FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/151282

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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 19, 2013.

The issue for determination is whether DHCAA was correct to deny MA Prior Authorization ["PA"] (PA # [redacted]) for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted] (not present at September 19, 2013 Hearing)
[redacted]

Represented by:

[redacted], petitioner's mother
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Robert Dwyer, DDS, DCHAA Dental Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]; 12 years old) is a resident of Calumet County.
2. Petitioner's provider, [redacted] [redacted] of [redacted], Wisconsin, requested PA (PA # [redacted]; dated June 25, 2013) for MA coverage for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner at a total cost of $1,280.00.
3. DCHAA denied PA # [redacted] for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner; DHCAA sent petitioner a letter dated July 5, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.
4. Petitioner has a Salzmann Index score of 4; the evidence in the record of this matter does not support a conclusion that petitioner has any of the following: (1) a severe and handicapping malocclusion determined by a minimum Salzmann Index of 30; (2) a severe handicapping malocclusion; (3) a need for minor treatment (1-4 teeth) or for minor fixed or removable orthodontic treatment; or, (4) a referral from a mental health professional.

DISCUSSION

Petitioner appeals because DHCAA denied PA for comprehensive orthodontic treatment and periodic orthodontic treatment visits. This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

Orthodontic services are not covered under MA. Wis. Admin. Code §§ DHS 107.07(1)intro. & 107.07(4)(j) (May 2009). However, medical services provided to Early and Periodic Screening, Diagnosis and Treatment ["EPSDT"] patients must be covered for all recipients under age 21 years if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. § 441.56(c)intro. (2011); Wis. Admin. Code §§ DHS 107.22(1) & 107.22(4) (May 2009); See also, 42 USC § 1396d(a) (2006) & Wis. Admin. Code § DHS 101.03(54) (December 2008). Prior Authorization ["PA"] under section DHS 107.02(3) of the Wisconsin Administrative Code is required for coverage of such services. Wis. Admin. Code § DHS 107.22(4) (May 2009). Thus, the determination of whether or not the EPSDT health assessment and evaluation "indicates" that a requested service is "needed" is made by the PA process.

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (May 2009). Written state policy interpretations provide that orthodontic treatment can be approved in any of the following circumstances:

(1) a severe and handicapping malocclusion determined by a minimum Salzmann Index of 30;
(2) in extenuating circumstances, the dental consultant may, after comprehensive review of the case, determine that a severe handicapping malocclusion does exist, and approve the orthodontic treatment even though the Salzmann score is less than 30; and,

(3) certain cases of minor treatment (1-4 teeth) can be approved for minor fixed or removable orthodontic treatment;
(4) if the request for orthodontic services is the result of a personality or psychological problem or condition and a patient does not meet the criteria listed above, then a referral from a mental health professional is required.

Wisconsin Medicaid Provider Handbook ["WMPH"], Part B ([redacted] Handbook), Appendix 17, page B118 (issued 11/98); See also, *Prior Authorization Guidelines Manual* pages 125.004.03-04 & 125.005.03-04 (10/04/95); See also, DHA Case No. MPA-13/111381 (Wis. Div. Hearings & Appeals Proposed Decision July 30, 2010; Final Decision September 30, 2010) (DHS).

Based on the evidence in the record of this matter, petitioner does not satisfy any of the above criteria. Information in the record of this matter is that petitioner has a Salzmann Index of 4. Therefore, PA cannot be approved as requested by petitioner.

Petitioner's mother testified her orthodontist confirmed that petitioner needs braces to get her jaw in line to avoid headaches and that the need for braces is not cosmetic. However, as explained above, orthodontic treatment can be authorized only if certain criteria are satisfied. Petitioner does not satisfy those criteria.

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA (PA # [redacted]) for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 11th day of October, 2013

\sSean P. Maloney
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 11, 2013.

Division of Health Care Access And Accountability