



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/147675

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 27, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 19, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for orthodontic work.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Dr. Robert Dwyer

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. On November 5, 2012, the petitioner with her orthodontist, Kristo Orthodontics, requested authorization for orthodontic work. The Office of Inspector General denied the request on November 13, 2012.
3. The petitioner is 13 years old.
4. The petitioner's Salzmann score is 28,
5. The petitioner's request does not document any extenuating circumstances.

### DISCUSSION

Medical assistance covers orthodontia if the recipient obtains prior authorization. To receive authorization, a service must be medically necessary rather than merely socially desirable or cosmetic. Wis. Admin. Code, § DHS 107.02(3)(e). The Division of Health Care Access and Accountability uses the Salzmann Index, which measures the crookedness of teeth (referred to as a malocclusion), as the first step in determining whether orthodontia is medically necessary. It automatically approves requests where the score is 30 or greater; if the score falls below 30, it denies the request unless it contains documentation of extenuating circumstances. *See MA Provider Handbook*, p. B5.2-070. The petitioner's score is 28, but her mother indicated that she has headaches and likely will permanent problems with her teeth if they are not straightened now. However, none of this was documented in the prior authorization request. The Diagnosis section of that document stated in entirety: "25% CLASS II MALOCCLUSION RIGHT; CLASS I MALOCCLUSION LEFT; MODERATE CROWDING MAXILLARY ARCH; LEFT POSTERIOR CROSSBITE." There was no other description of the petitioner's problems anywhere else in the document. Because the petitioner's orthodontist did not document any extenuating circumstances in the request itself, I must uphold the Division's decision.

As I told the petitioner's mother, her daughter's orthodontist can submit another prior authorization. If he does, he should include any extenuating circumstances in the request itself. It is also possible, given how close the petitioner's Salzmann score is to 30, that by the time a new request is submitted her teeth may be crooked enough for the orthodontic work to be covered even without extenuating circumstances.

I note that it appear that the petitioner did not file this appeal within 45 days as required by Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. I did not dismiss the appeal on this ground because I did not notice it earlier and thus did not question the petitioner's mother about the circumstances.

### CONCLUSIONS OF LAW

The petitioner has not established by the preponderance of the credible evidence that the requested orthodontic work is medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 Madison,  
Wisconsin, this 21st day of March, 2013

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\sMichael D. O'Brien  
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 21, 2013.

Division of Health Care Access And Accountability