

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-05/21-323
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Appeal of)
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INTRODUCTION

Petitioner appeals what he understood to be a denial of Medicaid coverage for orthodontic treatment for his daughter by the Department of Vermont Health Access (Department). The following facts are based upon a hearing held June 11, 2021. The issue posed is whether petitioner was "aggrieved" by Department action or policy in any measure sufficient to trigger Board jurisdiction.

FINDINGS OF FACT

1. Petitioner's minor daughter is a current Medicaid recipient covered under Medicaid "Early Periodic Screening, Diagnosis and Treatment" services or "EPSDT" services. EPSDT services are a mandatory requirement of the federal Medicaid statute and include coverage of orthodontia under certain criteria.

2. Petitioner represents that he took his daughter to an orthodontist (who apparently was an approved Medicaid

provider) for a consult. Petitioner represented that he was told by the orthodontist that orthodontic services for his daughter would not be covered by Medicaid and would therefore cost \$7,000 which petitioner was unable to afford.

3. Typically, requests for orthodontic treatment have required submission of a "prior authorization" request by the provider that must be approved by the Department before the service is provided. However, this prior authorization requirement has been waived by the Department during the Covid-19 pandemic. While prior authorization is waived, the Department notes the criteria for approval of orthodontic services for children as outlined by Vermont Medicaid rules remain unchanged. Thus, the responsibility for ensuring that a child meets Medicaid criteria for orthodontic services lies with the provider - if the provider finds that the child's situation meets Medicaid criteria, then the provider can perform the service without prior authorization and simply submit an invoice to Medicaid for payment.

4. In this case, the Department reports that it has not received any request from any provider for payment for orthodontic services for petitioner's daughter and therefore no denial of payment has been issued. Given petitioner's representations as noted above, the provider apparently did

not find that petitioner's daughter met the required criteria for orthodontic work. See Health Care Administrative Rules (HCAR) §§ 4.205.2 (Orthodontic Treatment - Covered Services), 4.205.3 (Orthodontic Treatment - Eligibility for Care) and 4.205.5 (Conditions for coverage) (coverage limited to medically necessary correction of one major or two minor malocclusions). Petitioner was referred to the list of Vermont Medicaid providers on the Department's website if he wished to obtain a second opinion on whether his daughter's dental condition meets the coverage conditions under Medicaid.

ORDER

Petitioner's appeal is dismissed for lack of a cognizable grievance.

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.

The Board's jurisdictional statute provides that:

An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and

Families, of Vermont Health Access, of Disabilities, Aging, and Independent Living, or of Mental Health, or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Human Services Board. *An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.*

3 V.S.A. § 3091(a) (emphasis added).

The Department has not denied any benefit or service to petitioner's daughter and has not issued a decision with respect to the daughter's need for orthodontic services. Rather, petitioner's provider apparently determined that he could not provide the services under the Medicaid program because the child's condition does not meet the criteria for coverage based on medical need.

Under the facts presented, petitioner cannot be said to be aggrieved by Departmental action or policy and as such his claim must be dismissed for lack of jurisdiction. See Fair Hearing B-11/20-746 (Board lacks jurisdiction when no action adverse to petitioner has been taken by the Department). See also 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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