Appellant:  
For:  Medical Assistance  
Agency:  Department of Human Services  
Docket:  226702  

On October 28, 2019, Human Services Judge John Sadowski held a hearing under Minnesota Statutes, section 256.045, subdivision 3. The following people appeared at the hearing:

[Name] Appellant’s father;  
[Name] Certified Registered Dental Assistant.

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

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1 The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10i; and 626.557, subdivision 9d.
STATEMENT OF ISSUES

The issue(s) raised in this appeal is:

Whether the Department of Human Services correctly denied the Appellant’s Prior Authorization request for orthodontic services.

Recommended Decision:

The Human Services Judge recommends the Commissioner of Human Services AFFIRM the Department of Human Services’s denial of the Appellant’s Prior Authorization request for orthodontic services.

PROCEDURAL HISTORY

1. On August 5, 2019, the Department of Human Services (Agency) sent (Appellant) a notice that her Prior Authorization request had been denied. Exhibit 2.

2. On September 11, 2019, the Appellant filed this appeal. Exhibit 1.

3. A hearing was scheduled for October 9, 2019. However, Appellant had not received the Agency’s Appeal Summary. The hearing was then continued to allow the Appellant to receive and review the Appeal Summary.

4. On October 28, 2019, Human Services Judge John Sadowski held an evidentiary hearing via telephone conference. Judge Sadowski accepted two exhibits and testimony into evidence.²

FINDINGS OF FACT

1. Appellant was approved for prior authorization for comprehensive orthodontic services on March 2, 2016. Exhibit 1. The approval begin date was February 18, 2016. Id. Full treatment for orthodontics was delayed while the Appellant’s teeth continued to grow and for her to develop healthy brushing habits. Testimony. This prior authorization expired February 18, 2019. Id.

² Exhibit 1: Appeal Request; Exhibit 2: Appeal Summary.
2. On May 23, 2019, the Appellant submitted a request for a renewal of prior authorization for comprehensive orthodontic services. Exhibit 2. The request was pended and additional information was requested from the provider on June 7, 2019. Id.

3. On July 11, 2019, Appellant’s provider Dr. submitted clinical documentation in support of the prior authorization request. Exhibit 2. Dr. indicated that the recommended treatment was to remove Appellant’s two lower first premolars and to insert full appliances to close Appellant’s upper and lower spaces. Id. Dr. noted that although there is documentation of crowding and malocclusion, there is no documented functional problem or impinging deep bite. Id. Dr. also provided a checklist of criteria as part of required clinical documentation. Id. The checklist submitted by Dr. lists each of the requirements listed in the Minnesota Health Care Programs Provider Manual. Id; See MHCP Provider Manual, Dental Services, Children and Pregnant Women, Covered Services. Dr. indicated that the Appellant had no need for each and every individual criteria listed in the checklist regarding medical necessity. Exhibit 2.

4. Appellant’s care provider acknowledges that Appellant’s orthodontics were medically necessary in 2016 at the time of the initial prior authorization. Testimony. However, because of the Appellant’s physical growth and treatment previously received, such orthodontics are no longer medically necessary and that no treatment is always an option. Id.

5. Mr. spoke with Appellant’s orthodontic provider and representatives from the Department of Human Services on how to pursue an appeal once he realized the request for prior authorization had been denied. Testimony. Mr. made his best efforts to file the appeal in a timely manner. Id.

**AUTHORITY**

1. An individual has 30 days after receiving the notice of a specified action or decision to file an appeal. Minn.Stat. § 256.045, subd. 3(i). To file an appeal, the individual must submit a written request for a hearing to the state agency. Id. The deadline is extended to 90 days from the date of the written notice if the individual shows good cause for not filing an appeal within 30 days. Id. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. Id. Good cause includes personal injury or illness, an emergency, an obligation which reasonably takes precedence and excuseable neglect. Minn.Stat. § 256.0451, subd. 13.
2. In an administrative appeal, the burden of proof is governed by the state or federal laws that apply to the hearing. Minn.Stat. § 256.0451, subd. 17. When there is no specific law, the party who seeks that a certain action be taken must prove the facts at issue by a preponderance of the evidence. Id. Preponderance of the evidence means that, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely to be true than not true. Minn.Stat. § 256.0451, subd. 22.

3. The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the Human Services Judge adopts an argument as a finding of fact or conclusion of law. Minn.Stat. § 256.0451, subd. 22. The Human Services Judge’s recommended order must be based on all relevant evidence. Minn.Stat. § 256.0451, subd. 5.

4. Some medical services require prior authorization in order to be covered by Medical Assistance. Minn.Stat. § 256B.0625, subd. 25. To be approved for prior authorization, the requested services must be medically necessary. Minn.R. 9505.5030, subd. 1. The recipients medical provider is responsible for submitting all required medical evidence to substantiate that the prior authorization for requested services are medically necessary. Id. The provider bears the burden of showing that the services are medically necessary. Id.

5. MHCP covers orthodontic treatment that meets the specifications of utilization criteria for children through the age of 20. MHCP Provider Manual, Dental Services, Children and Pregnant Women, Covered Services. 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: dentition affected by significant cleft palate, craniofacial or other congenital or developmental disorder; significant skeletal disharmony requiring combination of orthodontic treatment and orthognathic surgery for correction; overjet greater than 9mm or reverse overjet greater than 3.5mm; anterior openbite greater than 4mm. Id. If one of the criteria immediately above is not met, one of the following criteria must be met and demonstrated functional impairment must be present: 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; severe crowding of greater than 7mm in either the maxillary or mandibular arch; extensive hypodontia requiring pre-restorative orthodontics or orthodontic space closure to obviate the need for prosthetic treatment; significant posterior openbite (not involving partially erupted teeth or teeth slightly out of occlusion); anterior crossbite involving permanent incisors or canines creating a
CONCLUSION OF LAW AND DISCUSSION

1. Appellant was given notice of the Agency’s decision on August 5, 2019 and the appeal was filed on September 11, 2019, 37 days after the notice. Therefore, this appeal is outside the 30 day window to appeal and is untimely. However, the appeal was within 90 days and therefore the Appellant has the burden to show good cause for the delay.

2. Good cause exists for the delay in filing the appeal. Appellant spoke with his provider and representatives from the Department of Human Services on how to pursue an appeal. His appeal was 7 days past the 30 day deadline. I find that the delay was based on excusable neglect as it was clear the Appellant was making diligent efforts to file the appeal in a timely manner. Because there is good cause for the delay, the Commissioner has jurisdiction over this appeal.

3. Appellant has failed to show that the comprehensive orthodontics prior authorization requested is medically necessary. While Appellant’s care provider acknowledged that Appellant’s orthodontics were medically necessary in 2016 at the time of the initial prior authorization, because of the Appellant’s physical growth and treatment previously received, such orthodontics are no longer medically necessary and that no treatment is an option. This testimony is supported by Dr. [redacted] clinical documentation provided at the time of the prior authorization request.
RECOMMENDED ORDER

The Human Services Judge recommends the Commissioner of Human Services AFFIRM the Department of Human Services’s denial of the Appellant’s Prior Authorization request for orthodontic services.

_________________________________ _________________________
John W. Sadowski                        Date
Human Services Judge

ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

_________________________________ _________________________
Date

cc:  
DHS –
FURTHER APPEAL RIGHTS

This decision is final unless you take further action. Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** 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. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge. You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 24.

- **Start an appeal in the district court.** This is a separate legal proceeding that you must start within 30 days of the date this decision was issued by the co-chief human services judge. You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7. 3

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3 County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.