



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

In the Matter of

██████ ██████
c/o ██████ ██████
████████████████████
██

DECISION

MPA/151227

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 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 (Division or DHCAA) in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on September 25, 2013, by telephone.

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 Shawano County. He is certified for MA or BCP.

2. On June 27, 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 July 8, 2013.
3. The Division's basis for denial of the request was lack of medical necessity. Specifically, the Division determined that the petitioner's Salzman 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 14, has a Salzman Index score of **16**. He has no speech impediment. Although he is slender, it is unclear if his dentition is responsible for his being underweight (5th percentile). He chews in an odd manner, but manages to consume a variety of foods.
5. The petitioner has a significant overbite. He is bothered by regular sinus infections and headaches, with the migraine headaches beginning approximately two years ago. The headaches had been occurring weekly, but are currently occurring every other week. The improvement is probably attributable to an increase in the medication, Topiramate (50 mg). Topiramate is a medication that is used to treat seizures and/or prevent migraines.

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 Salzman Index score of 16 for his malocclusion. The Division's policy is to consider only children with Salzman 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 Salzman score, by providing documentation of a speech impediment, eating problem, or significant pain associated with the malocclusion.

The petitioner's physician has stated that orthodontia for the petitioner might help relieve his migraine symptoms. If the petitioner's Salzman score were much closer to 30 (*e.g.*, 26-29), I would have given him the benefit of the doubt, and granted the authorization request here. However, the link between the malocclusion and the migraines is somewhat tenuous, and the petitioner's migraine problem appears to have recently improved with stronger medication. If the beneficial effects of his increased medication wear off (this has happened previously) or if the link between the migraines and the petitioner's malocclusion becomes stronger, the petitioner may wish to submit another prior authorization request (with the updated evidence) in the future. Put another way, one denial of a prior authorization request that is upheld by hearing does not automatically mean that the petitioner cannot ask again and be successful in a future request.

I conclude that the petitioner does not *currently* have a demonstrable medical problem due to the malocclusion, 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.

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 2nd day of October, 2013

\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 October 2, 2013.

Division of Health Care Access And Accountability