

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/16-15
)
Appeal of)

INTRODUCTION

Petitioner appeals a decision by the Department of Vermont Health Access ("Department") denying his daughter comprehensive orthodontic treatment under Dr. Dynasaur. The issue is whether petitioner's daughter meets the criteria for prior authorization for orthodontia. The following facts are adduced from a hearing held January 28, 2016, telephone status conferences on February 29 and March 21, and documents submitted by the parties.

FINDINGS OF FACT

1. Petitioner's daughter is fourteen years old.
2. On or about July 20, 2015, the daughter's orthodontist submitted a Prior Authorization Form for comprehensive orthodontia to the Department. The orthodontist checked that she met one of the minor criteria, specifically, "traumatic deep bite impinging on palate." The orthodontist did not check any major impairment, functional impairment or special medical consideration. The

orthodontist indicated in a handwritten note on the form that it was "submitted at father's request - I saw only one criteria [sic]."

3. In its review, the Department found that petitioner's daughter did not meet the criteria for prior authorization for orthodontia. A Notice of Decision denying prior authorization for orthodontia was made on July 29, 2015.

4. Petitioner submitted an internal appeal of this decision, which was denied by the Department on January 8, 2016. This appeal followed.

5. During the hearing, petitioner submitted additional information. This included a letter from his daughter's treating dentist (not the orthodontist who submitted the prior authorization request) stating that:

[She] has been diagnosed with bimaxillary crowding, Class II subdivision right malocclusion with a deep overbite and moderate overjet. These conditions predispose her to a lifetime of bruxism, accelerated tooth wear, tooth mobility, tooth fracture, occlusomuscle disorders, and dysfunction of the TMJ. It seems clear that comprehensive orthodontic care is indicated to proactively address the afore mentioned problems, and continue to move [her] forward on the path of health that her parents so lovingly want for her. Please decide in favor of full orthodontic treatment for [her].

6. Petitioner also submitted a letter from his daughter, in which she cited the discomfort - her lips become easily dry, chapped and sometimes cracked - and embarrassment she feels due to the condition and appearance of her teeth.

7. The Department's medical expert reviewed the new information as part of the fair hearing process. He contacted the dentist who wrote the above letter and reports that:

[He] indicated that he was advocating for the patient and agreed that he was advocating for the patient and placed in his letter the list of potential difficulties one could have if they did not have a perfect bite. He agreed that there are many people who have much worse occlusions who do not have temporal mandibular joint dysfunction, cracked teeth or periodontal difficulties. Everyone has the potential for these problems even with a good occlusion. The occlusion of this particular individual does not place her at an increased risk. It is of note that one minor criteria plus a medley of other dental issues together could equal a second criteria but even that standard is note [sic] met in this case.

8. The Department maintains its original denial. Petitioner does not dispute the opinion of the Department's medical expert. He further indicates that he does not have any additional medical evidence regarding his daughter's condition.¹

¹ Petitioner was given the opportunity by the hearing officer to submit additional evidence and/or schedule further hearing, and declined as he did not dispute the Department's evidence.

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 Early, Periodic, Screening, Diagnosis and Treatment ("EPSDT") requirements. Dental services are defined to include services:

(B) 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).

Vermont has adopted regulations governing orthodontic treatment consistent with EPSDT requirements. The pertinent regulations provide that:

Medically necessary orthodontic treatment involves the use of one or more prosthetic devices to correct a severe malocclusion. [See 42 CFR §440.120(c)]

Medicaid Covered Services Rules § 7314.

Coverage of orthodontia requires prior authorization,
and:

To be considered medically necessary, the beneficiary's condition must have one major or two minor malocclusions according to diagnostic criteria adopted by DVHA or if otherwise necessary under EPSDT found at rule 4100.

Medicaid Covered Services Rules § 7314.4.

The EPSDT requirements can be found in the questions addressing whether there are functional impairments equal to or greater than the impairments listed for major or minor criteria, or whether there are other special medical considerations. In this case, the orthodontist only checked one of the minor criteria (and indicated no functional impairment(s) or other special medical condition(s)), which does not rise to the level necessary for prior authorization.

It otherwise cannot be concluded that petitioner has presented sufficient evidence to show that orthodontic treatment is medically necessary under the rules. Petitioner is free to request coverage in the future if he believes sufficient medical need can be established.

As such, the Department's determination 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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