

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE**

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Docket # 14-99
Hearing Date: April 3, 2014

Date: June 6, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

THE DHS PROVIDER MANUAL: Dental Services

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), the Agency Representative, the Agency Supervisor, and the Policy Unit.

Present at the hearing were: You (the Appellant), the Appellant's mother and Jack Demus, the Agency Representative.

ISSUE: Does the Appellant qualify for Medicaid covered Orthodontic Services?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy and Provider Manuals.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:**The Agency Representatives testified:**

- On November 22, 2013 the agency issued a notice of denial of services to the Appellant for reasons that her examination did not meet the HLD scores and that there must be evidence of current medical problems or impairment of function with an anticipated functional outcome before medical assistance coverage can be authorized.
- Appellant's mother filed an appeal stating that she had taken the Appellant to two different orthodontists who indicated that the Appellant was in need of braces.
- The agency reviewed the Appellant/child's orthodontist report, along with photographs of the Appellant's teeth as part of the application process.
- The HLD Scoring Index was used that allows a scoring to determine the severity of the condition. For an applicant to be approved, they must score at least 20 points.
- In this particular case, Dr. Brennan did the scoring; none of the first six options (Part A) had been indicated that the applicant/Appellant had any of these conditions. If any of these first six had been checked, the applicant would automatically be approved for services.
- The last four options (Part B) can receive a score from 0-5 each, a score of 20 or higher would qualify the applicant for services. The Appellant in this matter only had a score of 12;
 - Over jet in mm.....3 pts.
 - Overbite in mm.....4 pts.
 - Ectopic eruption, other than anterior teeth. Court each tooth excluding 3rd molar(s).....0 pts.
 - Anterior crowding: Scoring one point for Maxilla, and/or one point for Mandible:(two point maximum for anterior crowding).....5 pts.
- Since the Appellant had only scored a 12 and not a 20 or higher, the agency denied the Appellant services.

The Appellant testified:

- The Appellant has been taken to two different orthodontists, one being Dr. McMillen, who feel that the Appellant needs braces.
- The Appellant reports that she has pain in her ears.
- The Appellant's mother testified that she took the Appellant to an ear doctor, Dr. Duff, due to the Appellant having ear problems. The Appellant's jaw is causing pain in the Appellant's ears.
- The Appellant's mother submitted a letter that maybe notes from Dr. Duff but it was not on letter head or signed by anyone.

The Appellant's mother requested additional time that would allow her to bring the agency's HLD scoring sheet for Dr. McMillen's review and possibly submit more records and reports into evidence. At the request of the Appellant, the record of Hearing was kept open for an additional three weeks, which will allow the record to close at the end of business on April 24, 2014.

The Appellant's mother called the Appeal Office and requested an additional two week which was granted. The record closed May 8, 2014.

FINDINGS OF FACT:

- The agency issued a notice of denial of service to the Appellant on November 22, 2013.
- The Appellant's mother filed an appeal on behalf of the Appellant.
- Dr. Brennan prepared the HLD Scoring Index; none of the first six options (Part A) had been indicated that the applicant/Appellant had any of these conditions. If any of these first six had been check, the applicant would automatically be approved for services.
- The last four options (Part B) can receive a score from 0-5 each, a score of 20 or higher would qualify the applicant for services. The Appellant in this matter only had a score of 12;
 - Over jet in mm.....3 pts.
 - Overbite in mm.....4 pts.
 - Ectopic eruption, other than anterior teeth. Court each tooth excluding 3rd molar(s)0 pts.
 - Anterior crowding: Scoring one point for Maxilla, and/or one point for Mandible:(two point maximum for anterior crowding).....5 pts

After the Hearing, yet before the record closed, the Appellant submitted a letter from Dr. Duff (Otology, Neurology and Skull Base Surgery) date March 28, 2014 stating the Appellant has returned with binaural otalgia (earache) without a decline in auditory function; her tympanic membranes appear intact and mobile and the middle ears are well aerated and the canal epithelium is unremarkable. Routine survey of the upper aerodigestive tract without evidence of mucosal-based lesion, there is no evidence of cervical adenopathy and gross cranial nerve survey otherwise unremarkable. Appellant indicated severe pain with palpation of the right temporomandibular joint during forced occlusion of the mandible.

The doctor suggested a soft diet, avoid gum chewing, nonsteroidal medications and moist heat. If those measure are found unsuccessful, consult with dentist to discuss other treatment options.

CONCLUSION:

The issue to be decided is whether the Appellant qualifies for Medicaid covered Orthodontic Services?

The agency reviewed the Appellant's application and used reports and photographs from September 2013 submitted by orthodontist Dr. McMillen on behalf of the Appellant. Using that information, the agency's orthodontist was able to complete the Handicapping Labiolingual Deviation (HLD) Index, an orthodontic diagnostic score sheet.

In part "A" of the HLD Index it asks if any of the following exist:

1. Deep impingement when lower incisors are destroying the soft tissue of the palate.
2. Cross-bite of three or more permanent and/or deciduous posterior teeth of anterior cross-bite of one to two individual teeth when destruction of soft tissue is present.
3. Congenital birth defect (e.g. cleft palate) or deviations that affect skeletal relationship and/or dentition.
4. Impacted permanent teeth with most of the permanent dentition present (excluding third molars).
5. Over-jet greater than 6 mm with incompetent lips or reverse over-jet.
6. Malocclusion with open-bite from canine to canine.

If an applicant (Appellant) had any one or more of the above conditions, the applicant would automatically qualify for services. In this particular case, the Appellant did not have any of the above conditions.

Part "B" of the HLD Index is comprised of four different conditions, each condition is scored from 0 to 5, 5 being the most severe circumstances. If an applicant scores at least 20 points in this section, the applicant qualifies for authorization. The conditions are listed as follows

- | | |
|--|----|
| 7. Over-jet in mm. (1-5 mm)..... | 3 |
| 8. Over-bite in mm..... | 4 |
| 9. Ectopic eruption, other than anterior teeth. Count each tooth
Excluding 3 rd molar(s) (score=# of teeth x 3)..... | 0 |
| 10. Anterior crowding: Score one point for MAXILLA, and/or one
Point for MANDIBLE (two point maximum for anterior
Crowding) (score x 5 = _____)..... | 5 |
| | 12 |

The Appellant in this matter only was able to achieve a score of 12 for Part "B" of the HLD Index and a score of 20 or more is needed to qualify for authorization.

The Appellant's mother testified that her daughter, the Appellant, has pain in her ears and has always have had pain in her ears. The Appellant had been taken to two different dentists. The Appellant has also been to seen by Dr. Duff from University Otolaryngology on three different occasions. In Dr. Duff's March 28, 2014 note, the Appellant "had consulted with an orthodontist who recommended braces but insurance will not cover it." And that the Appellant has returned with "binaural otalgia without a decline in auditory function; her tympanic membranes appear intact and mobile and the middle ears are well aerated and the canal epithelium is unremarkable. Routine survey of the upper aerodigestive tract without evidence of mucosal-based lesion, there is no

evidence of cervical adenopathy and gross cranial nerve survey otherwise unremarkable. Appellant indicated severe pain with palpation of the right temporomandibular joint during forced occlusion of the mandible. A bite guard was suggested, as well as a soft diet, non-steroidal medication, avoidance of gum chewing and moist heat application. If none of the suggestion were successful, the Appellant should consult with her dentist for other possible treatments.

Dr. Duff's note from March 28, 2014 was re-submitted, this time appearing on letter head and signed by the doctor, which is why the report had been held open in part. After re-evaluation of this letter, Dr. Brennan still maintained the position that "...this patient does not meet the HLD score as required in order to qualify for D8080." (Code D8080 stand for comprehensive orthodontic services for an adolescent). Also submitted after hearing but yet before the record closed was a letter written by the Appellant's mother, dated May 3, 2014. This faxed letter indicated that it was also sent to the agency for review. The letter states that the Appellant had last seen orthodontist, Dr. Silverberg, on April 30, 2014 who was informing the Appellant that she would need braces and/or possible surgery for her jaw. No x-rays were taken because of what Dr. McMillens and Dr. Duff's report stated.

Unfortunately, the Appellant's mother stating that one or more orthodontists have indicated that the Appellant is in needs braces, this isn't enough. Why do these orthodontists feel that the Appellant is in need of braces was left unanswered. Dr. Duff's letter suggested a mouth guard but nothing was stated as to if this suggestion had been acted upon and if so, what was the result. The record had been asked to be held open twice by the Appellant's mother in order for more records and reports to be submitted on the Appellant's behalf. The only report that had been submitted was Dr. Duff's March 28, 2014 on letter head and signed compare to the original that was just on a plain piece of paper without a signature and a hand written letter from the Appellant's mother. It would have been nice to have Dr. Silverberg's option on the agency's HLD Index score sheet, which had been suggested at hearing or an explanation as why surgery is an issue and how having braces would help. Nothing has been submitted to explain why medically the Appellant should have orthodontics.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant does not qualify for Medicaid covered Orthodontic Services. The appellant's request for relief is therefore denied.



Thomas Bucacci
Appeals Officer