



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 10, 2005

\_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 23, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny coverage of Orthodontic Services for your son.

In arriving at a decision, the State Hearings 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.

Eligibility for the Medicaid program services is determined based on current regulations. One of these regulations reveals that orthodontic services are covered for medically necessary procedures. Medically necessary orthodontic coverage will be limited to dento-facial orthopedic services. This excludes impacted teeth, crowding, and cross bite cases.

The information which was submitted at your hearing fails to demonstrate that orthodontic services for your son are medically necessary.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for Medicaid to cover orthodontic services.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lynn Pugh, BMS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-5756**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 10, 2005 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 was convened on September 23, 2005 on a timely appeal filed May 13, 2005.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

### **III. PARTICIPANTS:**

\_\_\_\_\_, Claimant's mother  
Lynn Pugh, Managed Care Coordinator  
W. Christopher Taylor, D.D.S

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department was correct in their action to deny the Claimant's request for Medicaid to cover orthodontic services.

### **V. APPLICABLE POLICY:**

Medicaid Program Instruction MA-93-57 dated November 8, 1993  
Medicaid Program Instruction MA-95-59 dated November 15, 1995

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Information received from Dr. [REDACTED]
- D-2 Medicaid Program Instruction MA-93-57 dated November 8, 1993
- D-3 Medicaid Program Instruction MA-95-59 dated November 15, 1995
- D-4 New pictures considered by BMS taken on 9/28/05 and accompanying correspondence from W. Christopher Taylor, D.D.S.
- D-5 Original Notification letters dated 4/7/05 and 5/3/05

### **VII. FINDINGS OF FACT:**

- 1) The Claimant requested that Medicaid authorize payment for comprehensive orthodontic treatment and a request for Prior Authorization was submitted to WVMI on or about March 15, 2005.
- 2) On April 7, 2005, the Department, through WVMI, sent a Notice of Initial Denial – Dental Review to the Claimant. This notice states, in pertinent part:

After review of the information provided, it was determined that the requested comprehensive orthodontic services do not meet medical necessity and therefore, cannot be authorized.

- 3) On May 3, 2005, the Department sent a Notice of Preadmission Reconsideration Determination. This reconsideration notice states, in pertinent part:

After review of the information provided for comprehensive orthodontic treatment, the reviewing consultant has affirmed the decision of the original denial for not meeting medical necessity and therefore cannot be authorized.

- 4) Dr. Taylor reviewed the reports from Dr. [REDACTED] (D-1) and testified that the Claimant's over-jet (the distance the upper front teeth are in front of the lower front teeth) measured at four (4) and six (6) millimeters, and the guidelines for consideration of this program require at least a 7 mm overjet. Dr. Taylor noted that the Claimant's eye-teeth are not coming in exactly where they should, and this is causing a crowding problem, but this program does not deem crowding as medically necessary. There is also a noted mild cross-bite in the reports, however, this program excludes Medicaid coverage due to cross-bites.
- 5) [REDACTED] testified that the main problem is that her son's permanent eye-teeth initially started coming in over his baby eye-teeth. The baby eye-teeth were pulled to allow room for his permanent teeth to drop into place but they are coming in on top of the second front tooth. She contends that this pressure is causing her son pain.
- 6) Dr. Taylor testified that crowding does not typically cause pain, but because the x-rays and documentation considered for eligibility are almost 6-months old, he agreed to leave the record open for a period of 30-days so that new pictures could be taken and submitted for a reevaluation.
- 7) The new pictures (D-4) were submitted from Dr. [REDACTED] office and reviewed by Dr. Taylor. Dr. Taylor's November 1, 2005 written decision states, in pertinent part:

After reviewing the information sent, I have not changed my decision. [REDACTED]'s malocclusion does not meet the requirements of the Dept. of Health and Human Resources for orthodontic treatment. The information sent does not indicate that Dr. [REDACTED] believes the crowding of the lower teeth is causing pain.

- 8) Medicaid Program Instruction, MA-95-59 provides the following coverage limitations:
- Cosmetic services will not be covered
  - There is no orthodontic coverage for individuals age 21 and over

Medically necessary orthodontic coverage will be limited to dento-facial orthopedic services. This excludes impacted teeth, crowding, and cross-bite cases. The following will be considered for coverage with supporting documentation:

- Cleft palate and other skeletal problems
- Severe malocclusion associated with dento-facial deformity

### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid Policy provides that medically necessary orthodontic coverage is limited to orthopedic services. This excludes impacted teeth, crowding, and cross-bite cases. Only cleft palate and other skeletal problems, as well as severe malocclusions associated with dento-facial deformity, are considered medically necessary.
- 2) Evidence submitted at, and subsequent to, the hearing reveals that the Claimant's primary orthodontic needs are related to crowding and cross-bite. The evidence fails to demonstrate that the Claimant meets the medically necessary criteria for the Medicaid Program to cover orthodontic treatment.

### **IX. DECISION:**

After reviewing the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the action of the Agency in denying your request for Medicaid to pay for orthodontic services.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10th Day of November, 2005.**

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**Thomas E. Arnett**  
**State Hearing Officer**