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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MPA - 207225

PRELIMINARY RECITALS

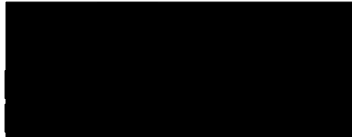
Pursuant to a petition filed on December 21, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on February 15, 2023, by telephone.

The issue for determination is whether Petitioner is entitled to Medical Assistance coverage of orthodontic treatment.

There appeared at that time the following persons:


PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: , DDS (written appearance)
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 10 year old resident of Milwaukee County.
2. On or about November 8, 2022, Dr. Sara Spector with IDental, LLC filed a request for prior authorization on Petitioner's behalf seeking Medical Assistance coverage of comprehensive orthodontic treatment, periodic orthodontic visits, and orthodontic retention (Procedure Codes D8080, D8670, and D8680).
3. By written notice dated November 15, 2022, the Department informed Petitioner that coverage for the requested orthodontic treatment because the services requested did not meet ForwardHealth guidelines and did not show that services are medically necessary.
4. On December 21, 2022, Petitioner filed an appeal of the denial.

DISCUSSION

Orthodontia is not an MA-covered service. Wis. Admin. Code, §DHS 107.07(4)(j). However, medical services provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Admin. Code, §DHS 107.22(4). Prior authorization for such services is required. Prior authorization is granted when the criteria set forth at Wis. Admin. Code §DHS 107.02(3) are met. Those criteria include the requirement that the requested service is a medical necessity. Wis. Admin. Code §DHS 107.22(4).

The department has developed a coverage policy to evaluate the medical necessity of orthodontic treatment. That policy, provides, in relevant part as follows:

The following criteria are considered when reviewing PA requests for orthodontia:

- A severe and handicapping malocclusion determined by a minimum Salzmann Index of 30.
- In extenuating circumstances, the dental consultant may, after comprehensive review of the case, determine that a severe handicapping malocclusion does exist, and approve the orthodontia treatment even though the Salzmann score is less than 30. . .
- If the request for orthodontic services is the result of a personality or psychological problem or condition and a member does not meet the criteria listed above, then a referral from a mental health professional is required.

Orthodontic treatment is *not* authorized for cosmetic reasons . . .

See [ForwardHealth Provider On-line Handbook](#): Topic #2909. In other words, orthodontic treatment will be covered if the recipient has "a severe and handicapping malocclusion" as indicated by a minimum Salzmann Index of 30 or, in the absence of a qualifying Salzmann Index, the presence of extenuating circumstances. The Salzmann Index assessment record is a tool used by Wisconsin Medicaid to help determine whether a handicapping malocclusion is present. Id. Extenuating circumstances may be found to exist where an individual's malocclusion causes pain, unusual difficulty eating or speaking, or documented psychological problems.

Here, the department determined that Petitioner's Salzman score is 18, as indicated by Dr. Busby in his written submission, and there is no evidence that the department's determination was incorrect. Petitioner's mother, who appeared for her son at the hearing, testified that Petitioner is an adolescent, that he doesn't like to show his teeth, and that he suffers from ADHD and sees a psychiatrist monthly. She stated that her son suffers from daily oral pain, especially with his two front teeth. The pain began about 1.5 years ago, and the family treats the pain with over the counter pain relievers.

While this is a very close case, I found the testimony of Petitioner's mother to be credible and unrefuted. The evidence in the record is sufficient to establish that there are "extenuating circumstances" that cause orthodontic treatment to be medically necessary, as that term is defined for purposes of determining Wisconsin Medicaid coverage.

I note to the petitioner's mother that her son's orthodontist will not receive a copy of this decision. In order to receive the approved orthodontia, she must provide a copy of this decision to the orthodontist, who then must submit a new prior authorization request.

CONCLUSIONS OF LAW

The requested orthodontia is medically necessary.

THEREFORE, it is ORDERED

That the petitioner's orthodontist, is authorized to provide the orthodontia discussed in this decision. To receive reimbursement, he must submit his claim, along with a copy of this decision and a new prior authorization form to Forward Health for payment.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

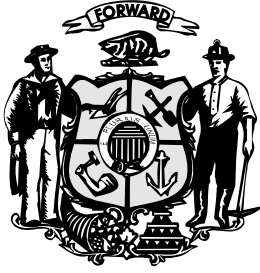
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of March, 2023



Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 6, 2023.

Division of Medicaid Services