

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT OF

HEALTH

* BEFORE ABENA Y. WILLIAMS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-12-21-09231

* * * * *

DECISION

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STATEMENT OF THE CASE

On January 7, 2021, [REDACTED] (Appellant) submitted a request for Comprehensive Orthodontic Treatment of the Adolescent Dentition and Periodic Orthodontic Treatment (orthodontic services) under the Maryland Healthy Smiles Dental Program (Healthy Smiles) of the Maryland Medical Assistance (MA) program. On the same day, the Maryland Department of Health (Department) notified the Appellant that it had determined she was not eligible for orthodontic services because those services were not medically necessary for the Appellant. On January 22, 2021, the Appellant's mother, [REDACTED], filed an appeal on behalf of the minor Appellant. Code of Maryland Regulations (COMAR) 10.01.04.02A; COMAR 10.01.04.12B(3)(a).

I held a hearing on June 15, 2021 via the Webex videoconferencing platform. COMAR 10.01.04.06. The Appellant's mother represented the Appellant. COMAR 10.01.04.12B(3)(a). Benjamin Bor, Assistant Attorney General, represented the Department.

The Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the Rules of Procedure of the Office of Administrative Hearings govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 10.01.04; and COMAR 28.02.01.

ISSUE

Did the Department properly determine that the Appellant was not eligible for orthodontic services via Healthy Smiles because the services were not medically necessary?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Department's behalf:

- MDH Ex. 1 Member Initial Determination Letter, January 7, 2021
- MDH Ex. 2 Initial Determination Letter Sent to Provider, January 7, 2021
- MDH Ex. 3 Letter of Appeal from [REDACTED] on behalf of the Appellant, January 20, 2021
- MDH Ex. 4 Letter confirming receipt of appeal request, January 26, 2021
- MDH Ex. 5 SKYGEN Denial of Reconsideration Letter, February 2, 2021
- MDH Ex. 6 Treating Provider ([REDACTED] DDS) Handicapping Labio-Lingual (HLD) Index No. 4 Form, January 5, 2021
- MDH Ex. 7 Panoramic Radiograph Photo, undated
- MDH Ex. 8 Cephalometric Radiograph Photo, undated
- MDH Ex. 9 Member Photographs, undated
- MDH Ex. 10 Provider Letter, January 5, 2021
- MDH Ex. 11 HLD Index No. 4 Reviewer Form, January 11, 2021
- MDH Ex. 12 HLD Index No. 4 Reviewer Form, January 7, 2021

The following document was offered by the Appellant but not admitted into evidence:

Offered Letter from Drs. [REDACTED] and [REDACTED] and [REDACTED] to Drs. [REDACTED] and [REDACTED] November 30, 2020¹

Testimony

The Department presented the testimony of the [REDACTED] D.M.D.,² SKYGEN USA (SKYGEN) Dental Consultant, who was accepted as an expert in Orthodontics.

[REDACTED] the Appellant's mother testified on behalf of the Appellant. The Appellant did not testify and was not present.

FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. Healthy Smiles is the Department's adolescent orthodontic program, which is administered by SKYGEN, under contract with the Department.
2. The HLD Index is the assessment tool adopted by the Department to determine the medical necessity for MA coverage of orthodontic services under the Healthy Smiles program.
3. A total score of fifteen or more points on the HLD Index is necessary for approval of coverage of orthodontic services under the MA program.
4. At all relevant times, the Appellant was a minor child entitled to receive MA benefits. The Appellant's mother is [REDACTED]
5. On January 22, 2021, [REDACTED] on behalf of the Appellant, requested MA coverage of orthodontic services. An HLD Index form completed by the Appellant's

¹ Although not offered, the Appellant's exhibit was kept and not considered: Letter from [REDACTED] to Drs. [REDACTED] and [REDACTED] regarding Appellant, November 30, 2020.

² Doctor of Dental Medicine.

treating orthodontist, Dr. [REDACTED] was submitted along with this request. Dr. [REDACTED] calculated a score of seventeen on the HLD Index.

6. The Appellant's dentition does not merit any points on the HLD Index for cleft palate, severe traumatic deviations, mandibular protrusion, open bite, labio-lingual spread, anterior crowding, or posterior crossbite. (MDH Exs. 11, 12.)
7. The Appellant's dentition merits a total of eight points on the HLD Index, for the following conditions:
 - Overjet³ of four millimeters, for a score of two points;
 - Overbite⁴ of six millimeters, for a score of three points; and
 - Ectopic eruption⁵ of one tooth, for a score of three points. (MDH Exs. 11, 12.)
8. On April 19, 2021, two orthodontists consulting for SKYGEN, Dr. [REDACTED] and Dr. [REDACTED] reviewed the Appellant's dental records from Dr. [REDACTED] and each completed an HLD Index, calculating a score of eight. *Id.*
9. On February 2, 2021, Healthy Smiles denied the Appellant's request, determining that the requested orthodontic services were not medically necessary. (MDH Ex. 5.)

DISCUSSION

LEGAL FRAMEWORK

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.

³ Overjet measures the horizontal distance between the upper and lower front teeth. ([REDACTED] Testimony.)

⁴ Overbite measures the vertical distance that determines how much the upper teeth overlap the lower teeth. *Id.*

⁵ Ectopic eruption is an unusual pattern of tooth eruption. *Id.*

Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002). In this case, the Appellant bears the burden to show that she is entitled to the benefit she seeks. COMAR 28.02.01.21K(1)-(2)(a).

The MA program covers only medically necessary dental services. COMAR

10.09.05.04A. "Medically necessary" is defined as a service or benefit 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).

For MA recipients younger than twenty-one years old, the MA program covers medically necessary dental services, 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 No. 4*.

THE MERITS OF THIS CASE

The Department denied the Appellant's request for orthodontic services because it found that the services were not medically necessary. The Department based that decision on the lack of information showing severe orthodontic abnormality resulting in a total HLD Index score of fifteen points or greater, as required by COMAR 10.09.05.04A(4)(a).

The Appellant disputed the Department's decision to deny her request for orthodontic services, contending that "she has [REDACTED], which is her adult tooth trying to come down but unable to fit, so it took a left turn and grew almost parallel to the ground if she is sitting or standing...in order to get the tooth into place, a lot of strategic moves must take place [which]

will take some time and [expense].” The Appellants aver that they cannot afford to do the surgery without insurance and according to their doctor, noted that eventually the Appellant’s body would get an infection around the [REDACTED] in an attempt to get rid of it, which if left untreated, could result in death.

The Department’s witness, orthodontist Dr. [REDACTED] testified as an expert in Orthodontics. Dr. [REDACTED] testified that he is an independent contractor for SKYGEN and explained that SKYGEN administers the Healthy Smiles program in accordance with the State guidelines set forth in COMAR. The treating dentist conducts an orthodontic evaluation and completes an HLD Index; each category of conditions observed is given a score. That dentist then submits the orthodontic evaluation and completed HLD Index form to SKYGEN, along with x-rays and photos of the patient’s face and teeth. A SKYGEN orthodontic consultant then reviews the records and renders an independent HLD Index score to determine if the scoring is correct. If coverage is denied, the individual may request a second review and SKYGEN will then forward the case to a second orthodontic consultant for another independent review. In order to receive orthodontic services, the individual must have a minimum total score of fifteen.

The record in this case includes the HLD Index form prepared by the Appellant’s treating orthodontist, Dr. [REDACTED] (MDH Ex. 6.) Dr. [REDACTED] scored the Appellant’s overjet as four points; the overbite as four points; the labio-lingual spread as three points; and ectopic eruption as six points, for a total score of seventeen. Dr. [REDACTED] determined that the Appellant did not have any of the remaining five conditions listed on the HLD Index. Thus, according to Dr. [REDACTED]’s evaluation of the Appellant, orthodontic services were medically necessary at the time of the evaluation.

Dr. [REDACTED] along with Dr. [REDACTED] another SKYGEN orthodontic consultant, reviewed the Appellant’s case. Dr. [REDACTED] testified that in his expert opinion, Dr. [REDACTED]’s scoring was not

in line with what he observed from the photographs and x-rays. According to his calculations, the Appellant scored eight points. He agreed the Appellant had one ectopic tooth, a canine, but noted that Dr. [REDACTED] gave her a score of six points for ectopic eruption, instead of three. He explained a scoring of six would only result if she had two ectopic teeth.⁶ He opined according to a panoramic radiograph, which gives an overall sense of where the teeth are situated in the mouth, outside of the ectopic tooth, the rest of the teeth appear to be in decent condition resulting in a score of zero for labio-lingual spread, and no major spacing on any of the teeth from canine to canine. Dr. [REDACTED] on the other hand measured a score of three. Dr. [REDACTED] also noted an overjet of two points by measuring four millimeters and subtracted two millimeters because two millimeters of overjet is normal. He also measured an overbite of six millimeters and subtracted three millimeters because three millimeters of overbite is normal for an overall score of eight. (MDH Ex. 7.) Dr. [REDACTED] on the other hand, noted a score of four for both overjet and overbite.

Dr. [REDACTED] opined that although it is apparent the Appellant's teeth have significant overlap and she could benefit from braces she does not meet the standard for medically necessary orthodontic intervention. Dr. [REDACTED] agreed with Dr. [REDACTED]'s assessment, also noting an overall score of eight points based on the Appellant's photographs and x-rays. (MDH Exs. 11, 12.)

The Appellant's mother testified that the Appellant has reported that her tooth is starting to hurt. She explained the ectopic tooth is starting to impede the root, could possibly erupt, and extraneous circumstances outside of the scoring system should be considered. Due to financial difficulties, the Appellant's mother cannot afford to get braces for the Appellant without the assistance of the Healthy Smiles program. Although Dr. [REDACTED] gave the Appellant a scoring of seventeen points, her report was left incomplete as she did not note any of her measurements.

⁶ An ectopic eruption score results from multiplying the number of ectopic teeth by three. (MDH Ex. 6.)

As the party with the burden, the Appellant failed to provide evidence that Dr. [REDACTED] or Dr. [REDACTED] incorrectly determined the HLD index score as eight. The Appellant's mother challenged the evidence but failed to present any expert testimony to contradict Drs. [REDACTED] and [REDACTED]'s findings. While I find the Appellant's mother and Dr. [REDACTED] to be credible, I find the Appellant failed to meet her burden.⁷

I am sympathetic to the Appellant's situation and understand her mother's desire to obtain orthodontic services for the Appellant to prevent the ectopic eruption of her canine tooth and improve the quality of her life. Unfortunately, although the Appellant would likely benefit from orthodontic services, the law in Maryland is clear that coverage for adolescent orthodontic services under Healthy Smiles is reserved for the most serious cases. The service is not covered by MA unless the patient's condition results in a score of at least fifteen points on the HLD Index. I find that the overwhelming evidence indicates that the requested orthodontic services are not medically necessary as it is defined by COMAR 10.09.05.04A. Two orthodontists independently assessed the Appellant's dental condition, and each found an HLD Index score less than fifteen, deeming the braces not medically necessary. Since the Appellant's score is lower than fifteen, she does not qualify for MA coverage of orthodontic services and I must uphold the Department's denial of coverage for orthodontic treatment.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Department properly determined that the Appellant was not eligible for orthodontic services via the Maryland Healthy Smiles Dental Program because the services were not medically necessary. COMAR 10.09.05.04A(4); COMAR 10.09.05.01B(22).

⁷ The Appellant offered a letter dated November 30, 2020 noting the result of an orthodontic consultation. This letter; however, was not admitted into evidence.

ORDER

I hereby **ORDER** that the determination of the Maryland Department of Health be **AFFIRMED**.

July 7, 2021
Date Decision Issued

Signature Appears on Original

Abena Y. Williams
Administrative Law Judge

AYW/cj
#193069

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. 2020). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to [REDACTED] 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]

(Emailed)

[REDACTED]