



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
PO Box 6165  
407 Main St  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 2, 2008

\_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2008. 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 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.

Eligibility for 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 anomalies. This excludes impacted teeth, crowding and cross bite cases. Situations will be considered for coverage includes severed 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).

Information 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,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Evelyn Whidby, BMS

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 08-BOR-1836**

**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 September 26, 2008 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 26, 2008 on a timely appeal filed August 7, 2008.

**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

Stacy Hanshaw – Bureau of Medical Services

Dr. Chris Taylor - Dental Consultant, Bureau for Medical Services

Presiding at the hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

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

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

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

Dental Manual, Chapter 500, Section 524, Prior Authorization for Orthodontic Services

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

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

- D-1 Dental Manual, Chapter 500, Section 524, Prior Authorization for Orthodontic Services (2 pages)
- D-2 Request for Prior Authorization for Comprehensive Orthodontic Treatment dated April 21, 2008 signed by Dr. \_\_\_\_\_ with three (3) pages of reports and treatment plans.
- D-3 Notice of Denial for Dental Services dated June 13, 2008 sent to Claimant
- D-4 Notice of Denial for Dental Services dated June 13, 2008 sent to \_\_\_\_\_, DDS

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

- 1) Representatives for the Claimant requested that Medicaid authorize payment for comprehensive orthodontic treatment. A Request for Prior Authorization (D2) was submitted to West Virginia Medical Institute (WVMI) on or about April 21, 2008.
- 2) On June 13, 2008 the Department, through WVMI, sent a Notice of Denial for Dental Services to the Claimant (D3) and to \_\_\_\_\_, DDS (D4). This notice states, in part:

A request for prior authorization was submitted for dental services. Based on the medical information provided, the request has been denied.

Reason for Denial: Documentation provided does not indicate medical necessity- specifically: overbite and overjet are less than the requirements.

- 3) The Dental Consultant reviewed reports (D2), photos and X rays from Dr. \_\_\_\_\_ and indicated that he agreed with the referring physician's findings that the

Claimant has a crowding condition caused by a narrow upper arch. There are permanent teeth that have not come through the gums and may have problems doing so due to the narrow opening available. There are several baby teeth that have not fallen out yet. The Dental Consultant's testimony indicates that at this time the claimant does not meet the necessary requirements for coverage as there is no class 2 malocclusion with a demonstrable impinging overbite into the palate.

- 4) Testimony from the Claimant's mother indicates that the Claimant had the baby teeth extracted since the request was submitted. The permanent teeth have not come through yet. Her concern and the orthodontist concern are that these teeth's roots are fully extended and they have not come through the gum. The concern is that due to the narrow arch, there is lack of space for these teeth to erupt and that is why the request for orthodontic services was made.
- 5) The Dental Consultant's testimony indicates that at this time it is too soon to make that determination. He suggests waiting a few months to give the teeth time to erupt through the gums and file another request based on the condition of the teeth and gums at that point.
- 6) Dental Manual, Chapter 500, Section 524, Prior Authorization for Orthodontic Services, 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 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) Medicaid policy provides that medically necessary orthodontic coverage is limited to services for dento-facial anomalies. This excludes impacted teeth, **crowding** and cross bite cases. Only cleft palate and other skeletal problems, as well as severe malocclusions (Class 2) associated with dento-facial deformity, are considered medically necessary. The Class 2 malocclusion must have a demonstrable impinging overbite into the palate.
- 2) Evidence submitted at the hearing fails to demonstrate that the Claimant meets the medically necessary criteria for the Medicaid Program to cover orthodontic treatment. A class II malocclusion with an impinging overbite into the palate is required. Medical reports from Claimant's orthodontist and testimony from the agency's Dental

Consultant and Claimant's mother all confirm that at this time this condition is not present.

- 3) The Department acted correctly in denying the Claimant's request for Medicaid payment of orthodontic services.

**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 the Claimant's 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 2nd Day of October 2008.**

---

**Melissa Hastings  
State Hearing Officer**