



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jim Justice
Governor**

**BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

**Bill J. Crouch
Cabinet Secretary**

October 4, 2017



RE:  A MINOR v. WVDHHR
ACTION NO.: 17-BOR-2364

Dear Ms. 

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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.

You will find attached an explanation of possible actions that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29
cc: Angela Signore

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

■, A MINOR,
Appellant,
v.

ACTION NO.: 17-BOR-2364

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ■ a minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 27, 2017, on an appeal filed August 25, 2017.

The matter before the Hearing Officer arises from the August 10, 2017 decision by the Department to deny Medicaid payment of orthodontic services for the Appellant.

At the hearing, the Respondent appeared by Cyndi Engle, Registered Nurse, WV Bureau for Medical Services. Appearing as witness for the Respondent was Dr. ■, Orthodontic Consultant for the WV Bureau for Medical Services. The Appellant, a juvenile, appeared *pro se* by her mother, ■. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 WV Medicaid Provider Manual Chapter 505: Covered Services, Limitations and Exclusions for Dental, Orthodontics, and Oral Health Services
- D-2 WV Medicaid Prior Authorization Form, blank
- D-3 Medical Documentation from ■
- D-4 Notice of Initial Denial, dated August 10, 2017
- D-5 Bureau for Medical Services (BMS) list of exhibits

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant's orthodontist, [REDACTED], DDS, requested prior authorization of Medicaid payment for orthodontic services for the Appellant. (Exhibit D-3 and D-4)
- 2) The Appellant's orthodontist requested comprehensive orthodontic treatment to make space for the Appellant's impacted mandibular left second premolar, a Class II cusp, and narrow maxilla. (Exhibit D-3)
- 3) Dr. [REDACTED], Orthodontic Consultant, reviewed documentation submitted by the Appellant's orthodontist and determined that the request for prior authorization did not meet medical necessity criteria.
- 4) The medical necessity criteria require that molar positions must be a full cusp per normal position.
- 5) The Appellant's photographs and x-rays do not demonstrate a full cusp out of normal position. (Exhibit D-3)
- 6) To meet the medical necessity criteria for cross bite there must be present a cross bite of several teeth.
- 7) Documentation from the Appellant's orthodontist demonstrates a narrow arch, but does not demonstrate a cross bite of several teeth. (Exhibit D-3)
- 8) The medical necessity criteria exclude impacted posterior teeth, including molars. To meet medical criteria, impacted teeth must include anterior teeth only.
- 9) The Appellant's x-rays show that the Appellant has an impacted mandibular left second premolar, which does not meet medical necessity criteria. (Exhibit D-2 and D-3)
- 10) On August 10, 2017, the Respondent issued a denial notice to the Appellant indicating that the services requested did not meet medical necessity criteria and had been denied based upon the clinical information submitted for prior authorization by the provider did not demonstrate medical necessity for the requested service. (Exhibit D-4)

APPLICABLE POLICY

West Virginia Bureau for Medical Services (WVBMS) Provider Manual §505.1 provides in part:

Orthodontic services for children up to 21 years of age must be medically necessary and require prior authorization before services are provided. Clinical documentation to include a treatment plan of care, radiograph results, and photographs must be available to the Utilization Management Contractor (UMC) for prior authorization review and final determination of approval.

WVBMS Provider Manual §505.8 provides in part:

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, the American Academy of Pediatrics (AAP), the American Dental Association (ADA), research-based, nationally accredited medical appropriateness criteria OR other appropriate criteria approved by BMS.

WV Medicaid Dental Services Prior Authorization Form (Exhibit D-2) lists ten criteria, any one of which a request for orthodontic services must meet for the request to be approved:

- An overjet in excess of 7 millimeters;
- A severe malocclusion associated with dento-facial deformity;
- A true anterior open bite;
- A full cusp classification from normal (Class II or Class III);
- Palatal impingement of lower incisors into the palatal tissue causing tissue trauma;
- Cleft palate, congenital or developmental disorder;
- Anterior crossbite (two or more teeth, in cases where gingival stripping from the crossbite is demonstrated and not correctable by limited orthodontic treatment)
- Unilateral posterior crossbite with deviation or bilateral posterior crossbite involving multiple teeth including at least one molar;
- True posterior open bite (not involving partially erupted teeth or one or two teeth slightly out of occlusion and not correctable by habit therapy); or
- Impacted teeth (excluding third molars) cuspids and laterals only.

DISCUSSION

The Appellant, through her mother and orthodontist, submitted a request for prior authorization for comprehensive orthodontic treatment to the Respondent. Policy requires that orthodontic services for children up to age 21 be medically necessary and require prior authorization. The Respondent denied the Appellant's request for orthodontic services based on the clinical information submitted by the Appellant's orthodontist not demonstrating medical necessity for the requested services. The Appellant contended that the Appellant's teeth not being placed correctly is causing more oral problems for the Appellant and requested that the denial of orthodontic services be reconsidered.

Pursuant to policy, the Respondent must demonstrate by a preponderance of evidence that policy was correctly followed in determining the Appellant's medical eligibility for orthodontic services. The WV Medicaid Prior Authorization Form (Exhibit D-2) clearly states that the Appellant must meet at least one of the listed ten (10) criteria. Pursuant to policy, orthodontic services must be medically necessary and medical necessity review criteria may be based on adaptations of dental standards developed by known organizations with authority on the matter or other appropriate criteria approved by BMS. The Respondent's witness testified that he reviewed the documentation submitted by the Appellant's orthodontist and compared the documentation to the criteria.

Per the documentation submitted by the Appellant's orthodontist, the Appellant is a "12-year-old female with Class II on the right." The Respondent's witness testified that the criteria says the molar position must be a full cusp per normal position, half of a molar tooth, to meet the criteria. The Respondent testified that he reviewed the photos and x-rays and that the Appellant's molar position was not a full cusp out of normal position. Per the documentation submitted by the Appellant's orthodontist, the Appellant has a "narrow mx." The Respondent's witness testified that "mx" is an abbreviation for "maxilla," or the upper jaw. The Respondent's witness testified that to meet criteria either the posterior (back) or anterior (front) teeth must demonstrate a crossbite of several teeth. The Respondent's witness testified that upon review of the Appellant's documentation, he observed that the Appellant had a narrow arch but did not observe a crossbite of several teeth. The documentation submitted by the Appellant's orthodontist stated the Appellant has an "impacted mandibular left second premolar." The Respondent testified that upon review of the photographs and x-ray, that the Appellant does have an impacted mandibular left second premolar. The Respondent witness testified that the tooth on the lower left hasn't erupted, is crowded, and is probably trapped from coming in the way it should. He testified that the criteria for impacted teeth lists only the anterior teeth such as incisors or canine teeth and excludes posterior teeth such as molars. The Respondent witness testified that the Appellant's orthodontist treatment plan makes sense to use comprehensive braces on the top and bottom teeth to make room for the bottom molar. However, the Respondent's witness testified that orthodontic services must meet a list of criteria for prior authorization and that the Appellant did not meet any of those criteria, resulting in the denial. Testimony by the Respondent's witness revealed that the Appellant's request for prior authorization for comprehensive orthodontic treatment did not meet medical necessity criteria. The Respondent acted correctly in denying the Appellant's request.

The Appellant's representative inquired about alternative treatment for the impacted tooth. The Respondent's witness replied that the impacted tooth could be removed or orthodontics could be

used to create room for the impacted tooth to erupt; however, the Respondent witness advised that orthodontics would not be covered by Medicaid and would have to be funded by the Appellant. The Respondent advised the Appellant's representative that if the Appellant's circumstances change, the Appellant's orthodontist could submit a new request for review.

CONCLUSIONS OF LAW

- 1) The information submitted by the Appellant did not establish medical necessity for prior authorization.
- 2) Pursuant to policy, orthodontic services must meet medical necessity criteria. The Respondent was correct to deny the Appellant prior authorization for orthodontic services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to deny Medicaid payment of orthodontic services for the Appellant.

ENTERED this 4th day of October 2017.

Tara B. Thompson
State Hearing Officer