

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/20-12
)
Appeal of)
)

INTRODUCTION

Petitioner appeals the denial of orthodontic treatment for her daughter under the Dr. Dynasaur program as determined by the Department of Vermont Health Access (Department). The following facts are adduced from a telephone hearing held February 20, 2020 and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner had her 14-year old daughter A.M. evaluated for orthodontic treatment. The orthodontist who conducted the evaluation submitted a *Comprehensive Orthodontic Treatment Prior Authorization Request Form* (Form) to the Department along with supporting diagnostic materials (x-rays and images). In the section of the Form reserved for the description of diagnostic treatment criteria, the orthodontist indicated that petitioner had one minor criteria, "2 Blocked cuspids, per arch." No major criteria were found to be present.

2. The Form also lists an alternative eligibility criterion regarding functional impairment and asks:

If the patient does not meet the above criteria but has a functional impairment that is equal to or greater than the severity of a functional impairment resulting from meeting those criteria, please briefly describe below and attach detailed written documentation from your office.

There was no information supplied by the orthodontist in that section.

3. On November 27, 2019 the Department's dental and orthodontic consultant reviewed the submitted materials and determined that petitioner did not meet the eligibility requirements for "medically necessary orthodontic treatment under age 21" as defined by the Health Care Administrative Rules for Orthodontic Treatment (HCAR Rules). The consultant found as follows:

Request for Prior Authorization of Comprehensive Orthodontic Treatment denied because orthodontic problem does not meet the State's criteria for orthodontic treatment and orthodontic treatment is not otherwise necessary under ESPDT found at HBEE 2.2(c) (Medicaid Rule 7314.3).

4. Petitioner filed an internal appeal. After a meeting on December 20, 2019, with petitioner, a Department representative and three dentists, the Department determined that the petitioner's daughter did not meet the medically

necessary criteria for orthodontic treatment and issued its final denial of the appeal. Petitioner appeals from that denial.

5. At hearing, petitioner stated that her daughter is emotionally affected by her dental problems, petitioner described her as stressed out and anxious, and that this should be considered as a factor in the evaluation. However, she indicated that her daughter has only reported this impact to her and has not spoken of it with her dentist or any health care professional (including mental health therapist or counselor). The Department indicated that it can consider physical or mental health impacts under the "functional impairment" criterion but that it would need evidence from a health care professional.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

States are required to provide dental services to Medicaid recipients under the age of 21 if certain criteria are met as part of federal Early, Periodic, Screening, Diagnosis and Treatment ("EPSDT") program requirements. Dental services are defined to include services:

which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

42 U.S.C. § 1396d(r) (3) (B).

The Department has adopted regulations for Medicaid coverage of orthodontics to include the following:

4.203 Dental Services for beneficiaries Under Age 21..

4.203.3 Eligibility for Care

Dental Services for medically necessary purposes are covered for beneficiaries who are

(a) under the age of 21,

. . .

4.205.5 Conditions for Coverage

(a) Coverage for comprehensive orthodontic treatment is limited to those that are medically necessary to correct a minimum of one major or two minor malocclusions according to diagnostic criteria adopted by the Department of Vermont Health Access. Or if a beneficiary has a functional impairment that is equal to or greater than the severity of a functional impairment meeting the diagnostic criteria.

Health Care Administrative (HCAR) Rules §4.203 and §4.205 (equivalent to Medicaid Covered Services Rule §7314.4).

Petitioner's daughter does not meet eligibility criteria required by the Rules because (1) she met only one minor criteria when two minor or one major malocclusions are required, and (2) there was no evidence that petitioner's daughter exhibited a functional impairment that was the same as, or greater, than the diagnostic criteria. The Board has previously affirmed the denial of orthodontic treatment where the petitioner had failed to meet these specific criteria. See e.g., Fair Hearing No. B-01/16-15 and Fair Hearing No. V-10/09-534. While petitioner raises the issue of an emotional impact for her daughter in not obtaining orthodontics, there must be evidence to establish that an emotional impact is a "functional impairment that is the same as, or greater, than the diagnostic criteria." No such evidence was presented in this case. *Cf.* Fair Hearing No. Y-01/09-24 (Evidence from petitioner's pediatrician, orthodontist, clinical school psychologist, and school-based counselor all supported finding of alternate (non-diagnostic) finding of medical necessity under prior version of Medicaid regulation).

Therefore, the Department's decision denying Dr. Dynasaur coverage for orthodontic treatment in this case is

consistent with the Rules and must be affirmed. See 3 V.S.A.
§ 3091(d); Fair Hearing Rule No. 1000.4D.

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