



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

January 27, 2012

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your daughter's hearing held January 6, 2012. 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 that medical necessity review criteria may be based on adaptations of dental standards developed by the Periodicity and Anticipatory Guidance Recommendations by the American Academy of Pediatric Dentistry (AAPD), the American Academy of Pediatrics (AAP), the American Dental Association (ADA), and research-based, nationally accredited medical appropriateness criteria, such as InterQual, or appropriate criteria approved by BMS. (Bureau for Medical Services Provider Manual, Chapter 505, §505.8)

The information which was submitted at your daughter's hearing revealed that the palatal impingement standard proposed in the prior authorization request was 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 to deny 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 AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2266

**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 January 27, 2012 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 January 6, 2012 on a timely appeal, filed October 18, 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
Virginia Evans, 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 Provider Manual, Chapter 505: Dental, Orthodontic, and Oral Health Services; §505.8

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 505: Dental, Orthodontic, and Oral Health Services; §505.8
- D-2 Prior authorization request forms from [REDACTED] DMD, MS, dated October 7, 2011
- D-3 Notice of Denial for Dental Services, dated October 11, 2011

VII. FINDINGS OF FACT:

- 1) On October 11, 2011, 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 11, 2011 (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:

After the review of the information provided for the request of D8090 and D8680 the consultant denied this due to:

1. Criteria set by BMS was not met
2. Lower incisor are hitting Lingual MX incisors

- 2) Virginia Evans, representative for the Department's Bureau for Medical Services, presented the appropriate policy as Bureau for Medical Services Provider Manual, Chapter 505: Dental, Orthodontic, and Oral Health Services; §505.8, which states, in pertinent part:

505.8 PRIOR AUTHORIZATION

Effective with this manual, medical necessity review criteria may be based on adaptations of dental standards developed by the Periodicity and Anticipatory Guidance Recommendations by the American Academy of Pediatric Dentistry (AAPD), the American Academy of Pediatrics (AAP), the American Dental Association (ADA), and research-based, nationally accredited medical appropriateness criteria, such as InterQual, OR other appropriate criteria approved by BMS.

- 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.
- 4) Dr. Taylor noted a section of the prior authorization request (Exhibit D-2) listing criteria. The first subsection requires all underlying criteria to be met, and lists radiographs, dental molds, photos, and a treatment plan as required criteria. Dr. Taylor testified that all of these criteria were met in the Claimant's request.
- 5) Dr. Taylor noted the second criteria subsection, which requires at least one of the underlying criteria to be met. The Claimant's treating orthodontist marked only one selection from this listing: *Palatal impingement of lower incisors into the palatal tissue causing tissue trauma*. Dr. Taylor testified that based on his review of photographs and radiographs, this assertion is incorrect. He agreed, based on his review findings, with the treating orthodontist's diagnosis of "deepbite," or overbite, but not that the overbite causes palatal impingement for the Claimant. He testified specifically that he did not see redness or teeth indentations reflective of tissue trauma.
- 6) -----, the Claimant's mother, testified that her daughter needs the requested orthodontic treatment. She testified that three different orthodontists have told her that her daughter needs braces. She testified that sometimes when the Claimant bites, her teeth and jaw move. She testified that the Claimant suffers from a teeth crowding problem.
- 7) Dr. Taylor testified that crowding was noted in the prior authorization request (Exhibit D-2) documentation and it is not a covered condition for orthodontic treatment. Dr. Taylor reiterated that the only proposed condition from the Claimant's treating orthodontist – palatal impingement – was not actually met, based on his review.

VIII. CONCLUSION OF LAW:

The expert testimony of the Department's Orthodontic Consultant confirmed that the standard of palatal impingement resulting in tissue trauma was not met. As this was the only proposed criterion from the Claimant's treating orthodontist, medical necessity for orthodontia was not 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 January, 2012.

Todd Thornton
State Hearing Officer