



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

Earl Ray Tomblin  
Governor

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

April 1, 2011

-----For: -----

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of orthodontic services for your daughter -----.

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-2228**

**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 April 1, 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 March 25, 2011 on a timely appeal filed November 9, 2010. This hearing originally was scheduled for January 14, 2011, but was rescheduled at Claimant's request.

**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 October 21, 2010

D-3 Denial Notification Letters to Claimant and [REDACTED] DDS, dated October 25, 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. 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. 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 October 21, 2010. (Exhibit D-2.) On the “Complete Diagnosis or Remarks” section of the request, it is written, “Mandibular retentive appliance missing, for maintenance of dentition.”
  - 3) A denial notification letter (Exhibit D-3) was issued by the Department on May 10, 2010 which read in part:
 

Documentation provided does not indicate medical necessity – specifically:  
The patient’s orthodontic treatment was not covered by D.H.H.R.
  - 4) Department’s witness and orthodontic consultant for the WV Medical Institute testified that Claimant’s dentist requested a mandibular (lower teeth) retainer. He testified that Claimant’s orthodontic treatment was not provided by the Department, and as such he had to evaluate the photographs, x-rays and models provided by Claimant’s dentist to determine if her malocclusion met the requirements the Department has for treating orthodontic cases. He stated that Claimant’s bite was good, and her molar relationships were normal. He testified that in order to qualify for orthodontic services, her overbite would have to be so severe that her lower front teeth would touch the tissue behind her upper front teeth. He added that Claimant has a slight overbite, but not nearly that severe.
  - 5) Claimant’s representative and mother testified that she understood the reason for the denial but that her daughter plays the clarinet and she was concerned that the pressure on her daughter’s front teeth from playing this instrument could cause a worsening of her daughter’s tooth alignment. She did not provide substantial rebuttal to the Department’s evidence and testimony.

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

- 1) Claimant’s previous orthodontic care was not done under WV Medicaid. Therefore, WVMI’s orthodontic consultant had to review the request based on Claimant’s current dental condition and not her dental condition at the time that her orthodontic treatment was initiated. As such, the medical evidence presented failed to show a severe dento-facial deformity as required by policy.
- 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 1<sup>st</sup> day of April 2011.**

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**Stephen M. Baisden  
State Hearing Officer**