



FH

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152458

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 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), a hearing was held on December 17, 2013, by telephone. A hearing set for November 6, 2013, was rescheduled at the petitioner's request. The hearing record was held open for the petitioner to confirm the numbers of her congenitally missing teeth. The record was further held open an additional 10 days to allow the Division to comment on the information regarding the missing teeth; a post-hearing response was received from the Division on February 10, 2014.

The issue for determination is whether the Division correctly denied the petitioner's prior authorization request for orthodontia.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
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 Calumet County. She is certified for MA.
2. On August 17, 2013, a prior authorization request (#5...006) was submitted on the petitioner's behalf for orthodontic treatment and adjustments. The Division issued written notice of denial on September 10, 2013.
3. The Division's basis for denial of the request was lack of medical necessity. Specifically, the Division determined that the petitioner's Salzmman Index score does not establish that she 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 Salzmman Index score of 16. She has no speech impediment, and she has managed to maintain a normal weight. However, the child has difficulty and discomfort with chewing some foods. She has many areas in her arches with exposed gums, as she has many congenitally missing adult teeth. These gaps will get worse as her few remaining baby teeth fall out, with no replacements. Prosthodontics are clearly in her future, and her treating dentist recommends orthodontia at a cost of \$1,280 to preserve adequate spacing.
5. The petitioner is congenitally missing adult teeth ## 1, 3, 4, 5, 12, 13, 16, 17, 20, 29, and 32. Per the Division's letter of February 10, 2014, the absence of these teeth was considered in its decision and the development of the Salzmman Index score in this case.

DISCUSSION

Orthodontia can be a covered service for certain MA recipients, subject to prior authorization. Wis. Admin. Code §§ DHS 107.07(3) and 107.22, and 42 C.F.R. § 441.56(c). 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.*, § 107.07(4)(a0

The petitioner has not met her burden of proving, by a preponderance of the credible evidence, that the requested orthodontia is medically necessary. The Division's policy is to consider only children with Salzmman 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). However, the policy is not law. On rare occasion, a petitioner has been able to show that a handicapping malocclusion exists despite a low Salzmman score, by providing documentation of a speech impediment, eating problem, or significant pain associated with the malocclusion.

The petitioner does not, barely, currently have a demonstrable medical problem due to the malocclusion at this time. She is missing many teeth and will continue to miss even more teeth due to the adult molars being congenitally absent. The Division was given an opportunity to explain why the large number of missing teeth was not an unusual circumstance, and it did so. *See*, Administrative Law Judge letter of January 27, 2014, and response of February 10, 2014. The denial of the prior authorization request was permissible and rational.

CONCLUSIONS OF LAW

1. The requested orthodontia is a not 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, Room 651, 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 10th day of February, 2014

\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 February 10, 2014.

Division of Health Care Access and Accountability