified that on the HLD scale, he only awarded 5 points for Anterior Crowding, stating that after his in-person exam of appellant, he only found severe crowding in the mandible (lower) arch. He stated there was some crowding in the maxilla (upper) region, but not enough to award points. Appellant's provider awarded 10 points for Anterior Crowding, 5 points for upper and lower crowding. (Ex. 4, p. 7). The other main difference in scoring the HLD scale was related to Mandibular Protrusion. Dr. Kaplan testified this score deals with the relationship of upper molars with lower molars. After looking into appellant's mouth, Dr. Kaplan stated appellant's posterior teeth are in ideal occlusion. Dr. Kaplan stated occlusion meant bite. He stated if the lower molar is forward from where it should be, you can give points but after reviewing the photos of appellant's teeth and looking in appellant's mouth, he testified the occlusion in the back of appellant's mouth is ideal. Therefore, he could not give any points for this category. Appellant's orthodontist gave 10 points.

Regardless of point total, it is also possible to qualify for orthodontic treatment if the appellant has a condition deemed an Autoqualifier. Here, the appellant's provider did not indicate the presence of an Autoqualifier. (Ex. 4, p. 7). DentaQuest did not find the presence of an Autoqualifier. (Ex. 4, p. 14). Dr. Kaplan testified he also did not find an Autoqualifier was present based upon his in-person review. (Testimony).

It is additionally possible to qualify for comprehensive orthodontic treatment if that treatment

is medically necessary for the appellant. In order for the appellant's particular conditions to be evaluated to see if those particular conditions support a Medical Necessity determination, evidence, in the form of a Medical Necessity Narrative letter and supporting documentation, must be submitted by the appellant's requesting provider. Generally, this involves a severe medical condition that can include atypical or underlining health concerns which may be either dental or non-dental. Here, the appellant's orthodontic provider did not provide a Medical Necessity Narrative, nor was any additional supporting documentation submitted. (Ex. 4, p. 8). Moreover, Dr. Kaplan's testimony and DentaQuest's submitted evidence do not support a Medical Necessity determination at this time. (Testimony).

Appellant's mother asked why, if her son's orthodontist found an abnormality in his mouth, Dr. Kaplan did not give more points. Dr. Kaplan explained how his exam did not show enough of an occlusion to award more points than he did.

## **Findings of Fact**

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

1. Appellant is currently a ■-year-old MassHealth member who had a request for full or comprehensive braces denied by MassHealth. (Testimony; Ex. 1; Ex. 4, p. 1-3).
2. Neither the initial DentaQuest review nor the review testified to by Dr. Kaplan found evidence of 22 or more points on the HLD scale. (Ex. 4, p. 14; Testimony).
3. Appellant's provider submitted an HLD score of 27 points. (Ex. 4, p. 7).
4. None of the three orthodontists examining the record found an auto qualifier present. (Testimony; Ex. 4, pp. 7, 14).
5. Appellant's orthodontic provider did not submit documentation related to whether treatment is medically necessary in accordance with the instructions on the latter pages of the HLD form. (Ex. 4, p. 8; Testimony).
6. Dr. Kaplan's testimony does not support a Medical Necessity determination at this time. (Testimony).
7. DentaQuest's submitted evidence does not support a Medical Necessity determination at this time. (Ex. 4).

## **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. (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>1</sup> covered services for certain dental treatments, including orthodontia, are subject to the relevant limitations of 130 CMR 420.421 through 420.456. (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 4. 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 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.

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<sup>1</sup> 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>.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). On this record, the appellant has not demonstrated the invalidity of the denial of preauthorization for braces.

A review of the different HLD scores is required to ascertain 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. Here, the appellant's orthodontic provider calculated a score of 27 points on the HLD scale. Dr. Kaplan only found an HLD score of 15. (Testimony). Dr. Kaplan testified that after he carefully looked at photos and x-rays of appellant's mouth and he had the opportunity to examine appellant at the hearing. There are two main areas of contention. The first is Anterior Crowding. Appellant's orthodontist gave a score of 10 points, finding crowding on upper and lower teeth. Dr. Kaplan scored only 5 points. Dr. Kaplan admitted in his testimony there was some crowding in the upper teeth, but he found not enough to grant the scoring of 5 points. He agreed with the awarding of 5 points for the severe crowding he also saw in the lower teeth. The second score in contention is the Mandibular Protrusion. Appellant's orthodontist gave 10 points for this condition. After reviewing x rays and photographs and examining appellant at hearing, Dr. Kaplan did not give any points. He testified you are looking at the relationship of the upper molars with the lower molars. If the lower molar is forward from where it should be, you can give points. Dr. Kaplan testified that the posterior teeth are in ideal occlusion, meaning the bite is ideal. If the scoring done by appellant's orthodontist is adjusted to what Dr. Kaplan found you would subtract 5 points from the Anterior Crowding score and 10 points from the Mandibular Protrusion score, for a total of 12 points on the HLD scale.

I credit the testimony of Dr. Kaplan. I find Dr. Kaplan's explanation of his process in reviewing photos, x-rays and his in person examination to be very thorough. He testified he was careful in his review and is a board-certified orthodontist. (Testimony). Dr. Kaplan is an orthodontist who provided credible testimony and based on the overall testimony given at hearing, I find that the opinion of the orthodontist present at hearing to be persuasive and plausible, especially as he was subject to cross examination by appellant and his mother. Appellant has not met his burden and the 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.

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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: DentaQuest 1, MA