Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2402603
Decision Date:	05/23/2024	**Hearing Date:**	03/18/2024
Hearing Officer:	Casey Groff, Esq.	**Record Closed:**	04/09/2024

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Katherine Moynihan, DMD, Orthodontic Consultant, 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:**	Orthodontic Services; Interceptive Treatment
Decision Date:	05/23/2024	**Hearing Date:**	03/18/2024
MassHealth's Rep.:	Katherine Moynihan, DMD	**Appellant's Rep.:**	Parent
Hearing Location:	Tewksbury MassHealth Enrollment Center	**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

On 1/23/2024, MassHealth notified Appellant, a minor, that her provider's prior authorization (PA) request for interceptive orthodontic treatment (procedure codes D8020 and D8999) had been denied. See Exhs 1, 2, and 4. Appellant's mother filed a timely appeal of the decision on Appellant's behalf on 2/21/2024. See 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

A hearing was conducted on 3/18/24. See Exh. 3. After the hearing concluded and record closed, Appellant's mother sent BOH additional correspondence and documentation to further dispute the MassHealth denial. See Exhs. 5-6. Pursuant to 130 CMR 610.081, the hearing officer reopened the record for consideration on the additional information and to provide MassHealth with an opportunity to respond. See Exh. 8. The record closed on 4/9/24 following receipt of MassHealth's response to Appellant's post-hearing submissions. See Exh. 7 and 8.

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth correctly denied Appellant's PA request for interceptive orthodontic treatment.

Summary of Evidence

At hearing, MassHealth was represented by Katherine Moynihan, D.M.D. a board-certified and Massachusetts licensed orthodontist and consultant for DentaQuest. DentaQuest is the third-party contractor that administers and manages MassHealth's dental program. Through testimony and documentary submissions, the MassHealth representative presented the following evidence: Appellant is a MassHealth member under the age of 18. Id. On January 17, 2024, MassHealth received a prior authorization (PA) request from Appellant's orthodontic provider, [redacted], DMD, on behalf of Appellant, seeking coverage for interceptive orthodontic treatment under procedure codes D8020 and D8999. See Exh. 1 and 4. The PA request included a medical necessity narrative from [redacted], which provided the following basis for the PA request:

> The recommended treatment plan for Phase I would include a Maxillary fixed expander to increase upper arch length and improve the omega shape of the upper arch. This will help re-direct the ectopic eruption of teeth #6 and #11 which are applying their eruptive forces on the roots of teeth #7 and #10. This can be seen clinically as crowns teeth #7 and #10 are tipped distally as result of mesial root tipping due to the ectopic position of both upper cuspids.
>
> Expansion of the upper arch will also increase buccal overjet allowing for natural transverse uprighting of the lower left mandibular buccal segment. Removal of transverse and anterior restrictions on the patient's mandible during closure will greatly benefit her [long-term] condylar development and help to eliminate retrusion of the mandible while in occlusion at this time.
>
> We have also planned using a fixed lower lingual arch in order to maintain mandibular arch length and prevent mesial drift of teeth #19 and #30 once the lower deciduous molars are exfoliated in order to preserve lower leeway spaces to help resolve lower anterior crowding.
>
> It is my opinion, that the patient's maxillary constriction and deep anterior

> overbite are restrictive to both her dental development and normal condylar development of the mandible. At this time, I strongly recommend Phase I treatment for this patient.

See Exh. 4 p. 8.

Dr. Moynihan testified that according to the PA request, Appellant's orthodontic provider is requesting coverage for a palate expander, a type of phase I / interceptive treatment. The goal of interceptive treatment, which differs from comprehensive orthodontic treatment, is to prevent or minimize the severity of a developing handicapping malocclusion, and thus the need for later comprehensive treatment. MassHealth has strict standards for when it will cover phase 1 treatment. Referring to Appendix F of the MassHealth *Dental Manual*, Dr. Moynihan reviewed the clinical criteria that MassHealth uses in determining medical necessity for interceptive treatment. Such conditions include, but are not limited to anterior crossbite, posterior crossbite, crowding with evidence of bony impaction, and crowding with evidence of showing resorption of 25% the root of an adjacent permanent tooth.

In reviewing the PA request, a MassHealth dental consultant from DentaQuest reviewed the provider's clinical narrative, oral and facial photographs, a side x-ray, and panoramic x-ray. See Exh. 8. Using the documentation provided, the reviewing consultant could not find evidence of crossbite, damage, impaction, or any other qualifying condition to authorize coverage. Accordingly, through a notice dated 1/23/24, MassHealth denied Appellant's PA request citing the following basis for its determination:

> The documentation sent by your dentist does not support the medical necessity of interceptive orthodontic treatment. The goal of this treatment is to reduce the severity of the developing problem and eliminate the cause. The purpose of this treatment is to reduce the need for comprehensive orthodontic treatment in the future. Our records do not show that this treatment will have these results for you. The documentation does not show that you have any of these issues: two or more front teeth in crossbite…; permanent first molars or baby second molars in crossbite; front teeth that are in a position that they will not come through the gums without treatment; or you have a tooth that has started growing into the root of another tooth and you would lose your tooth if it kept growing that way…

See Exh. 2, p. 4.

At hearing, Dr. Moynihan conducted an in-person oral examination of Appellant and found no evidence of crossbite or any of the listed criteria to override the denial. Dr. Moynihan noted that she did observe crowding and the omega or "U" arch shape, as noted by [redacted]. She explained that Appellant could benefit from expansion therapy, and that in general, the treatment offers dental and systemic benefits beyond just straightening teeth. MassHealth's

stance, however, is that it will only pay for phase I treatment in extremely severe cases and/or where there is evidence of damage. While Appellant had observable crowding, she did not exhibit any of the extreme conditions to render Appellant eligible for coverage.

At hearing, Appellant's representative stated that she appealed the MassHealth decision because she was told that it had been denied for "cosmetic reasons." Appellant's mother testified that [redacted] wants to treat her crowding by placing a palate expander on her top arch to correct the omega shape and a space maintainer on the bottom. The basis for the request is not due to cosmetic concerns but is medically necessary to make space for her teeth to come in and make future braces more effective. The provider thought the crowding was so bad that her erupting canines were starting to hit the root of the adjacent teeth. If phase I treatment is approved, Appellant would only need braces on her top arch to address her overbite. If denied, it was [redacted] recommendation to make space by pulling a total of 8 baby teeth – 4 on top and 4 on the bottom. With the palate expander, she would only have to pull a total of two upper teeth. In addition, the treatment is time sensitive because she loses the ability to do expansion therapy once she has matured and cannot be performed during comprehensive treatment.

In response, MassHealth explained that the lower space maintainer will only maintain, not eliminate, her lower crowding, and she will still need braces in the future address crowding. In addition, Dr. Moynihan noted that on examination and in reviewing the x-rays, there was not enough crowding for it to be hitting root for MassHealth to approve. MassHealth will only approve coverage on this ground where there is evidence of damage to 25% of the root. Dr. Moynihan also noted Appellant's canines were in a "classic eruption pattern" which can kick out the roots of the lateral incisors as the canines come through. She explained this is normal and there was no evidence of damage to the root. There are alternative treatments to address this issue, and extraction of the baby canines, as the provider planned to do, is common. Once Appellant becomes eligible for full orthodontic treatment, MassHealth uses a wider variety of criteria to determine medical necessity as opposed to the "very strict" standards for interceptive treatment. Dr. Moynihan explained that just because it is not "medically necessary" under MassHealth coverage regulations, does not mean that Appellant would not benefit from treatment. It just means MassHealth will not pay for it.

Following the hearing, Appellant's mother sought to admit additional commentary and documentation in support of her appeal that the treatment was not requested for cosmetic reasons. See Exhs. 5-6. Appellant highlighted Dr. Moynihan's testimony indicating that Appellant would benefit from expansion therapy and that she is generally in favor given its benefits. She also highlighted [redacted] written statement that "teeth #6 and #11 …are applying their eruptive forces on the roots of teeth #7 and #10." Exh. 5, p. 2. In another post-hearing email, Appellant submitted a panoramic x-ray from 7/10/23 to show the progression the erupting canines when compared with her more recent 1/15/24 x-ray, which was included in the PA

request. See Exh. 6. Appellant's mother believed that the images showed that the erupting teeth were "already impacting the root and will continue to do so." Id. [1]

At Appellant's request, the hearing officer reopened the matter to consider the post-hearing submissions under 130 CMR 610.081. In accordance with this 130 CMR 610.081, Dr. Moynihan reviewed the submissions and submitted the following response:

> In response to the comments and new images sent by [Appellant] regarding damage to root structure, MassHealth will only cover Interceptive Treatment if the case presents with "crowding with radiographic evidence documenting resorption of 25% of the root of an adjacent permanent tooth". All of [Appellant's] records and narratives were carefully reviewed as required, however, fail to satisfy MasHealth's criteria for medically necessary coverage.

See Exh. 7.

Findings of Fact

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

1. Appellant is a MassHealth member under the age of 18. (Exhibit 1; Exhibit 4).

2. On January 17, 2024, MassHealth received a PA request from Appellant's orthodontic provider seeking coverage for interceptive orthodontic treatment under procedure codes D8020 and D8999. (Testimony; Exh. 4).

3. Appellant's orthodontic provider included a clinical narrative with the PA request stating that the Phase I treatment would: "include a Maxillary fixed expander to increase upper arch length and improve the omega shape of the upper arch. This will help re-direct the ectopic eruption of teeth #6 and #11 which are applying their eruptive forces on the roots of teeth #7 and #10. This can be seen clinically as crowns teeth #7 and #10 are tipped distally as result of mesial root tipping due to the ectopic position of both upper cuspids. Expansion of the upper arch will also increase buccal overjet allowing for natural transverse uprighting of the lower left mandibular buccal segment. Removal of transverse and anterior restrictions on the patient's mandible during closure will greatly benefit her [long-term] condylar development and help to eliminate retrusion of the mandible while in occlusion at this time. We have also planned using a fixed lower lingual arch in order to

[1] Appellant also raised concerns in her post-hearing submission that the hearing officer sought to exclude evidence, including MassHealth's testimony regarding the benefits of interceptive orthodontic treatment. These concerns are addressed in footnote 3 on p. 9 of this decision.

maintain mandibular arch length and prevent mesial drift of teeth #19 and #30 once the lower deciduous molars are exfoliated in order to preserve lower leeway spaces to help resolve lower anterior crowding. It is my opinion, that the patient's maxillary constriction and deep anterior overbite are restrictive to both her dental development and normal condylar development of the mandible. At this time, I strongly recommend Phase I treatment for this patient." (Exh. 4 p. 8; Exh. 5).

4. A MassHealth dental consultant from DentaQuest reviewed the provider's clinical narrative, oral and facial photographs, a side x-ray, and panoramic x-ray and found that Appellant did not meet the clinical criteria for coverage. (Testimony; Exh. 2; Exh. 4).

5. Through a notice dated 1/23/24, MassHealth denied Appellant's PA request for interceptive orthodontic treatment. (Testimony; Exh. 2; Exh. 4).

6. At hearing, a board-certified orthodontist representing MassHealth conducted an in-person oral examination and secondary review of the medical documents included with the PA request. (Testimony).

7. Based on the in-person examination and secondary review of documents, MassHealth found no evidence that Appellant had crossbite or crowding with evidence of impaction or damage to 25% of the root, and thus upheld MassHealth's denial for coverage. (Testimony; Exh. 7).

8. Following the hearing, Appellant submitted a panoramic x-ray from 7/10/23 to compare with the 1/15/24 x-ray to show the progression of the erupting canines which she believed were infringing on the roots of the adjacent teeth. (Exhibit 6).

9. MassHealth reviewed both x-rays and responded that the evidence did not show 25% resorption of the root nor any other clinical criteria to qualify for coverage. (Exh. 7).

Analysis and Conclusions of Law

MassHealth only covers a medical service or treatment unless it is "medically necessary." The threshold considerations for determining whether a service is medically necessary are set forth under 130 CMR 450.204, which states, in full:

> (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.

(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. …

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

As subsection (D) indicates, MassHealth establishes additional medical necessity criteria in its regulations for each specific service-type. The authority to implement such criteria is derived from federal law, which mandates state Medicaid plans, such as MassHealth, to specify the "amount, duration, and scope of each service that it provides for [its members]." 42 C.F.R. § 440.230. Although it may not "arbitrarily reduce or deny services" based on a member's diagnosis or medical condition, the agency is permitted to "place appropriate limits on a service based on such criteria as medical necessity or utilization control procedures." See id.

MassHealth covers interceptive orthodontic treatment to members under the age of 21 only to the extent it is deemed medically necessary to treat or help correct a handicapping malocclusion, and subject to the service limits described as follows:

(a) The MassHealth agency pays for interceptive orthodontic treatment once per member per lifetime. The MassHealth agency determines whether the treatment will prevent or minimize a handicapping malocclusion based on the clinical standards described in Appendix F of the *Dental Manual*.

(b) ***The MassHealth agency limits coverage of interceptive orthodontic treatment to primary and transitional dentition with at least one of the following conditions***: constricted palate, deep impinging overbite, Class III malocclusion, including skeletal Class III cases as defined in Appendix F of the *Dental Manual* when a protraction facemask/reverse pull headgear is necessary at a young age, craniofacial anomalies, anterior cross bite, or dentition exhibiting

results of harmful habits or traumatic interferences between erupting teeth.

130 CMR 420.431(B)(2) (emphasis added).

Appendix F, as incorporated by reference in § 420.431, above, lists the following criteria for seeking coverage of interceptive orthodontic treatment:

(2) Supporting documentation. Providers must submit:

a) a medical necessity narrative explaining why, in the professional judgment of the requesting provider and any other involved clinician(s), 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. The medical necessity narrative must clearly demonstrate why interceptive orthodontic treatment is medically necessary for the patient.
….[2]

b) 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

[2] The remaining text in subsection (a) pertains to documentation requirements in cases where justification for the requested treatment is based on a member's diagnosis(es)/condition(s) that involve expertise of another (non-orthodontic) clinician, such as diagnoses involving a mental, emotional, or behavioral condition; a nutritional deficiency; a speech or language pathology. As the provider did not include any documentation from other clinicians, this portion if Appendix F is not relevant.

> requiring treatment at an early age with protraction facemask, reverse pull headgear, or other appropriate device.

Appellant's provider submitted x-rays, images, and a detailed medical necessity narrative in support of the requested treatment. Through its initial review, MassHealth found that such documentation failed to meet the threshold criteria for medical necessity of interceptive orthodontic treatment, and therefore denied the PA request on 1/23/24. See Exh. 2, p. 4. The issue on appeal is not whether Appellant would *benefit* from treatment, but whether it is "*medically necessary*" as defined by MassHealth under definitions and criteria set forth in 130 CMR 450.204, 130 CMR 422.431, and Appendix F of the *Dental Manual*, such that MassHealth will cover the cost of care.[3] By disputing the coverage determination, it is the appellant's burden to prove, beyond a preponderance of the evidence, that MassHealth erred in its determination. See Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (Mass. App. Ct. 2007).

Based on a thorough review of evidence, medical documentation, and testimony presented at hearing, Appellant has not met her burden of proof in demonstrating that MassHealth erred in in denying coverage. As stated above, MassHealth only pays for interceptive orthodontic treatment when it will prevent or minimize a developing handicapping malocclusion or will preclude the need for comprehensive orthodontic treatment. See 130 CMR 420.431(C)(2). Neither of the reviewing MassHealth orthodontic consultants found that the proposed treatment would have this effect. See Exh. 2, p. 4. In addition to reviewing the records, Dr. Moynihan conducted an in-person examination of Appellant at hearing. Based on her observations, Dr.

[3] Appellant's representative asserted that MassHealth denied the PA request for "cosmetic reasons." There is no evidence that MassHealth denied the PA request based on "cosmetic reasons." Rather, the denial notice indicates that coverage was denied because the documentation did not show the presence of a condition that met the strict criteria for coverage and thus not medically necessary. Additionally, in her post-hearing submission, Appellant raised concerns that the hearing officer sought to exclude evidence and deter the MassHealth representative from answering questions regarding the beneficial effects that expansion therapy would have on Appellant. A review of the record shows that throughout the hearing, Appellant's mother solicited testimony from Dr. Moynihan, reflecting her opinion that a palate expander would benefit Appellant and that generally, she is in favor of expansion therapy. Such testimony was captured on the record, at multiple times throughout the hearing, and is summarized in this decision. When answering, Dr. Moynihan also clarified that despite benefits of interceptive treatment, MassHealth only deems it medically necessary in extreme and severe cases, none of which Appellant had. The record does reflect that the hearing officer intervened on two occasions, after Appellant's mother posed questions asking for Dr. Moynihan's "medical advice," one of which was regarding her opinion on an alternative non-orthodontic procedure. The hearing officer noted that it was not MassHealth's role to provide medical advice or a second medical opinion, but instead, to explain how MassHealth's regulations and coverage guidelines apply to the facts of this case. Pursuant to MassHealth Fair Hearing Rules, the hearing officer not only has the power, but the duty, to ensure an orderly presentation of the evidence, and to receive, rule on, exclude or limit irrelevant evidence. See 130 CMR 610.065. Exercising this role, the hearing officer sought to redirect the parties when questions sought evidence beyond the scope of the appeal or cumulative evidence already given. Appellant was given substantial leeway to testify, question the witness, and present evidence both during and after hearing. All proper protocols were followed to ensure that the hearing officer renders a "fair, independent, and impartial decision based on the issues and evidence presented at hearing and in accordance with the law, including the MassHealth agency's rules, regulations, and Policy Memoranda." Id.

Moynihan testified that while expansion therapy would benefit Appellant, it would not reduce crowding or correct a developing malocclusion such that it would eliminate her need for comprehensive orthodontic treatment in the future. In addition, the anticipated benefits as noted by the provider, including improvement to condylar development, are not enough to meet MassHealth's steep threshold for medical necessity.

Additionally, the evidence fails to demonstrate that Appellant has any one of the requisite conditions listed under 130 CMR 420.431(B)(2)(b). In conjunction with § 420.431(B)(2)(b), Appendix F § (2)(b) sets forth a non-exclusive list of qualifying conditions that illustrate the severity of malocclusion and traumatic interferences between erupting teeth that must be documented to demonstrate medical necessity. None of the extreme conditions was evident in Appellant's case. For example, the provider's clinical narrative noted the palate expander would help redirect Appellant's ectopic teeth that were "applying their eruptive forces" on the adjacent teeth. On examination, Dr. Moynihan also observed the crowding, but noted it was consistent with normal canine eruption patterns and that there was no evidence that it caused "25% resorption of the root of an adjacent permanent tooth."[4] See Appendix F. Nor was there evidence of crossbite, impaction of an erupting tooth, sign of damage, or any other listed criteria that MassHealth considers for determining medical necessity. See Appendix F, §(2)(b); see also Exh. 7.[5] It is undisputed that Appellant would benefit from treatment. The evidence shows, however, that her condition is not severe enough to be deemed medically necessary under 130 CMR 450.204, coverage under 130 CMR 422.431(B)(2) (incorporating by reference Appendix F of the *Dental Manual*). MassHealth did not err in denying Appellant's prior authorization request.

This appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

[4] Appellant's provider did not comment on the extent of resorption, if any, on the roots of lateral incisors #7 and #10, or whether they would be lost as a result of the eruption progression. See id; see also Exh. 1. In addition, it is irrelevant whether or not the progression of crowding may *eventually* lead to 25% of resorption, as this is anticipatory. Records must show that a 25% loss to the root has already occurred to qualify under MassHealth criteria.

[5] While the clinical narrative notes that Appellant has a "deep anterior overbite" there is no evidence to suggest it was impinging or causing damage to the surrounding tissue to satisfy the standards set forth in 130 CMR 420.431(B)(2)(b) (qualifying conditions include evidence of deep impinging overbite).

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: DentaQuest 1, MA