

3. The Division's basis for denial was that the petitioner was over the age of 20, so orthodontic treatment is not available to her under Wisconsin's MA State Plan, which is on file with the federal government.
4. The petitioner is age 29. The anterior/posterior/vertical aspects of her jawbone are within normal limits. There is a discrepancy in the length of her maxillary and mandibular arches, and posterior cross-bite is present. The petitioner has many medical issues, including hydrocephalus and cerebral palsy, and has undergone over a dozen surgeries for treatment of the same. She currently wears night splints in an effort to reduce headaches and tooth and jaw pain. The headaches are probably caused by multiple factors, not just dental malocclusion.

DISCUSSION

Orthodontia can be a covered service for MA recipients under age 21, subject to prior authorization. Wis. Admin. Code §DHS 107.07(3). 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 for cosmetic, social or academic reasons). *Id.*, 107.07(4)(a).

Orthodontic services are limited to persons under age 21. Those services are part of a package of Early Periodic Screening, Diagnosis, and Treatment (ESPDT) services under federal law. See Wis. Adm. Code, §DHS 107.22; 42 C.F.R. §441.56(c). There is no availability of orthodontia for anyone else under MA in Wisconsin. See, § 107.07(4)(j). Thus, denial of the petitioner's authorization request was correct.

The petitioner stated that she had been told by someone when she was under age 21 that orthodontia was not available to her under the MA program. It is very unfortunate that someone told her this; however, any such misinformation does not overcome the legal authority presented here.

CONCLUSIONS OF LAW

1. The Division correctly denied the petitioner's request for orthodontia, as she is over the age of 20.

THEREFORE, it is

ORDERED

That the petition 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 28th day of August, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on August 28, 2013.

Division of Health Care Access And Accountability