



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

November 4, 2010

-----**For:**-----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 17, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of orthodontic services for -----.

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. These regulations provide that 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 upon medical necessity (Dental Services Manual §505.8).

The information submitted at your hearing failed to demonstrate the medical necessity of orthodontic services.

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

Sincerely,

Stephen M. Baisden  
State Hearings Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Amy Workman, WV Bureau of Medical Services

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

-----,  
Claimant,

v.

**Action Number: 10-BOR-1324**

**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 November 4, 2010 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 17, 2010 on a timely appeal filed May 17, 2010.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is 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 Representative and Mother

Robin Brock, WV Bureau of Medical Services

Chris Taylor, DDS, Orthodontic Consultant to the WV Bureau of Medical Services

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the Board of Review.

This hearing took place via telephone conference call.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to deny Claimant orthodontic services.

**V. APPLICABLE POLICY:**

Dental Services Manual §505.8

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

**Department's Exhibits:**

- D-1 WVDHHR Medicaid Policy Manual §505.8
- D-2 Prior Authorization Request Form dated April 22, 2010
- D-3 Denial Notification Letters to Claimant and [REDACTED] DDS, dated May 10, 2010

**VII. FINDINGS OF FACT:**

- 1) Dental Services Manual § 505.8 (Exhibit D-1) 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.

...

Medically necessary orthodontic coverage is limited to services for dento-facial anomalies. 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. full cusp Class II malocclusion with demonstrable impinging overbite into the palate).

- 2) A request for prior authorization for approval of orthodontic services for Claimant was submitted by [REDACTED] DDS, to the West Virginia Medical Institute (WVMI) on April 22, 2010. (Exhibit D-2.) On the "Complete Diagnosis" section of the request, it is written, "Class III mild mx (maxillary or upper teeth) arch spacing, mild md (mandibular or lower teeth) arch crowding." On the "Current Treatment Status" section, it is written, "Initial Records." On the "Recommendations for Treatment" section of the request, it is written, "Mx/md arch braces, retainers." On page 2 of the request, the "Information Required for Assessing Handicapping Malocclusion Section" reports that Claimant had an overjet of 2 millimeters, an overbite of 2 millimeters, the Molar Relationship is rated at Class III for both the left and right side, the Skeletal Relationship is checked at level I, there are no missing or impacted teeth, no crowding for the maxillary teeth, a 3 millimeter crowding for the mandibular teeth, no cleft palate, no crossbites, no open bites, and nothing written in the "Comments" section.
- 3) A denial notification letter (Exhibit D-3) was issued by the Department on May 10, 2010 which read in part:

Orthodontia - documentation provided does not indicate medical necessity – specifically: Requests . . . have been denied due to [the fact that] overbite and overjet are less than the requirements.
- 4) Department's witness and orthodontic consultant for the WV Medical Institute testified that he reviewed the dental models, photographs and x-rays taken of the Claimant, and he agreed with Dr. [REDACTED] examination findings. He testified to the reason for the denial of orthodontia for Claimant. According to the authorization request form and accompanying medical documentation from Dr. [REDACTED] Claimant's diagnoses are a Class III malocclusion with upper spacing and lower crowding. He testified that Claimant's overjet was rated at 2 millimeters and her overbite at 2 millimeters, and that she had a Class I skeletal relationship. He testified that he agreed with the assessment of a Class III malocclusion, but that does not meet the definition of a severe dento-facial deformity. He testified that a Class I skeletal relationship is normal. He stated that an overjet of 2 millimeters is within normal limits. Claimant's overbite was at 2 millimeters, and her lower teeth do not touch the upper palate of the mouth. He added that in order to be medically eligible for orthodontics, the overbite would have to be 100% with palatal impingement, which means the lower front teeth must go up behind the upper front teeth and touch the tissue in the palate, causing discomfort or a malocclusion.
- 5) Claimant's representative and mother testified that Claimant had worn braces in the past, and she was ready for the second phase of her orthodontic treatment. She testified that because Claimant had received some orthodontic treatment, that was why she did not have the required measurements to qualify under WV Medicaid's orthodontic requirements. She stated that if the orthodontic consultant could see the measurements from before she had started orthodontic treatments, he would reach a different conclusion. She added that she felt she was being punished for having taken good care of her daughter's dental health when her family was in a better financial position. She offered no substantive rebuttal to Department's testimony or evidence.

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

- 1) The medical evidence presented failed to show a severe dento-facial deformity as required by policy. Claimant's Class III Malocclusion is not severe enough to be considered a dento-facial deformity, her skeletal relationship and overjet are within normal limits, and her overbite is less than the requirements.
- 2) Claimant does not meet the criteria for the medical necessity of orthodontic services.

#### **IX. DECISION:**

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

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 4<sup>th</sup> day of November 2010.**

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**Stephen M. Baisden**  
**State Hearing Officer**