Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Dismissed; Denied	**Appeal Number:**	2408759
Decision Date:	8/6/2024	**Hearing Date:**	07/10/2024
Hearing Officer:	Christopher Jones		

Appearances for Appellant:
Pro se
[redacted]

Appearance for MassHealth:
Dr. Harold Kaplan

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:	Dismissed; Denied	**Issue:**	Prior Authorization; Orthodontia
Decision Date:	8/6/2024	**Hearing Date:**	07/10/2024
MassHealth's Rep.:	Dr. Harold Kaplan	**Appellant's Reps.:**	Pro se; Grandparents
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

Through a notice dated May 16, 2024, MassHealth denied the appellant's prior authorization request for orthodontia. (See Exhibits 1; 5.) The appellant filed this appeal in a timely manner on May 30, 2024. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request because the submitted records were four years old.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.431, in determining that comprehensive orthodontia is not medically necessary because the appellant does not currently have a Handicapping Labio-Lingual Deviations Score of at least 22 points, or whether the appellant may appeal a 2019 denial pursuant to 130 CMR 610.015.

Summary of Evidence

The appellant's provider submitted a prior authorization request for comprehensive orthodontia on the appellant's behalf on or around April 30, 2024. Submitted with this request was a Dental Claim form dated May 17, 2023, a Handicapping Labio-Lingual Deviations ("HLD") form dated September 27, 2023, and photographs and x-rays dated November 25, 2019. The provider's HLD form identified the appellant as having the auto-qualifying condition: "Impactions where eruption is impeded but extraction is not indicated (excluding third molar)." Otherwise, she found an HLD score of 14 points.

On May 2, 2024, MassHealth's dental administrator DentaQuest, deferred its decision, sending out a notice requesting more recent records. The provider did not provide updated records, and DentaQuest sent out a denial based upon the submitted images. DentaQuest's orthodontist found an HLD score of 10 points and no proof of impaction, based upon the submitted images from 2019.

The appellant's grandparents testified that they were referred to their provider while the appellant was quite young. The appellant has a genetic condition called 22q deletion, which has necessitated six surgeries on her jaw in relation to this condition. The appellant's grandparents felt that this condition should be considered in determining whether the appellant's orthodontia was covered by MassHealth. They testified that the provider told them that the appellant automatically qualified for orthodontia, and so they began treatment right away back in 2019, paying out of pocket. They testified the provider told them MassHealth would reimburse them once they were approved. They testified they were told not to appeal by their provider, and that the provider would take care of the coverage, as it was clear the appellant needed orthodontia and should automatically qualify.

They finally appealed because this was the twelfth denial they have received, and they were told the appellant may need to stay in braces for 10 more years. They have already paid the provider around $10,000 for two rounds of orthodontia. First, the appellant received a palate expander, and she has just completed one round of braces. They were told they would need to pay thousands more to start the third round of treatment, and they wanted an explanation from MassHealth as to when they were going to be reimbursed for all of this expense. They did not have any more specific information regarding when the earlier denials occurred.

Dr. Kaplan, a licensed orthodontist, represented MassHealth at the hearing. He testified that the appellant would not have been eligible for comprehensive orthodontia based upon the submitted images for two reasons. First, in 2019, when the images were taken, she was quite young and did not have her permanent molars and pre-molars. This is a prerequisite for MassHealth to approve comprehensive orthodontia. MassHealth will only cover interceptive orthodontia before the first molars and pre-molars have erupted. Second, Dr. Kaplan testified that he could not tell from the submitted images that any teeth were, in fact, impacted. Given the appellant's age and development at the time, it was possible that the purportedly impacted tooth would still erupt into

the mouth. He testified that MassHealth considers a tooth impacted only where it would never erupt without assistance. If the tooth would erupt out of alignment, it is not impacted. Further, because the appellant started treatment, there is no way to determine whether the tooth was ever truly impacted, especially without updated treatment records from the provider. He testified that the present condition of the appellant's bite might warrant an HLD score of seven, and the purportedly impacted tooth was now in the mouth.

The appellant's grandparents testified were told by the provider that she only sent in the 2019 records because the appellant would not get approved based upon her current teeth, she would only ever get approved based upon her status in 2019. Dr. Kaplan explained that MassHealth might have approved the appellant for the palate expander as interceptive orthodontia in 2019, but it seemed like the provider only ever requested comprehensive orthodontia, and none of the earlier denials were appealed. MassHealth also only approves two years of treatment at the outset, and as far as Dr. Kaplan understood, it would only ever approve a third year to complete treatment.

The appellant's grandparents had many questions about MassHealth's process for reviewing orthodontia claims. It was explained that each prior authorization request is reviewed based upon the documentation submitted with the request. The agency does not compare old requests to new requests. If an appellant has a disagreement with a denial, that denial must be appealed within a specific time limit, otherwise they need to wait to resubmit.

Moving forward, Dr. Kaplan explained that the appellant can still resubmit for orthodontia based upon her 22q deletion diagnosis. This would require the medical team treating her for 22q deletion to write a "Medical Necessity Narrative" detailing the licenses of the clinicians diagnosing the appellant, the diagnosis, that orthodontia would be necessary to treat the diagnosis, and what other steps they may have taken to remedy their concerns.

The appellant's grandparents were shocked that this option had been available throughout the past four years, and that the provider had never asked them to get a letter from the appellant's 22q deletion care team. They also understood that this hearing could not address any dispute they had with their provider, and it was limited to reviewing the timely appealed denial by MassHealth of the specific prior authorization request. DentaQuest does offer a Dental Complaint Form,[1] and this form can be discussed with DentaQuest directly at 800-207-5019.

Findings of Fact

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

1) The appellant's provider submitted a prior authorization request for comprehensive orthodontia on the appellant's behalf on or around April 30, 2024. This request included: a

[1] https://www.masshealth-dental.net/MassHealth/media/Docs/Member-Complaint-Form.pdf

Dental Claim form dated May 17, 2023; an HLD form dated September 27, 2023; and photographs and x-rays dated November 25, 2019. (Exhibit 5, pp. 6, 14-21.)

2) The provider's HLD form identified the appellant as having the auto-qualifying condition "Impactions where eruption is impeded but extraction is not indicated (excluding third molar)." She found an HLD score of 14 points. (Exhibit 5, pp. 15-16.)

3) On May 2, 2024, MassHealth deferred its decision on the prior authorization request, seeking updated clinical records. (Exhibit 5, pp. 4-5.)

4) On May 16, 2024, MassHealth denied comprehensive orthodontia, finding only 10 points on the HLD scale and no proof of impactions. (Exhibit 5, pp.6-9.)

5) This is around the twelfth prior authorization request submitted on the appellant's behalf that has been denied by MassHealth. (Testimony by the appellant's representatives.)

6) The appellant first sought prior authorization for comprehensive orthodontia in 2019 when the appellant did not yet have all of her permanent first molars and pre-molars. (Testimony by the appellant's representatives; testimony by Dr. Kaplan; Exhibit 5, pp. 19-21.)

7) The appellant filed their first appeal on May 30, 2024. (Testimony by the appellant's representatives; Exhibit 2.)

8) At this time, the appellant's HLD score is seven and her purportedly impacted tooth has erupted. (Testimony by Dr. Kaplan.)

Analysis and Conclusions of Law

MassHealth covers orthodontic services when it determines them to be medically necessary. (130 CMR 420.431.) 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.) Pursuant to 130 CMR 420.431(C)(3), MassHealth "pays for comprehensive orthodontic treatment … only when the member has a severe and handicapping malocclusion. The MassHealth agency determines whether a malocclusion is severe and handicapping based on the clinical standards described in Appendix D of the Dental Manual." [2]

[2] The Dental Manual and Appendix D are available on MassHealth's website, in the MassHealth Provider Library. (Available at https://www.mass.gov/lists/dental-manual-for-masshealth-providers, last visited August 1, 2024.) Additional guidance is at the MassHealth Dental Program Office Reference Manual ("ORM"). (Available at https://www.masshealth-dental.net/MassHealth/media/Docs/MassHealth-ORM.pdf, last visited August 1, 2024.)

The regulations do not speak directly to what conditions qualify as "severe and handicapping" except for "cleft lip, cleft palate, cleft lip and palate, and other craniofacial anomalies to the extent treatment cannot be completed within three years."[3] (130 CMR 420.431(C)(3).) Sub-regulatory guidance is provided in the MassHealth Dental Manual and the Office Reference Manual ("ORM"). (See 130 CMR 420.410 (requiring prior authorization for services identified in the Dental Manual and in accordance with procedures laid out in the ORM).) The ORM includes the requirement that providers submit "all applicable completed forms and documentation to DentaQuest for review." The HLD form is included at "Appendix B." (See ORM, Sec. 16.2; App. B.)

The HLD form is a quantitative and objective method for measuring malocclusions. It is used to calculate a single score based on a series of measurements that represent the degree to which a bite deviates from normal alignment and occlusion. MassHealth made a policy decision that a score of 22 or higher signifies a "severe and handicapping malocclusion," ostensibly a medical necessity for orthodontia. Certain exceptional malocclusions are deemed automatically severe and handicapping: "Cleft Lip, Cleft Palate, or other Cranio-Facial Anomaly"; "Impinging overbite with evidence of occlusal contact into the opposing soft tissue"; "Impactions where eruption is impeded but extraction is not indicated (excluding third molars)"; "Severe Traumatic Deviations – This refers to accidents affecting the face and jaw rather than congenital deformity. Do not include traumatic occlusions or crossbites"; "Overjet (greater than 9mm)"; "Reverse Overjet (greater than 3.5mm)"; "Crowding of 10 mm or more, in either the maxillary or mandibular arch (excluding 3rd molars). Includes the normal complement of teeth"; "Spacing of 10 mm or more, in either the maxillary or mandibular arch (excluding 3rd molars). Includes the normal complement of teeth"; "Anterior crossbite of 3 or more maxillary teeth per arch"; "Posterior crossbite of 3 or more maxillary teeth per arch"; "Two or more congenitally missing teeth (excluding third molars) of at least one tooth per quadrant"; "Lateral open bite: 2 mm or more; of 4 or more teeth per arch"; and "Anterior open bite: 2 mm or more; of 4 or more teeth per arch." The HLD form also allows medical providers to explain how orthodontia is medically necessary, despite not satisfying the dental criteria otherwise captured on the form. (See ORM, Sec. 16.2.c.)

The appellant's provider did not submit a current HLD score. The regulations require **prior authorization** for coverage of orthodontia, and that prior authorization exists "only when the member **has** a severe and handicapping malocclusion." (130 CMR 420.410 (emphasis added).) The appellant no longer has a severe and handicapping malocclusion as measured by the HLD form. Dr. Kaplan found an HLD score of seven points and found that the purported impacted tooth was now in the mouth. Therefore, the current prior authorization request cannot be approved, and this appeal is DENIED.

The HLD form includes instructions regarding what qualifies as a "medical necessity narrative":

[3] It is unclear based upon the clinical record if this applied to the appellant's 22q deletion diagnosis.

The medical necessity narrative must clearly demonstrate why comprehensive orthodontic treatment is medically necessary for the patient. 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 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);

v. discuss any treatments for the patient's condition (other than comprehensive orthodontic treatment) considered or attempted by the clinician(s); and

vi. provide any other relevant information from the clinician(s) that supports the requesting provider's justification of the medical necessity of comprehensive 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.

(ORM, App. B, p. 3.)

This decision takes no position as to whether the appellant could be eligible for additional orthodontia based upon a medical necessity narrative from the doctors treating the appellant for

22q deletion. Nor does it make any findings regarding the appropriateness of the appellant's earlier treatment.[4]

The appellant's grandparents testified that they came to the appeal expecting to be reimbursed for all of the orthodontia that they had been told would be covered. They testified that they did not appeal the earlier denials because their orthodontist had told them that she would take care of getting the coverage approved, and that MassHealth would reimburse them once it was.[5] Unfortunately, any appeal of the previous prior authorizations for orthodontia would now be untimely.

The Board of Hearings has limited jurisdiction to address MassHealth action (130 CMR 610.032), and any appeal of those actions must be received by the Board of Hearings "within … **60 days after an applicant or member receives written notice from the MassHealth agency of the intended action**." MassHealth notices are presumed received five business days following the date on the notice unless there is evidence to the contrary.[6] (130 CMR 610.015(B).) There is an extended 120-day timeframe for appeals where MassHealth "fails to act on an application; … fails to act on [a request for services]; … fails to send written notice of the action; or" the date on which it is alleged that a MassHealth employee has coerced or otherwise improperly deterred the member from filing an appeal. (130 CMR 610.015(B)(2).) Appeals must be dismissed where "the request is not received within the time frame specified in 130 CMR 610.015." (130 CMR 610.035(A)(1).)

The appellant's grandparents did not know specifically when the earlier prior authorization claims were denied, but this appeal is certainly untimely in order to reach back to the original 2019

[4] It is worth noting that under the ORM, an initial authorization for treatment covers the placement of braces "and first two (2) years of treatment visits [(8 units) which] will expire 36 months from the date of the authorization." (ORM, Sec. 16.3.) An additional request will be considered for four more unites (one year) of treatment, but it must include "an explanation of why the initially approved units were insufficient and an updated treatment plan for completion of the case." (ORM, Sec. 16.3.)

[5] This decision makes no findings regarding the conversations between the appellant's family and the provider. That said, "[n]o provider may solicit, charge, receive, or accept any money, gift, or other consideration from a member, or from any other person, for any item or medical service for which payment is available under MassHealth, in addition to, instead of, or as an advance or deposit against the amounts paid or payable by the MassHealth agency for such item or service, except to the extent that the MassHealth regulations specifically require or permit contribution or supplementation by the member or by a health insurer." (130 CMR 450.203(A).)

[6] Prior to the Federal Public Health Emergency related to Covid-19 ("FPHE"), this time limit was only 30 days. It was expanded temporarily to 120 days during the FPHE and changed to 60 days at the end of the FPHE. (See EOM 22-10 (Aug. 2022).)

request for coverage. To the extent that the appellant seeks to review the earlier denials, this appeal must be DISMISSED.

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 Jones
Hearing Officer
Board of Hearings

MassHealth Representative: DentaQuest 2, MA