

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT

OF HEALTH

* BEFORE LAURIE BENNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-12-19-22575

* * * * *

DECISION

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STATEMENT OF THE CASE

[REDACTED] (Appellant) is a recipient of Medical Assistance (MA) benefits. MA, also known as Medicaid, is administered by the Maryland Department of Health (Department). On March 18, 2019, the Appellant's orthodontist, [REDACTED], D.D.S., M.S., requested preauthorization of orthodontic treatment for the Appellant under the MA Healthy Smiles Dental Program. Around April 16, 2019, Healthy Smiles, by its administrative service organization, Scion Dental, Inc., denied the request on the grounds that orthodontic care is not medically necessary for the Appellant. On April 16, 2019, the Appellant filed an appeal.

Scion performed a second review on April 17, 2019. The reviewer again determined that the service was not medically necessary. Around May 29, 2019, the Appellant requested a hearing.

Around May 30, 2019, a third reviewer considered the request and denied it.

On July 18, 2019, the Department transmitted the appeal to the Office of Administrative Hearings (OAH).

On January 15, 2020, I conducted a hearing at the OAH in [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 10.01.04.04. [REDACTED] the Appellant's mother, represented the Appellant, who was present. Vanessa Yanson, Assistant Attorney General, represented the Department.

The contested-case provisions of the Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the State MA Program, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 10.01.04; and COMAR 28.02.01.

ISSUE

Did the Department properly deny the Appellant's request for preauthorization of orthodontic care?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted these exhibits that the Department offered:

1. Letter from [REDACTED] D.D.S., M.S., [REDACTED], 3/18/19, with attachments
2. Handicapping Labio-Lingual Deviations Form (HLD Index No. 4), 3/18/19
3. Letter from the Appellant's mother, 5/22/19
4. Hearing Summary, not dated

The Appellant did not offer any exhibits.

Testimony

The Appellant and her mother testified.

Ronald Chenette, D.M.D., who was accepted as an expert in dentistry, testified for the Department.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant is a fifteen-year-old girl who receives medical insurance benefits through the MA Program, including medically necessary dental care.
2. [REDACTED] D.D.S., M.S., from [REDACTED] examined the Appellant on or before March 18, 2019. Dr. [REDACTED] took photographs and radiographs of the Appellant's teeth and she completed a Handicapping Labio-Lingual Deviations Index (HLD Index) in an effort to show that orthodontic care is medically necessary.
3. The HDL Index calls for scores for a patient's cleft palate, severe traumatic deviations, overjet, overbite, mandibular protrusion, open bite, labio-lingual spread, anterior crowding, ectopic eruption, and posterior crossbite.
4. Overbite and overjet are measured in millimeters. The HDL Index calls for a clinician to subtract 2 mm from overjet and 3 mm from overbite scores to obtain a net score.
5. Dr. [REDACTED] assessed a total of 18 points from four categories:
 - a. Overjet: gross score of 6 mm minus 2 mm for a net score of 4 mm;
 - b. Overbite: gross score of 6 mm minus 3 mm for a net score of 3 mm;
 - c. Anterior crowding of the maxilla jaw: 5; and
 - d. Ectopic eruption: 2 times 3 (as the Index demands) for a total of 6.
6. Dr. [REDACTED] proposed comprehensive orthodontics for the Appellant.

7. The Appellant does not suffer from anterior crowding.

8. Scion is the contractual administrative service organization that assists the Department in managing its dental program.

9. Two orthodontists consulting for Scion, [REDACTED] D.M.D., and [REDACTED] [REDACTED] D.D.S., reviewed the Appellant's dental records from Dr. [REDACTED] and determined that there was anterior crowding and they reduced her overjet score by 1 mm. They agreed with her other scores. Without anterior crowding, the total score is only 13.

DISCUSSION

Healthy Smiles covers medically necessary dental services for participants younger than twenty-one, including but not limited to nine specifically enumerated services. COMAR 10.09.05.04A. The fourth enumerated service is orthodontic care for conditions which: (a) have adjusted case scores of at least fifteen points on the HLD Index; and (b) cause dysfunction due to a handicapping malocclusion that is supported by comprehensive pretreatment orthodontic records. COMAR 10.09.05.04A(4). The Program also requires preauthorization for traditional orthodontic services for the correction of medically necessary conditions that cause dysfunction due to a handicapping malocclusion. COMAR 10.09.05.06F. The term "medically necessary" means a service that is:

(a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative treatment of an illness, injury, disability, or health condition;

(b) Consistent with currently accepted standards of good medical practice, dental practice, or both;

(c) The most cost-effective service that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the consumer, family, or provider.

COMAR 10.09.05.01B(22).

Dr. [REDACTED] scored the Appellant an 18 on the HDL Index. The Scion reviewers gave the Appellant a score of 3 for overjet, instead of Dr. [REDACTED]'s 4. Even if I give the Appellant the benefit of the doubt in that category, she faces a bigger hurdle with anterior crowding, where Dr. [REDACTED] scored 5 and, the Scion reviewer and Dr. Chenette scored 0. If she does not have anterior crowding, Dr. [REDACTED]'s score of 18 is reduced by 5 to a total of 13. A score of 13 is less than the 15 that is required for orthodontic care. The two Scion reviewers also deducted an additional point for overjet, for a total of 12 points.

The Appellant advocated for herself and asked Dr. Chenette an important question: how can one doctor score an 18 and another only 12 or 13? Dr. Chenette explained that doctors can disagree with each other and he disagrees with Dr. [REDACTED]'s anterior crowding score, in particular. It is my responsibility to decide which doctor's opinion to give more weight. Even though Dr. [REDACTED] examined the Appellant, I accept Dr. Chenette's testimony about her score.

Dr. [REDACTED] is surely owed some deference because she personally examined the Appellant, whereas the other doctors associated with this case did not. Dr. [REDACTED]'s preauthorization details the Appellant's dental condition in a bulleted list. At least to my lay eye, I do not see anterior crowding listed, although admittedly it may be that the doctor used a technical term that is not obvious to me. If that is the case, the problem is that Dr. [REDACTED] did not testify to explain the terms and how she scored 5 for anterior crowding. I am mindful that having a doctor testify at a hearing may be costly and therefore unrealistic. Without a doctor to testify and offer an opinion, the Appellant is disadvantaged.

Dr. Chenette is among those who did not personally examine the Appellant. He examined the photographs and radiographs that Dr. [REDACTED] took. He testified that the films do not show anterior crowding. He noted that the panoramic view of the Appellant's teeth is slightly distorted, but there is spacing on the upper arch. MDH/Dept. Ex. 1 at 5. He did not see the "bunching up of the teeth" that Dr. [REDACTED] reported, and he saw spacing between lateral incisors. Dr. Chenette testified that Dr. [REDACTED]'s observations are not supported by the records. Because Dr. Chenette examined the photographs and radiographs and those documents support his testimony, I will give his opinion significant weight. Without those 5 points, the Appellant has just 13 points total.

The Appellant's mother testified that she is concerned for her daughter's health. She fears the Appellant's teeth may get worse and she wants to fix them before that happens. The Appellant testified that she is worried also. She explained that she grinds her teeth a little because she is anxious and her teeth hurt, possibly from the overbite. The Appellant has done some research and believes the overbite may cause the grinding and resulting pain and may damage her teeth. I respect the work the Appellant has done to understand her teeth. Unfortunately, I must make a decision based on the regulations.

The Appellant said that she finds it difficult to brush her teeth. Dr. Chenette suggested that she talk to her regular dentist about this problem.

Dr. Chenette testified that the Appellant may reapply every six months. He believes that it may be beneficial to do so because she is still growing.

CONCLUSION OF LAW

I conclude that the Department properly denied the Appellant's request for pre-authorization of orthodontic treatment. COMAR 10.09.05.01B(21); COMAR 10.09.05.04A(4).

ORDER

I hereby **ORDER** that the determination of the Maryland Department of Health – to deny preauthorization for orthodontic treatment for the Appellant through the Maryland Healthy Smiles Dental Program – is **AFFIRMED**.

February 14, 2020
Date Decision Issued

Signature Appears on Original

Laurie Bennett
Administrative Law Judge

LB/kdp
#184043

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2019). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed to:

[Redacted]

[Redacted]

[Redacted]