State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 4, 2009

-------for

Dear -------:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 29, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid payment for Orthodontic Services.

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 the Medicaid program services is determined based on current regulations. One of these regulations state that orthodontic services are covered on a limited basis for Medicaid members whose malocclusions create a disability and impairs their physical development. Medicaid coverage for orthodontic services is provided based on medical necessity and is limited to dento-facial anomalies. This excludes impacted teeth, crowding, and cross bite cases. (WV Medicaid Policy Manual, Chapter 500, Section 505.8 Prior Authorization-Orthodontic Services).

The information submitted at your hearing fails to demonstrate that orthodontic services for your daughter 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 payment of orthodontic services.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lorna Harris, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-------,

Claimant,

v. **Action Number: 09-BOR-845**

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 June 4, 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 originally scheduled to convene on April 17, 2009 but was rescheduled and convened on May 29, 2009 on a timely appeal filed March 10, 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 mother/representative
Cindy Knighten, RN, BMS (Bureau for Medical Services)
W. Christopher Taylor, D.D.S, Orthodontic Consultant for BMS

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated via a telephonic conference call.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's request for Medicaid payment of orthodontic services.

V. APPLICABLE POLICY:

WV Medicaid Provider Manual, Chapter 500 (Covered Services, Limitations and Exclusions), Section 505.8 (Prior Authorization- Orthodontic Services)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit A	Dental Manual, Chapter 500, Section 505.8 Prior Authorization-Orthodontic Services – Pages 1-2
Exhibit B	Information received from [redacted] DDS – Pages 3-4
Exhibit C	Notice of Denial Determination by WVMI – Pages 5-6

VII. FINDINGS OF FACT:

1) On December 18, 2008, Dr. [redacted] D.D.S., completed a Request for Prior Authorization for Comprehensive Orthodontic Treatment Form (Exhibit B, pages 3 & 4) on behalf of the Claimant and submitted it to the West Virginia Medical Institute (WVMI) to determine eligibility for Medicaid payment.

2) On or about December 29, 2008, the Claimant and Dr. [redacted] were notified via a Notice of Denial for Dental Services (Exhibit C, pages 5 & 6) that the request for Medicaid payment of orthodontic (dental) services was denied. This notice states, in pertinent 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 provided does not indicate medical necessity – specifically:
>
> Overbite and overjet are less than the requirements.

3) Dr. Taylor purported that he reviewed x-rays, a written report, photographs and pictures of the models from impressions taken during an evaluation of the Claimant. He indicated that he agreed with the written report and noted the Claimant has a Class II malocclusion (the upper molars are aligned a little forward of where they should with the lower molars, approximately 1mm). This, however, does not meet the criteria as the individual must have a Full Cusp Class II malocclusion (molars must be 4mm to 5mm forward of where they are supposed to be). The overbite must be impinging into the palate (bottom front teeth must touch, or impinge, the tissue behind the upper front teeth) and the photographs as well as impressions do not show this condition. The Claimant's overjet (distance front teeth jet out over the lower front teeth) is documented at 5mm but in order to qualify for medical necessity, the overjet must be 7mm or greater. Dr. [redacted] testified that the medical documentation submitted fails to demonstrate medical necessity in any of the areas an individual can be determined eligible for Medicaid payment of orthodontic services.

4) The Claimant's representative testified that she was advised by her daughter's orthodontist that her daughter's condition is only going to get worse. She expressed frustration regarding why treatment would not be approved now if her daughter's condition is only going to deteriorate. She further stated that she was told by an individual at Dr. [redacted] office that a prior authorization request that is initially denied is usually approved after a subsequent request. For these reasons, the Claimant's representative questioned why her daughter should have to wait for orthodontic treatment she needs.

5) Dr. Taylor testified that he is unable to determine, based on the clinical information reviewed, that the Claimant's condition is going to get worse. He further testified that there is no limit to the number of times an individual can apply for Medicaid payment of orthodontic services and indicated that if a future prior authorization request meets the eligibility criteria, approval would be granted. He also noted that if the medical necessity criterion is not met, the case would be denied. Approval cannot be based on developmental speculation but must be based on current diagnostic findings that meet the medical necessity criterion.

6) The WV Medicaid Provider Manual, Chapter 500 (Covered Services, Limitations and Exclusions), Section 505.8 (Prior Authorization-Orthodontic Services):

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 dyplasia

- 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).

Attachment 2 contains the form to request prior authorization for orthodontic services. This form is different from the authorization form for general dentistry. Supporting documentation must be submitted with the treatment request. Failure to submit any of the following information will result in a denial of the request for prior approval of orthodontic services:

- Panoramic Film

- Cephalometric Tracing

- Cephalometric X-ray

- Photographs - Intra and Extra Oral

- Treatment Plan, including findings, diagnosis, prognosis, length of treatment, and phases of treatment

- Upper and lower study casts trimmed to the correct occlusion. Failure to trim study casts to correct occlusion will delay decision.

The completed form and any supporting documentation must be sent to the BMS contracted agency.

Comprehensive orthodontic treatment is reimbursable only once in the member's lifetime. If treatment is discontinued or the patient transfers before completion of orthodontics, payment for the uncompleted portion must be returned to the BMS. A provider who accepts a transfer patient must complete a prior authorization request for continuing the previously initiated orthodontic treatment, and submit it to the BMS contracted agency.

If an eligible member under 21 years of age moves to WV from another State while undergoing active orthodontic treatment, a WV provider may request prior authorization to provide the balance of the treatment.

WV Medicaid does not cover orthodontic services for cosmetic purposes.

VIII. CONCLUSIONS OF LAW:

1) Medicaid Policy provides that orthodontic services are covered on a limited basis for Medicaid members whose malocclusions create a disability and impairs their physical development. Medicaid coverage for orthodontic services is provided based on medical necessity and is limited to dento-facial anomalies. This excludes impacted teeth, crowding, and cross bite cases. Only Medicaid eligible individuals with syndromes or craniofacial anomalies such as cleft palate, Alperst Syndrome or craniofacial dyplasia OR 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) will be considered for coverage.

2) A thorough review of the clinical evidence, as well as testimony received at the hearing, clearly indicates that the Claimant's current condition fails to meet the level of severity required to demonstrate medical necessity. Based on the evidence, the Department was correct in denying Medicaid payment for orthodontic treatment.

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 payment of orthodontic services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of June, 2009.

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Thomas E. Arnett
State Hearing Officer