



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

235 Barrett Street

Grafton, WV 26354

February 7, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

_____ for _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 3, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid coverage of Orthodontic Services for your child.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Orthodontic services are covered on a limited basis for Medicaid members less than 21 years of age, whose malocclusion creates a disability and impairs their physical development. Medicaid coverage for orthodontic services is provided based on medical necessity. Medically necessary orthodontic coverage is limited to services for dento-facial anomalies. This excludes impacted teeth, crowding, and cross bites. (West Virginia Provider Manual, Chapter 500, Volume 5, § 524)

Information submitted at your hearing revealed that treatment of your child's current dental condition is not, based on current policy, a matter of medical necessity covered under the agency's Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Agency in denying your dentist's September 21, 2005 request for comprehensive orthodontic treatment.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Lynn Pugh, WVDHHR, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

v.

Action Number 05-BOR- 7043

**West Virginia Department of Health & Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on February 6, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing convened on February 3, 2006 for a timely appeal filed on November 16, 2005.

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau of Medical Services is responsible for the development of regulations to implement Federal and State requirements for the program.

III. PARTICIPANTS: all participated by phone

_____, claimant's mother.

Lynn Pugh, HHR Specialist, BMS, Agency Representative.

Dr. Chris Taylor, Orthodontic Consultant, BMS/DHHR.

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in denying Orthodontic coverage through the Medicaid program?

V. APPLICABLE POLICY:

West Virginia Provider Manual, Chapter 500, Volume 5, § 524

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- E-1 Medicaid Program Instruction, MA-93-57 dated November 8, 1993
- E-2 Medicaid Program Instruction, MA-95-59 dated November 15, 1995
- E-3 Request for Prior Authorization for Comprehensive Orthodontic Treat. 9/21/05
With Dental Pictures, Dr. [REDACTED]
- E-4 Notification of denial 9/29/05
- E-5 Notification of denial (review), 11/1/05

VII. FINDINGS OF FACT:

1) The claimant requested a hearing November 16, 2005 as result of the November 1, 2005 denial of a September 21, 2005 request for orthodontic treatment. A hearing was scheduled for and held February 3, 2006.

2) During the hearing, Exhibits as noted in section VI above were submitted.

3) Testimony was heard from the individuals listed in section III above. All persons giving testimony were placed under oath.

4) Exhibit 3, Request for Prior Authorization for Comprehensive Orthodontic Treatment dated September 21, 2005: Provides a diagnosis of- Class III, div I malocclusion with crowding, overjet and overbite. Recommendation: 1) upper and lower straight wire appliances. 2) MARA functional appliance. 3) Spring/Hawley retention. Signed 9/21/05, Dr Miller.

5) West Virginia Provider Manual, Chapter 500, Volume 5, § 524 states in part: Orthodontic services are covered on a limited basis for Medicaid members less than 21 years of age , whose malocclusion creates a disability and impairs their physical development. All requests for treatment are subject to prior approval review by the Bureau's contracting agency.

6) West Virginia Provider Manual, Chapter 500, Volume 5, § 524 states further: Medically necessary orthodontic coverage is limited to services for dento-facial anomalies. This **excludes** impacted teeth, crowding, and cross bites. The following situations, with supporting documentation, will be considered for coverage:

- Member with syndromes or craniofacial anomalies such as cleft palate, Alperst Syndrome or craniofacial dysplasia
- Severe malocclusion associated with dento-facial deformity. (e.g., a patient with a full cusp Class II malocclusion with a demonstrable impinging overbite into the palate).

VIII. CONCLUSIONS OF LAW:

(1) Policy holds that orthodontic services are covered for children only (under 21) and only on prior approval. Evidence reveals a request for prior approval of orthodontic services was submitted on behalf of the claimant, a minor child, on September 21, 2005.

(2) Medicaid policy provides that medically necessary orthodontic coverage will be limited to dento-facial orthopedic services. This excludes impacted teeth, crowding, and cross-bite cases. Considered for coverage with supporting documentation is cleft palate and other skeletal problems and severe malocclusion associated with dento-facial deformity. Evidence fails to support a finding of "severe" malocclusion, or other skeletal problems. Crowding and overbite are not covered conditions under the Medicaid Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the determination of the Agency in denying Medicaid coverage for comprehensive orthodontic treatment. Evidence presented fails to support a finding that the claimant's condition meets the guidelines for Medicaid covered orthodontic treatment.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 7th Day of February, 2006.

RON ANGLIN
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.