



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor
October 16, 2008

Martha Yeager Walker
Secretary

_____ 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 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 is based on current policy and regulations. Some of these regulations state as follows: 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. (Chapter 500, Dental Services Manual Volume 5, Section 524, Prior Authorization – Orthodontic Services).

The information submitted at your hearing revealed: Your son did not meet the West Virginia Medicaid Program criterion for orthodontic services.

It is the decision of this State Hearing Officer to **uphold** the **action** of the Department to **deny** prior authorization.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Chairman, State Board of Review, Lorna Harris, BMS

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

_____,

Claimant,

v.

Action Number: 08-BOR-1738

**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 July 1, 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
_____, Claimant's mother
_____, Claimant's father

Stacy Hanshaw, Bureau for Medical Services (BMS), by telephone
Dr. Chris Taylor, DDS – Dental Consultant for the Bureau for Medical Services, by telephone

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Did _____ meet the eligibility criteria for orthodontic services?

V. APPLICABLE POLICY:

Chapter 500, Dental Services Manual Volume 5, Section 524, Prior Authorization – Orthodontic Services.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-A Chapter 500, Dental Services Manual Volume 5, Section 524, Prior Authorization Orthodontic Services
- D-B Request for Prior Authorization for Comprehensive Orthodontic Treatment dated April 17, 2008 and supporting forms
- D-C Notice of Denial Determination by WVMI dated April 30, 2008 issued to Provider and Claimant, and Notice of Pre-admission Reconsideration denial dated May 27,

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant is a thirteen year old male with a clinical diagnosis on the Request for Prior-Authorization form (D-B) of Class II malocclusion with 100% overbite, and rotated maxillary incisors.
- 2) A WVMI Medicaid Request for Prior Authorization for Comprehensive Orthodontic Treatment Authorization Request Form was completed by the Claimant's dentist and dated April 17, 2008 (D-B).
- 3) Chapter 500, Dental Services Manual Volume 5, Section 524, Prior Authorization for Orthodontic Services (D-1) 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. 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).

- 4) The WVMI reviewed the request for dental services and submitted a Notice of Denial to the Claimant and her Dentist on April 30, 2008 (Exhibit D-C). The reasons for the denial state 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: Orthodontia – Documentation does not indicate medical necessity – specifically: Overbite and overjet are less than the requirements.

The Claimant requested a reconsideration of this decision. WVMI reviewed the evidence and again determined the Claimant was not eligible. WVMI sent the Claimant a second notice dated May 27, 2008 which included the following pertinent information:

WVMI received your request for reconsideration of the initial denial of authorization for the above listed patient. After due consideration of all relevant factors including documentation in the medical record and any additional information provided, WVMI upheld the initial denial..

After review of the information provided for comprehensive orthodontic treatment, codes D8090 and

D8680, the reviewing consultant has affirmed the decision of the original denial for not meeting medical necessity and therefore cannot be authorized.

- 5) Testimony from the Dental Consultant revealed that he reviewed a written report, models, photos and x-rays of the Claimant's dental area, and determined the Claimant has a Class II Malocclusion on the left side with a 50% overbite, a rotated maxillary incisor, and no impinging overbite. The Consultant reports that the Claimant does not have a full cusp class II malocclusion as required in policy, and the rotated incisor tooth is considered the same as "crowding" and not covered. He added that based on his experience and the programs' criteria, the Claimant did not qualify for dental services. This is considered reliable testimony.
- 6) Testimony from the Claimant's witnesses shows that the Claimant has some emotional issues as a result of this condition. He never smiles or wants to take pictures, and has low self esteem. The Claimant indicated that "people make fun of him".

VIII. CONCLUSIONS OF LAW:

- 1) The policy 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." "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)."
- 2) The Claimant is less than 21 years of age. The Claimant has a Class II malocclusion on the left side, a rotated incisor, and no impinging overbite. The Claimant would need a full cusp Class II malocclusion with impinging overbite to meet guidelines. His malocclusion is not that severe.
- 3) The documentation and medical testimony do not support the fact that the Claimant's need for dental services creates a disability or impairs his physical development.

IX. DECISION:

It is the decision of this State Hearing Officer to **uphold** the **action** of the Department to **deny** prior authorization for orthodontic services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of October, 2008.

**Cheryl Henson
State Hearing Officer**