



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/160010

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 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 (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on October 16, 2014. The record was held open for petitioner to provide new information, which was received and reviewed again by the DHCAA. The DHCAA again upheld the PA denial. The record was held open again to allow petitioner time to submit additional information in response, but nothing was received.

The issue for determination is whether the DHCAA properly denied the petitioner's prior authorization (PA) request for comprehensive orthodontic treatment, visits, and retention.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: written appearance by 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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On June 9, 2014 petitioner's dental provider submitted a PA request for petitioner to receive comprehensive orthodontic treatment (braces), visits and retention.
3. On June 27, 2014 the Department of Health Services denied the request because petitioner did not meet the MA Guidelines for coverage.
4. Petitioner then appealed to the Division of Hearings and Appeals on August 18, 2014. That appeal is the subject of this decision.
5. Petitioner's Salzmann index score was 3.
6. Petitioner's malocclusion is not severely handicapping.

DISCUSSION

Orthodontia is an MA-covered service for persons under age 21, subject to prior authorization. Wis. Adm. Code §DHS 107.07(2)(c)11. Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHCAA has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual at pages 125.003 and 125.005, which requires a Salzmann Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion severely handicapping.

The Salzmann score is a rating of the person's dental malocclusion, that is, how far from normal occlusion the person's teeth are. Petitioner's Salzmann score, as determined by the dental consultant here, is 3. There is no evidence that indicates that unusual circumstances exist that make the petitioner's malocclusion severely handicapping. Extenuating circumstances could be that, despite the low Salzmann, the malocclusion causes the person to have unusual difficulty eating or speaking, or the person has documented psychological problems caused by the abnormal occlusion. If the malocclusion is severe enough, an individual may not be able to properly chew and therefore cannot eat or digest particular foods. The inability to eat particular foods may become so extreme that an individual's health is compromised.

Petitioner's parents appeared at hearing and clearly want what is best for their son. They described at hearing that petitioner has some diagnoses that impact his abilities – namely, autism with RAD, ADHD and ODD. He has difficulty trusting and relating to authority figures and adults. His parents therefore wish to have the braces taken care of while he is in their care, as opposed to hoping he will or can do it himself as an adult. Unfortunately, while I am sure that the braces would benefit him, based on the evidence before me, I do not find this to be the kind of severe handicap anticipated under the rules.

Because petitioner's Salzmann score is 3 and the malocclusion is not severely handicapping, the requested orthodontic treatment in this case is not covered by the MA program per Wis. Admin. Code §DHS 107.02(3). The Division was therefore unable to approve the requested service. I add that teeth generally do not straighten out on their own and often become more crooked, especially as this young man continues to grow. If this happens to petitioner, or if he develops better evidence, nothing prevents him from reapplying for orthodontic work in the future.

Finally, I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The DHCAA properly denied the petitioner's PA request for comprehensive orthodontic treatment, visits and retention as it has not been shown to be medically necessary.

THEREFORE, it is

ORDERED

The petition for review herein is 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 Milwaukee,
Wisconsin, this 15th day of January, 2015

\sKelly Cochrane
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 January 15, 2015.

Division of Health Care Access and Accountability