



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

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

August 3, 2010

-----for  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 23, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid payment for your son's 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 son 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 for your son.

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: 10-BOR-1408**

**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 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 convened on July 23, 2010 on a timely appeal filed May 28, 2010.

**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 Representative/Mother  
Robin Brock, 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. QUESTION 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 1 | Dental Manual, Chapter 500, Section 505.8 Prior Authorization-Orthodontic Services – Pages 1-2 |
| Exhibit 2 | Information received from [REDACTED] D.D.S., M.S. – Pages 3-4                                  |
| Exhibit 3 | Notice of Denial Determination by WVMI (March 1, 2010) – Pages 5-6                             |

#### **VII. FINDINGS OF FACT:**

- 1) On February 11, 2010, Dr. [REDACTED] D.D.S., M.S., completed a Request for Prior Authorization for Comprehensive Orthodontic Treatment Form (Exhibit 2, 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 March 1, 2010, the Claimant and Dr. [REDACTED] were notified via a Notice of Denial for Dental Services (Exhibit 3, pages 5 & 6) that the request for Medicaid payment of orthodontic 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:

Requested code of D8090 and D9680 cannot be approved due to overbite and overjet are less than the requirements.

- 3) The Claimant's representative testified that the dentist expressed concern about the growth of the lower jaw and has been told that if this is not corrected now, it will only get worse.
- 4) The Department's witness, Dr. Christopher 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 slight Class III malocclusion (the upper molars are aligned a little behind of where they should meet with the lower molars). 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 Claimant's overbite was measured at 3mm and this distance, according to Dr. Taylor, is in the average range. The overbite must be impinging into the palate (bottom front teeth must touch, or impinge the tissue behind the upper front teeth) in order to qualify medically. The Claimant's overjet (distance front teeth jet out over the lower front teeth) is documented at 2mm and Dr. Taylor testified that this distance is also in the normal range. In order to qualify for medical necessity, the overjet must be 7mm or greater. Dr. Taylor noted the concerns related to the hyperdivergent growth pattern but indicated there is no guarantee the Claimant's condition will get worse. If the Claimant's condition continues to get worse, a new request for orthodontia services can be completed and a new evaluation done. Dr. Taylor testified that the medical documentation submitted for this evaluation fails to demonstrate medical necessity in any of the areas an individual can be determined eligible for Medicaid payment of orthodontic services.
- 5) 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 dysplasia 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 \_\_\_\_ Day of August, 2010.**

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**Thomas E. Arnett  
State Hearing Officer**