



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: HMO - 210862

PRELIMINARY RECITALS

Pursuant to a petition filed on October 30, 2023, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 14, 2023, by telephone.

The issue for determination is whether Petitioner is entitled to orthodontic treatment as requested by his provider in a prior authorization request filed on July 7, 2023.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative:

██████████

Respondent:

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

Written Submission By: Michelle Rocca, Nurse Consultant
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who was under age 21 at all times relevant to this case.

2. Petitioner receives BadgerCare Plus / Medical Assistance (MA) services through Chorus Community Health Plan HMO. Chorus Community Health Plan subcontracts with Dental Professionals of Wisconsin.
3. Petitioner has an overbite which has caused him to chip more than one tooth and those teeth have required extraction. Petitioner's orthodontist recommended braces, in part, to correct his overbite.
4. On or about July 7, 2023, Familia Dental of Milwaukee filed a prior authorization on Petitioner's behalf for MA coverage of orthodontic services. By letter dated July 20, 2023, Dental Professionals of Wisconsin denied the request. Petitioner filed a grievance of that denial. By letter dated October 19, 2023, the HMO upheld the denial.
5. On October 30, 2023, Petitioner filed a request for fair hearing with the Division of Hearings and Appeals.
6. Dental Professionals of Wisconsin, the HMO, and the Department of Health Services determined that Petitioner has a Salzmann score of 27, 28, and 16 respectively.

DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department of Health Services ("the department") requires certain Medical Assistance (MA) recipients to participate in HMOs. Wis. Admin. Code §DHS 104.05(2)(a). HMOs must provide the same services as those provided to persons enrolled in fee for service MA or BadgerCare Plus. Wis. Admin. Code §DHS 104.05(3). If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance or may file an appeal with the Division of Hearings and Appeals. Wis. Stat., §49.45(5); Wis. Admin. Code, §DHS 104.01(5)(a)3.

The criteria for approval by a managed care program contracted with the department are the same as the approval criteria employed by the Department for MA recipients who are not mandated to participate in HMOs. See Admin. Code §DHS 104.05(3).

Medical services, including orthodontia, provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Admin. Code, §DHS 107.22(4). Orthodontia is otherwise not covered by Medical Assistance. Wis. Admin. Code, §DHS 107.07(4)(j).

Prior authorization for orthodontia is required. Prior authorization is granted when the criteria set forth at Wis. Admin. Code §DHS 107.02(3) are met. Those criteria include the requirement that the requested service is a medical necessity. Wis. Admin. Code §DHS 107.22(4). Petitioner bears the burden to prove that these criteria are met.

The department has developed a coverage policy to evaluate the medical necessity of orthodontic treatment. The HMO has adopted that policy which provides, in relevant part as follows:

The following criteria are considered when reviewing PA requests for orthodontia:

- A severe and handicapping malocclusion determined by a minimum Salzmann Index of 30.
- In extenuating circumstances, the dental consultant may, after comprehensive review of the case, determine that a severe handicapping

malocclusion does exist, and approve the orthodontia treatment even though the Salzman score is less than 30. . .

- If the request for orthodontic services is the result of a personality or psychological problem or condition and a member does not meet the criteria listed above, then a referral from a mental health professional is required.

Orthodontic treatment is *not* authorized for cosmetic reasons . . .

See ForwardHealth Provider On-line Handbook: Topic #2909 (“Topic #2909”).

In other words, orthodontic treatment will be automatically covered if the recipient has “a severe and handicapping malocclusion” as indicated by a minimum Salzman Index of 30 but may be covered under certain circumstances even in the absence of a qualifying Salzman score.

In a letter submitted by the Department in response to Petitioner’s appeal, the Department’s dental consultant, John Busby, described the Salzman Index as follows:

The Salzman Index assessment record is used by the Wisconsin Medicaid program to disclose whether a handicapping malocclusion is present and to assess its severity according to the criteria and weights assigned to intra-arch deviation and inter-arch deviation. The weights are based on tested clinical orthodontic values from the standpoint of the effect of the malocclusion on dental health, function, and esthetics. Assessments as to whether handicapping malocclusions criteria are met are made by the Dental Consultant based on casts of the member’s teeth submitted by the provider.” See *January 10, 2024 Letter from Dr. Busby*.

Here, three dental professionals reached three different conclusions regarding Petitioner’s Salzman Score—16, 27, and 28 respectively. There is not sufficient evidence in the record to establish with certainty what accounted for those differences. It is reasonable to infer that the assessment tool requires the exercise of some discretion; thus, dentists can reach different conclusions. It is also possible that one or more of the evaluating dentists made an error but there is no way for me to determine that based on the evidence in the record.

Given the divergence of Salzman scores for this petitioner and in the absence of any explanation for that divergence, I am reticent to rely too heavily on any of the three scores as an indicator of medical necessity or lack thereof. Fortunately, I do not have to because Petitioner offered credible testimony regarding the effect that his overbite has had on his teeth; specifically, that it has led to the extraction of more than one tooth. Although the Salzman Assessment appears to consider overbites generally, it is not clear whether the dentists here contemplated the particular impact of this Petitioner’s overbite on his dental health. I thus find that Petitioner has established that the requested orthodontia is medically necessary.

CONCLUSIONS OF LAW

The requested orthodontic treatment is medically necessary.

THEREFORE, it is ORDERED

That petitioner’s dental provider is hereby authorized to provide the petitioner with the requested comprehensive orthodontic treatment, and to submit a claim, along with a copy of this Decision and a new prior authorization request form, to the HMO and/or its agent for payment.

Note to Petitioner: Petitioner must provide his orthodontist with a copy of this decision because copies will not be sent directly to the orthodontist.

CONCLUSIONS OF LAW

THEREFORE, it is ORDERED

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, 4822 Madison Yards Way, 5th Floor North, 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

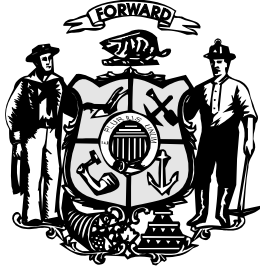
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 10th day of January, 2024



\s _____
Teresa A. Perez
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 January 10, 2024.

Division of Medicaid Services

