



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

April 23, 2009

c/o -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 9, 2009. 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. Among the situations considered for coverage are severe malocclusions associated with dento-facial deformity. (Bureau for Medical Services Dental Manual, Chapter 505, Section 505.8)

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
Lorna Harris, Department Representative

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

-----,

Claimant,

v.

Action Number: 08-BOR-2476

**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 April 23, 2009 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 January 9, 2009 on a timely appeal, filed November 21, 2008.

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's mother

-----, 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. QUESTION TO BE DECIDED:

The question 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 505, Section 505.8

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Bureau for Medical Services Dental Manual, Chapter 505, Section 505.8

D-2 Request for Prior Authorization for Comprehensive Orthodontic Treatment from -----, DMD, MS, dated November 7, 2008

D-3 Notice of Denial for Dental Services dated November 17, 2008

VII. FINDINGS OF FACT:

- 1) On November 7, 2008, the Claimant's orthodontist submitted a prior authorization request to WVMJ (Exhibit D-2) for orthodontic services for the Claimant. The Department denied this request in writing on November 17, 2008 (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:

Class II Malocclusion with increased overjet and overbite. Convex profile with hyper Divergent MP, crowding. Retrocline upper and lower incisors.

- 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 with an impinging overbite into the palate. The diagnosis in Exhibit D-2 noted a Class II malocclusion, but the Orthodontic Consultant for the Department noted that it was not with an impinging overbite. His testimony described the Claimant's overbite as a slight Class II, barely away from a Class I, which he indicated to be the ideal molar relationship.

- 4) The orthodontist for the Claimant reported a five (5) 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 was insufficient; he explained that the minimal amount before review is seven (7) millimeters.
- 5) The Claimant's mother testified that her concerns were how the Claimant's teeth are affecting his self-esteem among peers, and that his teeth do not appear to be proportioned correctly, and that his eating is affected adversely. The Department noted that they can only consider medical necessity for the services in making their decision.

VIII. CONCLUSIONS OF LAW:

- 1) Bureau for Medical Services Dental Manual, Chapter 505, Section 505.8 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 neither the degree of malocclusion nor overjet necessary to establish medical necessity for orthodontic services was met. 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 April, 2009.

**Todd Thornton
State Hearings Officer**