FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: MPA - 175359

PRELIMINARY RECITALS

Pursuant to a petition filed on July 1, 2016, 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 regarding Medical Assistance (MA), a hearing was held on August 15, 2016, by telephone.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: [redacted]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Chippewa County.

2. The petitioner with Kristo Orthodontics requested orthodontia. The department denied the request on May 31, 2016.
3. The petitioner's Salzmann score is 25.
4. The petitioner's dentist did not document any extenuating circumstances in the request for orthodontia.

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 department 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 25. The request includes no documentation of extenuating circumstances, so the Office of Inspector General had no basis for finding that any extenuating circumstances exist. An administrative law judge is not a dental expert, so he relies upon the evidence presented by provider and the department. If the dental provider does not explain why orthodontia is needed in the prior authorization request, there is no medical evidence for the judge to rely on. Without this evidence, the petitioner cannot meet his burden of proving by the preponderance of the credible evidence that the service is justified, which means the denial must be upheld.

The diagnosis found in the petitioner's stated in its entirety: "Class I malocclusion right; 25% class III malocclusion tendencies left; 50% deepbite; minor misalignment; maxillary right and left laterals are undersized." While this describes the manner in which the teeth are crooked, it does not explain what physical problems and what eating limitations this crookedness will cause the petitioner. Without an adequate explanation of this, the request cannot be approved.

CONCLUSIONS OF LAW

The department correctly denied the petitioner's request for orthodontia because he has not shown by the preponderance of the evidence that the service is medically necessary.

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, **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 19th day of August, 2016

\s_____
Michael 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 August 19, 2016.

Division of Health Care Access and Accountability