



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 26, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 11, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of orthodontic services.

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 orthodontic services under the Medicaid Program is based on current policy and regulations. Some of these regulations state, in pertinent part: 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...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). (Bureau for Medical Services Dental Manual, Chapter 500, Section 524)

The information which was submitted at your hearing revealed that the standards of severe malocclusion were not met, and medical necessity could not be established.

It is the decision of the State Hearings Officer to **uphold** the action of the Department in denying orthodontic services.

Sincerely,

Todd Thornton  
State Hearings Officer  
Member, State Board of Review

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

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

**Claimant,**

**Action Number: 08-BOR-790**

**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 August 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 April 11, 2008 on a timely appeal, filed December 26, 2007.

## II. PROGRAM PURPOSE:

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  
\_\_\_\_\_, Claimant's mother  
Miranda Walker, RN, Bureau for Medical Services  
Dr. Chris Taylor, Orthodontic Consultant, Bureau for Medical Services

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether or not the Department was correct to deny orthodontic services to the Claimant.

**V. APPLICABLE POLICY:**

Bureau for Medical Services Dental Manual, Chapter 500, Section 524

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

**Department's Exhibits:**

D-1 Bureau for Medical Services Dental Manual, Chapter 500, Section 524

D-2 Request for Prior Authorization for Comprehensive Orthodontic Treatment from [REDACTED]  
[REDACTED] DDS, MS, dated November 19, 2007

D-3 Notice of Denial for Dental Services dated December 10, 2007

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) On November 19, 2007, the Claimant's orthodontist submitted a prior authorization request to WVMi (Exhibit D-2) for orthodontic services for the Claimant. The Department denied this request in writing on December 10, 2007 (Exhibit D-3). The reason for denial was provided as follows:

"Orthodontia – Documentation provided does not indicate medical necessity – specifically:

Overbite and overjet are less than the requirements."

- 2) In the Claimant's diagnosis on the prior authorization request (Exhibit D-2), the Claimant's orthodontist stated:

"Prepubertal female with Class II skeletal pattern, Class II Division 1 malocclusion, minimal overbite, moderate overjet, proclined incisors, mild mandibular curve of Spee, posterior right buccal crossbite, mild mandibular crowding"

- 3) The Orthodontic Consultant for the Department testified that, with regard to the malocclusion, the minimum standard to be met is a full cusp, class II malocclusion. This was not what was noted in the diagnosis in Exhibit D-2, and was not shown in the x-rays, models or photographs reviewed by the Orthodontic Consultant for the Department.
- 4) The diagnosis from the Claimant's orthodontist described "minimal overbite" for the Claimant. The Orthodontic Consultant for the Department testified that the overbite must be severe enough that the lower teeth would be touching the tissue on the roof of the mouth, and that this was not demonstrated in any part of the report submitted to him.
- 5) The orthodontist for the Claimant reported a four (4) to six (6) millimeter overjet in the prior authorization request submitted to the Department (Exhibit D-2). The Orthodontic Consultant for the Department stated that this amount of overjet is insufficient; he explained that the minimal amount before review is seven (7) millimeters.
- 6) The Claimant's mother testified that her concern was with the effect the Claimant's teeth was having on her speech. She explained that the Claimant speaks with her tongue out of her mouth. The Orthodontic Consultant for the Department explained that speech problems are not always related to dental or orthodontic issues, and noted that the report from the Claimant's orthodontist made no mention of speech problems.

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

- 1) Bureau for Medical Services Dental Manual, Chapter 500, Section 524 states, in pertinent 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. Medicaid coverage for orthodontic services is provided based on medical necessity. However, because a member meets criteria submitted for consideration, does not mean that coverage is automatic. All requests for treatment are subject to prior approval review by the Bureau's contracting agency. Treatment is routinely accomplished through fixed appliance therapy and maintenance visits.

NOTE: Orthognathic surgical procedures associated with orthodontic treatment will be covered even if the member exceeds 21 years of age if the needed surgery is documented in the original orthodontic request and is requested before the member becomes 21 years of age.

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).”

The Department’s Orthodontic Consultant confirmed that medical necessity was not established to the required extent in the areas of malocclusion, overbite, or overjet. The action of the Department to deny orthodontic services due to the failure to meet medical necessity was correct.

**IX. DECISION:**

It is the decision of the State Hearings Officer to **uphold** the action of the Department to deny orthodontic services.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of August, 2008.**

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**Todd Thornton**  
**State Hearings Officer**