



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

In the Matter of

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

DECISION

MPA/168299

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2015, 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 hearing was held on October 16, 2015, at Balsam Lake, Wisconsin. Hearings scheduled for September 21, 2015, and October 12, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for orthodontia.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

By: Dr. [REDACTED]
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.

2. On July 22, 2015, the petitioner with Dr. [REDACTED], requested orthodontia at a cost of \$5,600. The Office of Inspector General denied the request on August 12, 2015.
3. The petitioner's Salzmann score is 22.
4. The orthodontia request did not document any extenuating circumstances in her request.
5. Dr. [REDACTED] submitted the following statement on September 15, 2015, to support the requested orthodontia: "[The petitioner] presents with a Class I malocclusion. She has crowding and a representative deep bite. The crowding causes a cross bite of tooth #27. Straight wire and brackets would correct all of the above mentioned malocclusion."
6. The petitioner has headaches, but there is no medical evidence that her teeth causes this problem.

DISCUSSION

Medical assistance covers orthodontia if the recipient obtains prior authorization. To receive authorization, a service must be medically necessary rather than merely socially desirable or cosmetic. Wis. Admin. Code, § DHS 107.02(3)(e). The Division of Health Care Access and Accountability uses the Salzmann Index, which measures the crookedness of teeth (referred to as a malocclusion), as the first step in determining whether orthodontia is medically necessary. It automatically approves requests where the score is 30 or greater; if the score falls below 30, it denies the request unless its consultant, "after a comprehensive review of the case," determines that "a severe malocclusion does exist." *Medicaid Online Handbook*, Topic # 2909.

The petitioner's score is 22. The request includes no documentation of extenuating circumstances, so the Office of Inspector General had no basis for finding that any extenuating circumstances exist. Her orthodontist did submit a statement to the Division of Hearings and Appeals, but this seems to say only that the teeth are crooked, something that is true of almost every request for orthodontia:

[The petitioner] presents with a Class I malocclusion. She has crowding and a representative deep bite. The crowding causes a cross bite of tooth #27. Straight wire and brackets would correct all of the above mentioned malocclusion.

The petitioner's father testified that his daughter has headaches, but he acknowledged that she was going through a growth spurt—now 14 years old, she is 5'11" tall—and had pain in other parts of her body, so there is no verifiable evidence that the crookedness of her teeth are causing the headaches. Furthermore, because both the dentist's statement and the father's testimony came after the prior authorization request was submitted, neither was something the Office of Inspector General could consider as part of its comprehensive review of the case. The process for determining prior authorizations is supposed to involve the Office of Inspector General making a decision based upon a medical file that contains all of the relevant evidence and the Division of Hearings and Appeals reviewing that decision after considering the petitioner and her provider's interpretation of that evidence. If the provider omits evidence from the request, the system breaks down because the administrative law judge, who is not trained in medicine, will not have adequate medical guidance for making the decision.

The petitioner is not entitled to the requested orthodontia because her Salzmann score is below 30 and her provider did not document any extenuating circumstances in the prior authorization request. But even if I consider the evidence developed after her dentist submitted the request to the Office of Inspector General, that evidence does not establish that she has a severe malocclusion.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for orthodontia because she has not shown by the preponderance of the credible evidence that she has a severe malocclusion.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 3rd day of November, 2015

\sMichael D. O'Brien
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 November 3, 2015.

Division of Health Care Access and Accountability