



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

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph. D.  
Cabinet Secretary

February 24, 2011

-----for -----

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your daughter's hearing held December 17, 2010. Your hearing request was based on the Department of Health and Human Resources' denial of orthodontia.

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 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, §505.8)

The information which was submitted at your hearing revealed that the standards of severe malocclusion were not met, and medical necessity for orthodontia could not be established.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying orthodontia.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Amy Workman, Department Representative

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

-----,

**Claimant,**

**v.**

**Action Number: 10-BOR-2097**

**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 February 24, 2011 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 December 17, 2010 on a timely appeal, filed October 19, 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 mother  
Robin Brock, Department Representative  
Dr. Chris Taylor, Department's witness

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 orthodontia to the Claimant.

**V. APPLICABLE POLICY:**

Bureau for Medical Services Dental Services Manual, Chapter 505, §505.8

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

**Department's Exhibits:**

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

D-2 Request for Prior Authorization for Comprehensive Orthodontic Treatment from [REDACTED]  
[REDACTED] DMD, MS, dated October 4, 2010

D-3 Notice of Denial for Dental Services dated October 9, 2010

**VII. FINDINGS OF FACT:**

- 1) On October 4, 2010, the Claimant's orthodontist submitted a prior authorization request (Exhibit D-2) to the Department for orthodontia for the Claimant. This request was denied in writing on or about October 9, 2010 (Exhibit D-3). The reason for denial was provided in this notice as follows, in pertinent part:

Documentation provided does not indicate medical necessity – specifically:

The overbite and overjet are less than requirements.

- 2) Robin Brock, representative for the Department's Bureau for Medical Services, presented the appropriate policy as 1) Bureau for Medical Services Dental Manual, Chapter 505, §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).

- 3) Dr. Chris Taylor, Orthodontic Consultant for the Department, testified that he reviewed the prior authorization request for orthodontia (Exhibit D-2) for the Claimant, as well as photographs, x-rays, and models of the Claimant's teeth. He noted that the request listed the Claimant's overjet as 4mm, and that the minimum overjet to establish medical necessity is 7mm. He noted that the Claimant was diagnosed as having a Class I malocclusion, which he described as a normal molar relationship. He testified that the Claimant's overbite was listed as 5%, and that some overbite is normal, but that the guidelines of "impinging overbite into the palate" were not met from the models of the Claimant's teeth that he reviewed. He testified that these areas were not indicative of medical necessity for orthodontic services.
- 4) The Claimant's mother testified that the Claimant was approved previously for orthodontia, and did not understand why she could not be approved with this request. Dr. Taylor testified that he could not explain without reviewing the previous request, but did note that children grow and change, and that the Claimant could have improved in the interim.

**VIII. CONCLUSION OF LAW:**

- 1) The Department's Orthodontic Consultant confirmed that neither the malocclusion classification, nor the extent of overjet, nor the guidelines for overbite indicative of medical necessity for orthodontia were met. The action of the Department to deny orthodontia due to the failure to establish medical necessity was correct.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny orthodontia.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of February, 2011.**

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**Todd Thornton**  
**State Hearing Officer**