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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/146552

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 11, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on February 19, 2013, at West Bend, Wisconsin. The record was held open for petitioner to provide new information, which was received and reviewed again by the DHCAA. The DHCAA again upheld the PA denial.

The issue for determination is whether the DHCAA properly denied the petitioner's prior authorization (PA) request for comprehensive orthodontic treatment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Lucy Miller, Nurse Consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street  
P.O. Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Washington County. He is 13 years old and certified for MA.
2. On July 31, 2012 petitioner's dental provider submitted a PA request for petitioner to receive comprehensive orthodontic treatment (braces). The petitioner's HMO denied the request on August 7, 2012 because he did not meet the MA Guidelines for coverage.
3. Petitioner appealed the HMO's decision to his HMO's Grievance Committee, but the Grievance Committee denied that appeal on October 2, 2012 finding that petitioner did not meet the criteria for benefit coverage.
4. Petitioner then appealed to the Division of Hearings and Appeals on January 11, 2013. That appeal is the subject of this decision.
5. Prior to the instant hearing, the Division of Health Care Access and Accountability (n/k/a the Office of the Inspector General) reviewed the HMO's decision and determined that the HMO's denial was correct because petitioner did not meet the MA Prior Authorization Guidelines' requirement that petitioner have a Salzman index score of 30.
6. Petitioner's Salzman index score was 27.
7. Petitioner's malocclusion is not severely handicapping.

### DISCUSSION

Orthodontia is an MA-covered service for persons under age 21, subject to prior authorization. Wis. Adm. Code §DHS 107.07(2)(c)11. Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHCAA has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual at pages 125.003 and 125.005, which requires a Salzman Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion severely handicapping.

The Salzman score is a rating of the person's dental malocclusion, that is, how far from normal occlusion the person's teeth are. Petitioner's Salzman score, as determined by the dental consultant here, is 27. There is no evidence that indicates that unusual circumstances exist that make the petitioner's malocclusion severely handicapping. Extenuating circumstances could be that, despite the low Salzman, the malocclusion causes the person to have unusual difficulty eating or speaking, or the person has documented psychological problems caused by the abnormal occlusion. If the malocclusion is severe enough, an individual may not be able to properly chew and therefore cannot eat or digest particular foods. The inability to eat particular foods may become so extreme that an individual's health is compromised. Petitioner's mother described at hearing that petitioner does have a large overbite that causes him problems when wearing a mouth guard in sports, that he grinds his teeth, and that he is teased about his teeth. Unfortunately, while I am sure that the braces would benefit him, based on the evidence before me, I do not find this to be the kind of severe handicap anticipated under the rules.

Because petitioner's Salzman score is 27 and the malocclusion is not severely handicapping, the requested orthodontic treatment in this case is not covered by the MA program per Wis. Admin. Code §DHS 107.02(3). The Division was therefore unable to approve the requested service. I add that teeth generally do not straighten out on their own and often become more crooked, especially as this young man continues to grow. If this happens to petitioner, or if he develops better evidence, nothing prevents him from reapplying for orthodontic work in the future.

Finally, I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a

decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

The DHCAA properly denied the petitioner’s PA request for comprehensive orthodontic treatment as it has not been shown to be medically necessary.

**THEREFORE, it is ORDERED**

That the petition for review is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted. The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of March, 2013

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\sKelly Cochrane  
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 29, 2013.

Division of Health Care Access And Accountability