



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████ ██████  
c/o ██████ ██████  
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DECISION ON REHEARING

MPA/147938

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 7, 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 (DHCAA or Division ) in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was scheduled, and the petitioner failed to appear. The appeal was dismissed. However, the petitioner filed a timely rehearing request, which was granted. The hearing was then held on June 4, 2013, by telephone. The hearing record was held open for 10 days for documentation from the petitioner, which was not received.

The issue for determination is whether the Division correctly denied a prior authorization request for orthodontia.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
By: ██████ ██████  
██████████████████  
██████████████████████████████

Respondent:

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

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

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Dane County. He is certified for MA or BadgerCarePlus.
2. On February 11, 2013, a prior authorization request was submitted on the petitioner's behalf for orthodontic treatment and adjustments. The Division issued written notice of denial on February 18, 2013.
3. The Division's basis for denial of the request was lack of medical necessity. Specifically, the Division determined that the petitioner's Salzmann Index score does not establish that he has a handicapping malocclusion. In the alternative, the Division asserts that there was no documentation in the authorization request of any unusual circumstances that cause the malocclusion to be handicapping.
4. The petitioner, age 12, has a Salzmann Index score of 22. He has no speech impediment, and he has managed to maintain a normal weight.
5. The petitioner asserts that his jaw locks when he is eating, and that the jaw pops when he yawns or tries to eat hard/chewy foods. He also asserts that he has frequent severe headaches due to his jaw. He asserts that he goes to a chiropractor multiple times weekly for this pain, and that he goes to the school nurse's room frequently for a painkiller for jaw pain. The hearing record was held open for the petitioner's mother to submit documentation from the chiropractor or school nurse to corroborate these assertions; nothing was received.

### DISCUSSION

Orthodontia can be a covered service for certain MA recipients, subject to prior authorization. Wis. Admin. Code §DHS 107.07(2)(c)11. For any prior authorization request to be approved, the requested service must satisfy the generic prior authorization criteria listed at §DHS 107.02(3)(e). Those criteria include the requirement that the service be medically necessary (as opposed to being needed, *e.g.*, for cosmetic, social or academic reasons). *Id.*, 1.

The petitioner has not met his burden of proving, by a preponderance of the credible evidence, that the requested orthodontia is *medically* necessary for him *at this time*. The Division's prior authorization document shows that the petitioner has a Salzmann Index score of 22 for his malocclusion. The Division's policy is to consider only children with Salzmann scores of at least 30 as having a malocclusion bad enough to pose a medical problem. *MA Prior Authorization Guidelines Manual*, p. 125.003.03 (5/93). On rare occasion, a petitioner has been able to show that a handicapping malocclusion exists despite a low Salzmann score, by providing documentation of a speech impediment, eating problem, or significant pain associated with the malocclusion.

The petitioner does not currently have a demonstrable medical problem due to the malocclusion at this time, so denial of his prior authorization request was reasonable and appropriate.

### CONCLUSIONS OF LAW

1. The requested orthodontia is not a medical necessity for the petitioner at this time.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**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 18th day of June, 2013

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\sNancy J. Gagnon  
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 June 19, 2013.

Division of Health Care Access And Accountability