



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

January 20, 2017

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED], v. WV DHHR
ACTION NO.: 16-BOR-2995

Dear Mr. [REDACTED]

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

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.

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

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Angela Signore, WV Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2995

**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 ██████████. 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 January 19, 2017, on an appeal filed November 16, 2016.

The matter before the Hearing Officer arises from the November 7, 2016, decision by the Respondent to deny Medicaid payment of orthodontic services for the Appellant.

At the hearing, the Respondent appeared by Anita Ferguson, WV Bureau for Medical Services. Appearing as a witness for the Department was ██████████, DDS, Orthodontic Consultant for the WV Bureau for Medical Services. The Appellant, a juvenile, appeared *pro se* by her father ██████████. The participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual Chapter 505 – Covered Services, Limitations and Exclusions for Dental, Orthodontic and Oral Health Services
- D-2 WV Medicaid Prior Authorization Form, blank
- D-3 WV Medicaid Prior Authorization Form for ██████████, dated October 5, 2016
- D-4 Notice of Denial from ██████████, dated October 11, 2016
- D-5 Series of facial and intraoral photographs and x-rays of Appellant
- D-6 Second Notice of Denial from ██████████, dated October 11, 2016
- D-7 Notice of Denial from ██████████, dated November 7, 2016

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant's orthodontist, [REDACTED], DDS, submitted a request for prior authorization of Medicaid payment for orthodontic services to the Department on October 5, 2016. According to the WV Medicaid Orthodontic Prior Authorization Form Dr. [REDACTED] submitted (Exhibit D-3), the orthodontia was requested to correct "palatal impingement of lower incisors into the palatal tissue causing tissue trauma."
- 2) The Department denied the request because the photographs, x-rays and models did not support the diagnosis of palatal impingement. The Department's witness, who evaluated the request for services, did not observe tissue trauma as the result of the Appellant's lower incisors scraping the soft palate of her upper mouth.
- 3) The Department issued a Notice of Initial Denial (Exhibit D-4) on October 11, 2016, notifying Appellant that the medical information submitted with the request did not meet medical necessity criteria.
- 4) The Appellant's representative, her father, appealed the Department's denial of the prior authorization request. The Department denied the appeal on November 7, 2016 (Exhibit D-7).
- 5) The Appellant's father requested a fair hearing to dispute the denial of prior authorization for orthodontic services on his daughter's behalf.

APPLICABLE POLICY

The WV Medicaid Provider Manual §505.8 reads that certain dental procedures require prior authorization, regardless of the place or nature of the service.

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

- 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's father requested this fair hearing because the Department denied a request on his daughter's behalf for orthodontic services. The Department's representative testified that the Appellant's request for orthodontic services included photographs and X-rays of the Appellant's teeth, which demonstrated that the Appellant did not meet the medical necessity criteria in order to approve Medicaid payment for the services.

The Prior Authorization Form (Exhibit D-3) contains a section labeled "Reason for Dental/Orthodontic Requested Procedure." In this section, someone (presumably Appellant's dental office staff) has written, "Deep bite with palatal impingement, [upper and lower] incisors lingually inclined, uneven [upper and lower] anteriors."

The Department's witness, the orthodontic consultant who evaluated the request for services, testified that the Appellant's upper front teeth overlap the lower front teeth, but not to the extent that it touches any of the tissue behind the upper front teeth into the palate. He testified that the photographs and x-rays did not show any tissue damage on the Appellant's palate. He added that the "Reason for Dental/Orthodontic Requested Procedure" field on the Prior Authorization Form mentions palatal impingement but it does not mention tissue trauma.

The Appellant's representative testified that his daughter's dentist is a reputable orthodontist. He stated that he did not understand why his daughter's dentist would put information on the request form that was not true. He testified that his daughter complains about her teeth being misaligned. He added that one tooth at the bottom of her mouth hits the roof of her mouth, causing pain and discomfort.

The Department's witness responded that he made his decision to deny the request based on the information the Appellant's dentist sent him. He testified that the photographs and x-rays did not show tissue trauma had taken place. He suggested that if the Appellant complains again about soreness on the roof of her mouth from a bottom tooth, she should return to her orthodontist/dentist to have the damage photographed and have her dentist submit another request.

The request for orthodontic services listed palatal impingement of lower incisors into the palatal tissue of the Appellant's upper mouth as the reason for the orthodontic services request. However, the accompanying documentation did not demonstrate palatal tissue damage as the result of impingement. The Appellant did not meet the medical necessity criteria to qualify for orthodontic services.

CONCLUSION OF LAW

Whereas medical necessity of orthodontic services could not be established based on the medical information submitted for prior authorization, the Department was correct to deny prior authorization for orthodontic services, pursuant to the WV Medicaid Provider Manual §§505.8 and 505.9 and the medical criteria listed on the WV Medicaid Dental Services Prior Authorization Form.

DECISION

It is the decision of the State Hearing officer to **uphold** the denial of Medicaid payment of orthodontic services for Appellant.

ENTERED this 20th day of January, 2017

Stephen M. Baisden
State Hearing Officer