



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

Earl Ray Tomblin
Governor

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

March 9, 2011

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 4, 2011. 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. Some of these regulation state that a request for prior authorization is reviewed by the Utilization Management Contractor (UMC). It is the responsibility of the treating/prescribing practitioner to submit the appropriate Prior Authorization Request Form with medical documentation to the UMC. When a request for service is denied based on medical necessity, the denial is communicated with the reason(s) of denial to the provider of service and the member or their legal guardian by the UMC.

The information submitted at your hearing fails to demonstrate that orthodontic services 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 to cover orthodontic services.

Sincerely,

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

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

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

-----,

Claimant,

v.

Action Number: 11-BOR-410

**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 March 4, 2011 on a timely appeal filed January 7, 2011.

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, 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 telephone conference call.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether 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 505 (Covered Services, Limitations and Exclusions), Section 505.8 (Prior Authorization)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Dental Manual, Chapter 505, Section 505.8 Prior Authorization-Orthodontic Services – Pages 1-2
- D-2 Information received from [REDACTED] DDS, MS – Pages 3-4
- D-3 Notice of Denial Determination by WVMI dated December 20, 2010 – Pages 5-6

VII. FINDINGS OF FACT:

- 1) On December 2, 2010, [REDACTED] D.D.S., M.S., completed a Request for Prior Authorization for Comprehensive Orthodontic Treatment Form (D-2, pages 3 & 4) on behalf of the Claimant and submitted it to the West Virginia Medical Institute (WVMI), the Utilization Management Contractor (UMC), to determine eligibility for Medicaid payment of orthodontic services.
- 2) On or about December 20, 2010, the Claimant and Dr. Weidman were notified via a Notice of Denial for Dental Services (D-3, pages 5 & 6) that the request for Medicaid payment of orthodontic (dental) services was denied. This notice states, in pertinent part:

Reason for Denial: Documentation provided does not indicate medical necessity – specifically:

Requested codes of D9090 and D8680 have been denied due to overbite is less than the requirements. Molar relationship is less than a full cusp class II from normal.

- 3) The Department's Bureau for Medical Services (BMS) representative reviewed applicable policy (Exhibit D-1) and called upon Dr. W. Christopher Taylor, D.D.S., an orthodontic consultant employed by WVMI, to explain how the medical findings apply to policy. Dr. Taylor testified that he reviewed x-rays, a written report, photographs and models from impressions taken during an evaluation of the Claimant. He indicated that he agreed with the diagnoses included on the written report, but noted that these findings are all within normal limits. Eligible individuals must have full cusp Class II malocclusion (molar misalignment by one full tooth when comparing top to bottom), a demonstrable impinging overbite into the

palate, or have a severe malocclusion that creates a disability/functional impairment. Dr. Taylor noted that a Skeletal Class 1 is within the normal range and a Class II malocclusion means the upper molars are aligned a little forward of where they should with the lower molars. 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 5.5mm but in order to qualify for medical necessity, the overjet must be 7mm or greater. There is evidence of crowding on the top and bottom but this is a cosmetic problem which is not considered for medical necessity. Dr. Taylor 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, expressed concern about the amount of crowding with her son's upper and lower teeth. As a matter of record, -----acknowledged that while her son's front lower teeth sometimes hit the back of his front upper teeth, there is no palatable impingement. She contends that orthodontic services are designed to correct crowding and that it should not be considered cosmetic for children who do not want to wear braces.
- 5) The WV Medicaid Provider Manual, Chapter 505 – Covered Services, Limitations, And Exclusions for Dental, Orthodontic and Oral Health Services, Section 505.8 (Prior Authorization), states that prior authorization is reviewed by the Utilization Management Contractor (UMC). It is the responsibility of the treating/prescribing practitioner to submit the appropriate Prior Authorization Request Form with medical documentation to the UMC. When a request for service is denied based on medical necessity, the denial is communicated with the reason(s) of denial to the provider of service and the member or their legal guardian by the UMC.

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid Policy provides that prior authorization is reviewed by the Utilization Management Contractor (UMC) and it is the responsibility of the treating/prescribing practitioner to submit the appropriate Prior Authorization Request Form with medical documentation to the UMC. When a request for service is denied based on medical necessity, the denial is communicated with the reason(s) of denial to the provider of service and the member or their legal guardian by the UMC. Orthodontic services are covered on a limited basis for Medicaid members whose malocclusions create a disability and impair their physical development. Medicaid coverage for orthodontic services is limited to 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). This excludes impacted teeth, crowding, and cross bite cases.
- 2) A review of the clinical evidence, as well as testimony received at the hearing, clearly indicates that while the Claimant would benefit from orthodontic services, his condition fails to meet the level of severity required to demonstrate medical necessity.
- 3) 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 March, 2011.

Thomas E. Arnett
State Hearing Officer