



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact Redact
Redact

DECISION

MPA/161471

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 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 in regard to Medical Assistance, a telephonic hearing was held on November 12, 2014, at Milwaukee, Wisconsin.

During that hearing, the petitioner's grandmother, Rec Redact, requested that the record be held open for documents submitted after the hearing to be sent to the Office of the Inspector General (OIG) for a reconsideration decision. This Administrative Law Judge (ALJ) sent December 8, 2014 cover letter to Dr. Redact at the OIG with a copy of the following documents submitted while the record was held open: a) a November 13, 2014 by Rec Redact; b) a November 13, 2014 letter by Dr. Redact, MD; c) various dental question and progress notes; and d) x rays of petitioner's teeth. In that same letter, this ALJ requested that Dr. Redact review the enclosed copies of the letters/documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals by December 15, 2014, with a copy of that reconsideration summary letter to be sent to the petitioner's grandmother. The petitioner's grandmother was granted until December 22, 2014 to submit any written response to DHA regarding the Department's reconsideration by Dr. Redact.

Dr. Redact timely sent a reconsideration letter to DHA and to petitioner. However, Ms. Redact did not submit any response to DHA by December 22, 2014 deadline or even by the date of this decision.

The issue for determination is whether petitioner meets the Medicaid criteria for approval of orthodontia.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact Redact
Redact

Representative:

Redact Redact, grandmother
Redact

Respondent:

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

By: Redact, D.D.S., 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:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 13 year old resident of Milwaukee County who is diagnosed with Autism.
2. On or about October 2, 2014, petitioner's provider, Dr. Redact, requested prior authorization (PA) on petitioner's behalf for orthodontia at a cost of \$6,140.00. See Exhibit 2.
3. The Division of Health Care Access and Accountability (DHCAA) sent an October 14, 2014 letter to the petitioner stating that his PA request for orthodontia was denied due to lack of medical necessity because petitioner does not have a severe malocclusion. See Exhibit 1.
4. Petitioner's "Salzmann" score was 23.
5. Petitioner's representative did not establish any "extenuating circumstances" for approval of his prior authorization request during the hearing or while the record was held open. See above Preliminary Recitals.

DISCUSSION

Orthodontia is not an MA-covered service. Wis. Adm. Code, §DHS 107.07(4)(j). However, medical services provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Adm. Code, §107.22(4). 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, page 125.004.03. The Manual requires a Salzmann Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion handicapping. See also the MA Providers Handbook. Part B, Appendix B118.

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 DHCAA dental consultant, is 23. Extenuating circumstances could be that, despite a 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. Neither the petitioner's grandmother nor his orthodontist were able to establish any problem that rose to the level of an "extenuating circumstance." See above Preliminary Recitals.

There are essentially two means to determine that a request should be granted when the DHCAA determines a Salzmann score to be below 30. One way would be to provide evidence and argue that the Salzmann score actually is 30 or above. The petitioner did not make such argument. The other way is to provide evidence of extenuating circumstances. The petitioner did not provide evidence to establish any extenuating

circumstances, but petitioner's grandmother explained that he was worried about the over-crowding of his grandson's teeth and that **Redact** sticks small items between the gaps in his teeth due to his "mental illness." Petitioner's grandmother submitted a letter from his physician, Dr. **Redact**. However, Dr. **Redact** letter did not establish extenuating circumstances for approval of the orthodontia, but instead explained how difficult it might be for petitioner to undergo orthodontia due to his mental health and behavioral issues.

There is no evidence in the hearing record that the DHCAA's determination of petitioner's Salzmann score was incorrect. While I can certainly understand why petitioner and his grandfather would desire the braces to straighten his teeth, I do not have the authority to disregard the department's approval criteria. Accordingly, based upon the above, I must conclude that the Division correctly denied petitioner's PA request for orthodontia because petitioner does not meet the MA criteria for orthodontia because his Salzmann score is less than 30 and extenuating circumstances have not been established.

CONCLUSIONS OF LAW

Petitioner does not meet the MA criteria for orthodontia because his Salzmann score is less than 30, and extenuating circumstances have not been established.

THEREFORE, it is ORDERED

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 9th day of January, 2015

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 9, 2015.

Division of Health Care Access and Accountability