



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of:

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

DECISION

MPA/157325

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2014, 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 June 17, 2014.

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 June 17,  
2014 Hearing)  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner’s mother  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Robert Dwyer, DDS, DCHAA Dental Consultant (Dr. Dwyer did not appear at the June 17, 2014 Hearing but submitted a letter dated May 12, 2014 with attachments.)

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 (11 years old) is a resident of Oneida County, Wisconsin.
2. Petitioner's provider, First Impressions -- Orthodontics of Wausau, Wisconsin, requested PA (PA # [REDACTED]; dated March 7, 2014) for MA coverage for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner at a total cost of \$5,580.00.
3. On March 18, 2014 DCHAA denied PA # [REDACTED] for MA coverage for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner; DHCAA sent petitioner a letter dated March 18, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.
4. Petitioner has a Salzmann Index score of 18; 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, (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) (February 2014). 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)(2) (2012); Wis. Admin. Code §§ DHS 107.22(1) & 107.22(4) (February 2014); See also, 42 USC § 1396d(a) & 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) (February 2014). 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. (February 2014). 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;

- (3) certain cases of minor treatment (1-4 teeth) can be approved for limited or interceptive orthodontic treatment using either fixed or removable appliances; or,
- (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.

*ForwardHealth: BadgerCare Plus and Medicaid Handbook Area Dental Topic #2909 (“Severe Malocclusion”); Wisconsin Medicaid Provider Handbook [“WMPH”], Part B (Dental 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 18. Therefore, PA cannot be approved as requested by petitioner.

Petitioner’s mother testified that petitioner has Ehlers-Danlos Syndrome [“EDS”] which effects the joints and can cause Temporomandibular Joint disorders [“TMJ”], migraines, and joint popping. She submitted a letter from Marshfield Clinic dated June 16, 2008 stating that the evaluating doctor “does believe it is likely that [petitioner] has EDS . . . ” No other medical documentation relevant to EDS was provided. The documentation in the record of this matter is not sufficient to conclude that petitioner needs orthodontic treatment due to EDS. However, petitioner may wish to have her orthodontic provider file a new PA request with recent medical documentation confirming that petitioner has been diagnosed with EDS and explaining why, in light of her EDS, orthodontic treatment is medically necessary.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, DHCAA was correct to deny 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**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of June, 2014

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 25, 2014.

Division of Health Care Access and Accountability