



Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] (by [REDACTED])
For: Medical Assistance Covered Services
Agency: Health Plan—[REDACTED]
Docket: 157852

On December 12, 2014, Human Services Judge Renee Ladd held a telephone evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

[REDACTED], Appellant's Mother;
[REDACTED], Senior Consultant, [REDACTED]
[REDACTED], Associate Dental Director, [REDACTED]

The judge, based on the evidence in the record recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether the agency correctly denied appellant's request for prior authorization for orthodontic treatment.

FINDINGS OF FACT

1. On October 30, 2014, the agency sent appellant a denial of service for orthodontia. *Exhibit 2*. On November 19, 2014, [REDACTED] submitted an appeal request to DHS on appellant's behalf, which the appeals office received on the same day. *Exhibit 1*. On November 25, 2014, the agency sent [REDACTED] a letter notifying her that the agency internally reviewed her appeal request and affirmed its denial of coverage for braces for appellant. *Exhibit 2*.

2. On December 12, 2014, Human Services Judge Renee Ladd held a telephone evidentiary hearing. At the end of the hearing, I closed the record, consisting of two exhibits.¹

3. Appellant is presently [REDACTED]-years-old. [REDACTED] *Testimony*. Appellant is in receipt of health care coverage that is paid by Medical Assistance. [REDACTED] *Testimony*. She has been placed on a prepaid managed health care plan with [REDACTED] since July 1, 2014. *Exhibit 2*.

4. On behalf of appellant, [REDACTED] submitted a prior authorization request for braces with an estimated treatment time of 24 months. *Exhibit 2*. The request included a Dental Claim Form, x-rays, and photographs of appellant. *Id.* The Dental Claim Form indicates class I malocclusion, mandibular asymmetry to the left, TMJ popping and pain when chewing and openbite in bicuspid area. *Id.* The agency received the prior authorization request on October 22, 2014. *Id.*

5. On October 24, 2014, the prior authorization request was reviewed by [REDACTED]. *Exhibit 2*. [REDACTED] denied prior authorization of orthodontic services because there is no evidence of a handicapping malocclusion. *Id.* [REDACTED] found that appellant's overbite was 10%, she had overjet of 2 mm, there was no maxillary overcrowding with 1-2 mm open bite at the #5 and #12 teeth areas and minimal mandibular crowding with tooth #23 rotated with the distal contact displaced 2 mm facial of the arch line. *Id.* [REDACTED] reviewed the criteria for coverage of orthodontia under Medical Assistance guidelines and found appellant's condition met none of the criteria and did not demonstrate functional impairment. *Id.*

¹ Appeal Request, Exhibit 1; Letter from [REDACTED] dated December 2, 2014, with attachments, Exhibit 2.

6. On November 21, 2014, [REDACTED] reviewed the prior authorization request and upheld the denial because appellant's dentition does not support the medical necessity for Orthodontic treatment because her occlusion is functional. *Exhibit 2; [REDACTED] Testimony.* Although [REDACTED] could not diagnose appellant's dental pain without examining her, in his opinion her pain is more likely caused by TMJ rather than malocclusion. [REDACTED] *Testimony.* Appellant's bicuspid's do not meet because of her age and in approximately one year he would expect these teeth to fully occlude. *Id.* Braces are rarely used to treat TMJ problems. *Id.* [REDACTED] recommended appellant be seen in [REDACTED]'s cranial-facial pain clinic to determine if other treatment would be beneficial. *Id.*

7. Appellant has had dental pain for approximately six months, with the pain getting worse over the last two to three months. [REDACTED] *Testimony.* Appellant has difficulty chewing hard food such as raw vegetables, hard candies, gum and chewy meat. *Id.* She also has dental pain during the day when she is not eating. *Id.*

CONCLUSIONS OF LAW

1. A person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days of such notice if the appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit. *Minn. Stat. § 256.045, subd. 3.* In this case, the preponderant evidence shows that an appeal was filed within 30 days of appellant receiving written notice of the action. Therefore, this appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under *Minn. Stat. § 256.045, subd. 3.*

2. The Medical Assistance program requires prior authorization for certain medical services. *Minn. Stat. § 256B.0625, subd. 25.* Medical Assistance services that require prior authorization must:

- a. be medically necessary as determined by prevailing medical community standards or customary practice and usage;
- b. be appropriate and effective to the recipient's medical needs;
- c. be timely, considering the recipient's current medical condition;
- d. be furnished by an appropriately credentialed provider;
- e. be the least expensive appropriate alternative available; and
- f. represent an effective and appropriate use of medical assistance funds.

Minn. R. 9505.5030. When requesting prior authorization for medical assistance services, a medical provider must submit all required forms, materials, reports, progress notes, admission histories, and other information that substantiates the requested service is

medically necessary to treat the recipient. *Minn. R. 9505.5010, subp. 1.* The provider bears the burden of establishing compliance with prior authorization criteria. *Minn. R. 9505.5010, subp. 1, 3, and 4.*

3. In order to receive payment for orthodontic treatment, at least one of the following criteria must be met:

- (1) there is a disfigurement of the patient's facial appearance including protrusion of upper or lower jaws or teeth;
- (2) there is spacing between adjacent teeth which interferes with the biting function;
- (3) there is an overbite to the extent that the lower anterior teeth impinge on the roof of the mouth when the person bites;
- (4) positioning of jaws or teeth impairs chewing or biting function; or
- (5) based on a comparable assessment of subitems (1) to (4), there is an overall orthodontic problem that interferes with the biting function.

Minn. R. 9505.0270, subp. 2a, clause (F).

4. The list of services requiring authorization is continuously updated in the Minnesota Health Care Program (MHCP) Provider Manual issued by the Minnesota Department of Human Services and is incorporated by reference in the Minnesota Rules. Effective May 1, 2013 comprehensive orthodontic treatment is considered medically necessary when adequate corrective treatment is not achievable with less extensive means, and one of the following criteria is met: A) dentition affected by significant cleft palate, craniofacial or other congenital or developmental disorder; B) significant skeletal disharmony requiring combination of orthodontic treatment and orthognathic surgery for correction; C) overjet greater than 9mm or reverse overjet greater than 3.5mm; or D) anterior openbite greater than 4mm. *MHCP Provider Manual, Dental Services, Children and Pregnant Women.* Comprehensive orthodontic treatment is also considered medically necessary when one of the following criteria is met and demonstrated functional impairment is present:

- 1) Impeded eruption of teeth (with the exception of third molars) due to crowding, displacement, the presence of supernumerary teeth, retained deciduous teeth or other pathological cause, where conservative removal of the ectopic tooth would create a significant functional deficit in biting or chewing;
- 2) Severe crowding of greater than 7mm in either the maxillary or mandibular arch;
- 3) Extensive hypodontia requiring pre-restorative orthodontics or orthodontic space closure to obviate the need for prosthetic treatment;

- 4) Significant posterior openbite (not involving partially erupted teeth or teeth slightly out of occlusion;
- 5) Anterior crossbite involving permanent incisors or canines creating a functional interference and a resulting functional shift, or gingival stripping;
- 6) Posterior transverse discrepancies causing buccal or lingual crossbite involving permanent molar teeth and creating a functional interference and a resulting functional shift;
- 7) Deep anterior overbite of multiple incisors resulting in soft tissue impingement or trauma;
- 8) Overjet greater than 6mm or reverse overjet greater than 1mm; or
- 9) Other conditions as deemed medically necessary. *Id.*

5. In this case, I reviewed the record before me in detail and I conclude that appellant has not met her burden. The evidence shows that there is no disfigurement of appellant's facial appearance, there is no spacing between her teeth that interferes with the biting function and there is no overbite that causes her lower teeth to impinge on the roof of her mouth. Although the evidence shows that appellant has dental pain associated with chewing, there is not sufficient evidence to show that this pain is due to malocclusion. [REDACTED] testified credibly that appellant's occlusion is functional and that her dental pain is more likely due to TMJ, which would not be treated with orthodontia. This is supported by the fact that appellant's dental pain occurs throughout the day and not only when she is chewing or biting. Although appellant's teeth may benefit from orthodontic care, the preponderance of evidence shows that her dental problems do not meet the severity level of the medical necessity criteria and do not meet any of the required criteria for coverage listed in Minn. R. 9505.0270, subp. 2a, clause F and the MHCP provider manual. Therefore, I find that the agency correctly denied appellant's prior authorization request and its action should be affirmed. It should be noted that appellant can request a future prior authorization if her condition deteriorates or she acquires additional medical evidence showing she meets the requirements for coverage.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the agency's denial of appellant's request that medical assistance be prior authorized to cover the cost of orthodontic treatment.

Renee Ladd
Human Services Judge

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the judge's recommended findings of fact, conclusions of law, and order as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc:

[REDACTED], Appellant
[REDACTED]
[REDACTED], DHS – Managed Care Ombudsman - 0249

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

If you disagree with this decision, you may:

- Request the decision be reconsidered; or
- Appeal to District Court.

Right to Reconsideration

You may make a written request to the Appeals Office to reconsider this decision. The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request; however, if you submit additional evidence, you must explain why it was not provided at the time of the hearing. The request must be *in writing*, be made *within 30 days of the date of this decision*, and a *copy of the request must be sent to the other parties*. Send your written request, with your docket number listed, to:

Appeals Office
Minnesota Department of Human Services
P.O. Box 64941
St. Paul, MN 55164-0941
Fax: (651) 431-7523

Appeal to District Court

You may start an appeal in the district court. This is a separate legal proceeding, and you must start this *within 30 days of the date of this decision* by serving a notice of appeal upon the other parties and the Commissioner. The law that describes this process is Minn. Stat. § 256.045, subd. 7.