



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

Martha Yeager Walker
Secretary

May 27, 2009

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 15, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny coverage of orthodontic services for your foster daughter, -----.

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 daughter 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 of orthodontic services for your foster daughter.

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: 09-BOR-739

**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 May 15, 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 May 15, 2009, on a timely appeal filed February 20, 2009.

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 foster mother
-----, Claimant
-----, Claimant's foster father
----, [REDACTED] Claimant's foster care therapist

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

It should be noted that the Department participated 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 Chapter 505, Section 505.8, Prior Authorization – Orthodontic Services.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-A Chapter 500, Dental Services Manual Chapter 505, Section 505.8, Prior Authorization Orthodontic Services
D-B Information received from [REDACTED] DDS
D-C Notice of Denial Determination by WVMI dated January 9, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant is a fifteen year old female with a clinical diagnosis on the Request for Prior-Authorization form (Department's Exhibit B) of Class II Malocclusion with 3-4 millimeter overjet and minor crowding.

- 2) A WVMi Medicaid Request for Prior Authorization for Comprehensive Orthodontic Treatment Authorization Request Form was completed by the Claimant's dentist and dated December 30, 2008. (Department's Exhibit B)
- 3) Chapter 500, Dental Services Manual Chapter 505, Section 505.8, Prior Authorization for Orthodontic Services (D-A) 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 January 9, 2009. (Department's Exhibit C) The reason for the denial 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: Orthodontia – Documentation does not indicate medical necessity – specifically: Overbite and overjet are less than the requirements.

- 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 (Department's Exhibit B) the Claimant has a Class II Malocclusion with 3-4 millimeter overjet and minor crowding. The Claimant would need a full cusp Class II Malocclusion in order to meet the criteria, and at least a 7 millimeter overjet. He found she has a 50% overbite;

however, this also does not meet the criteria because she would need a deep impinging over-bite. The crowding is not considered for the program.

- 6) The Claimant's mother stated that the Claimant is ridiculed in school and called "rabbit teeth" by the children. She also stated that her teeth touch her glass when she drinks, and she drools in her sleep. She also has headaches. She provided no other evidence to support this claim, and the referring dentist failed to include anything of that nature in his report. The Dental Consultant stated that although complaints of pain and other difficulties could make a difference in his evaluation, unfortunately he did not have evidence of this at the time of evaluation; therefore they could not be considered for this particular request for services. .

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 with a 3-4 millimeter overjet, and crowding of teeth. She has a 50% overbite. The Claimant would need a full cusp Class II malocclusion with impinging overbite to meet guidelines. Her malocclusion is not that severe. Although testimony from the Claimant's mother indicates that she has pain as a result of her condition, no evidence was provided to support her claim. The referring dentist failed to provide this information for review.
- 3) The documentation and medical testimony do not support the fact that the Claimant's need for dental services creates a disability or impairs her 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 27th Day of May, 2009

**Cheryl Henson
State Hearing Officer**