



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

In re:

DCIS No. 000000000

Ms. Smith, a minor

Appearances: Ms. Smith, pro se, Claimant
Mrs. Smith, pro se, Claimant's Mother
Mr. Smith, pro se, Claimant's Father

Dave Michalik, Chief of Policy and Planning, Division of Medicaid and Medical Assistance
Gabrielle Hoyer, Dental Administrator, Division of Medicaid and Medical Assistance

I.

Ms. Smith ("Claimant"), through her parents, Mr. Smith and Mrs. Smith, opposes a decision by the Division of Medicaid and Medical Assistance ("DMMA") to deny her request for Medicaid coverage of orthodontic care.

DMMA contends that the Claimant's dental profile was not one consisting of a handicapping or crippling malocclusion, as required under Dental Provider Policy, Section 3.2, and therefore she was ineligible for orthodontic care through Medicaid.

II.

By notice dated June 9, 2011, the DMMA denied the Claimant's request for comprehensive orthodontic treatment.

The Claimant's parents filed a request for a fair hearing on July 5, 2011. (Exhibit 2)

The Claimant was notified by letter dated July 26, 2011, that a fair hearing would be held on August 15, 2011. The hearing was conducted on that date in Newark, Delaware.

This is the decision resulting from that hearing.

III.

Jurisdiction for this hearing is pursuant to §5304 of the Division of Social Services Manual (DSSM). Under §5304:

an opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim ... is denied... and to any recipient who is aggrieved by any action of the Division of Social Services... Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

IV.

The Claimant is a sixteen (16) year old female, who is seeking orthodontic treatment to correct a malocclusion.

The Claimant's mother, Mrs. Smith ("Mrs. Smith"), testified that her daughter was undergoing orthodontic care when her husband was injured at work. Mrs. Smith testified that her husband suffered severe spinal cord damage, and is now on Social Security Disability and receives Medicare benefits. Mrs. Smith testified that her children now receive medical benefits through Medicaid, as they have no other insurance. The Claimant's father, Mr. Smith ("Mr. Smith"), testified that due to his injuries, he is no longer able to work. Mr. Smith further testified that due to the surgeries he has undergone, his savings are gone and he can barely afford his monthly expenses.

Mrs. Smith testified that her daughter was halfway through her orthodontic care when they lost insurance: Her daughter at that time, she testified, had a retainer to correct a severe cross-bite along with several other issues. Mrs. Smith testified that due to her daughter's cross-bite, one (1) of her teeth juts out, cutting her lip every night. Mrs. Smith testified that this causes her daughter's lips to bleed: She testified that while a lot of the injured area is hardened-over, occasionally the tooth breaks through this barrier and cuts her daughter in her sleep. Mrs. Smith testified that because her daughter lost her insurance coverage, they could not afford to continue to have her daughter's retainer adjusted.¹

Mrs. Smith testified that her primary dentist referred the Claimant to orthodontist Dr. Honig, D.M.D., due to the Claimant's tissue damage caused by her cross-bite. Mrs. Smith testified that Dr. Honig felt that the Claimant had a good chance of being approved for orthodontic services through Medicaid, as her malocclusions were so severe. Mr. Smith testified that just by viewing the Claimant's mouth, one can see not only that the Claimant has too many teeth, but that one (1) of her teeth sticks out into the flesh of her lip or cheek.

DMMA testified that when it received the request for orthodontic care from the Claimant, it forwarded that information to its orthodontic consultant, Dr. Stephanie Steckel. Dave Michalik ("Michalik"), Chief of Policy and Planning for the DMMA, testified that the agency received

¹ Mrs. Smith further testified that her daughter's cross-bite had to be corrected before she could be fitted for braces.

documentation from Dr. Honig in September 2010. Michalik testified that Dr. Steckel reviewed and returned that information by the end of December 2010. Michalik testified that while there was a delay in processing the notice of her decision to the Claimant due to a staffing shortfall, Dr. Steckel's decision itself was made in a timely manner.

Michalik testified that when DMMA receives a request for orthodontic care, the treating orthodontist must complete and send in a scoring sheet for the patient. (Exhibit 3) Michalik testified that if one of the first five (5) conditions are present, the orthodontist must merely check the box, no actual "score" is required. (Exhibit 3) For the remaining eight (8) items, Michalik testified, the treating orthodontist must assign a numerical value to indicate the severity of each condition. (Exhibit 3) This scoring, he testified, is done using the California Modification of the Handicapping Labiolingual Deviation (HLD-CalMod) Index, as found in the Dental Services Provider Policy Manual. (Exhibit 5) Michalik testified that if one of the first (5) conditions is present, no further scoring is necessary, as each one of those conditions is considered to be a handicapping malocclusion warranting Medicaid coverage for orthodontic services. (Exhibit 5) Michalik testified that if none of the first five (5) conditions apply, then a patient's score must equal twenty-six (26) or higher in order to be deemed a handicapping malocclusion, warranting Medicaid coverage for orthodontic services. (Exhibit 5)

Michalik testified that after receiving this scoring sheet from Dr. Honig, examination documentation, pictures that he took of the Claimant's mouth, x-rays of the Claimant's mouth, and a model of the Claimant's mouth, this documentation was forwarded to Dr. Steckel.² (Exhibits 4, 7, 8, and 9) Michalik testified that Dr. Steckel is an orthodontist contracted to review orthodontic care cases for DMMA. Michalik testified that Dr. Steckel is an active, practicing orthodontist with many years of experience, and is paid at a contracted rate for each case she reviews despite her ultimate decision of each case's merits. Michalik testified that all of these exhibits enabled Dr. Steckel to see exactly what the Claimant's mouth looked like, including any tissue damage.

In this instance, Michalik testified, Dr. Honig did indicate that the Claimant suffered from one (1) of the first five (5) conditions: He indicated that the Claimant had a cross-bite of anterior teeth numbers 7 and 10, and then proceeded to score her remaining problems. (Exhibit 4) However, Michalik testified, in order for a cross-bite of anterior teeth to qualify as a handicapping malocclusion, there must be accompanying destruction of soft tissue. (Exhibits 3 and 4) Michalik testified that Dr. Honig scored the remaining conditions as having twelve (12) points. (Exhibit 4)

Michalik testified that Dr. Steckel also completed a scoring sheet. (Exhibit 6) Michalik testified that Dr. Steckel scored the Claimant as having sixteen (16) points, compared to Dr. Honig's twelve (12) points. (Exhibit 6) While Dr. Steckel identified that the Claimant had a cross-bite of anterior teeth, he testified, she did not find any tissue destruction after reviewing the submitted documentation and exhibits: Michalik testified that the photographs, x-rays, and model of the Claimant's mouth did not show any signs of tissue destruction via redness, soreness, or abrasion. As a result, Michalik testified, Dr. Steckel could not rate that the cross-bite of anterior teeth had

² I note that no model of the Claimant's mouth was submitted into evidence at this hearing.

accompanying tissue destruction, and as her scoring showed only sixteen (16) points, Dr. Steckel found that the Claimant did not have a handicapping malocclusion. (Exhibit 6)

Michalik testified that the DMMA did not stop there: Because Dr. Honig's scoring identified a cross-bite of anterior teeth with tissue destruction, he had Gabrielle Hoyer contact the Claimant's orthodontist and regular dentist to inquire about any evidence of tissue destruction or pain. Gabrielle Hoyer ("Hoyer") testified that she first reviewed Dr. Honig's examination notes for the Claimant. (Exhibit 9) Hoyer testified that this documentation noted that the Claimant had a "healthy" gingival condition: Had there been tissue destruction, she testified, Dr. Honig would not have indicated a healthy gingival condition. (Exhibit 9) In addition, Hoyer testified that Dr. Honig would have indicated where any tissue destruction was present under the category "recession of supporting gingival and bone." (Exhibit 9) Hoyer testified that under this category Dr. Honig noted "none at this time": the lack of any information under this category, she testified, indicates that no tissue destruction was present. (Exhibit 9)

Hoyer testified that she did not stop there in her investigations. Rather, Hoyer testified that she contacted both Dr. Honig's office and the Claimant's general dentist via telephone. Hoyer testified that both offices reported no indication that the Claimant was ever sent to a periodontist or an oral surgeon due to soft tissue destruction, and that they had no records showing a history of pain, bleeding, or gingival problems. Michalik testified that based on the documentation they received plus the information or lack thereof discovered after contacting Dr. Honig and the Claimant's regular dentist, DMMA found that there was no evidence of soft tissue destruction.

Mr. Smith testified that merely going off of a model of his daughter's mouth was insufficient: The abrasion she suffers, he testified, would not have shown up on a model of her teeth. In addition, he testified, his daughter would probably not report pain to her dentist. Michalik countered, testifying that the model sent to Dr. Steckel was an anatomical replica of the Claimant's mouth.

V.

According to the Dental Services Provider Policy Manual ("DSPPM"), comprehensive orthodontics is a covered dental service for Medicaid-eligible individuals who have been diagnosed with a "handicapping" malocclusion. (DSPPM Section 3.2.4) In general, the individual must reach a score of 26 on the evaluation form to be considered as having a handicapping malocclusion. However, the individual may still qualify for coverage if he or she meets one of the five identified exceptions. (DSPPM, Section 3.2.4.2.2.1.1)

The five identified exceptions are: (1) cleft palate; (2) deep impinging overbite; (3) cross-bite of individual anterior teeth; (4) severe traumatic deviations; and (5) overjet greater than 9 mm or reverse overjet greater than 3.5 mm. Providers should refer to the evaluation form for additional information regarding the identified exceptions. (DSPPM, Section 3.2.4.2.2.1.2)

The Delaware Special Dental Orthodontic Evaluation Form identifies that a cross-bite of anterior teeth is an exception warranting orthodontic services when soft tissue destruction is present. (DSPPM, Section 9.0 Appendix B) This form identifies that its scoring is derived from the

California Modification of the Handicapping Labiolingual Deviation Index (CalMod Index). (DSPPM, Section 9.0 Appendix B) Further, in the description on how to utilize this CalMod Index, the DSPPM clearly identifies that when destruction of soft tissue is present in the cross-bite of anterior teeth, no further scoring is required and the individual is deemed to have a handicapping malocclusion. (DSPPM, The California Modification of the Handicapping Labiolingual Deviation {HLD(CalMod) Index})

In this instance, although Dr. Honig identified that the Claimant suffered from such tissue destruction due to a cross-bite of her anterior teeth, no other medical documentation was submitted to support this finding. Although I fully credit the Claimant's argument that her x-rays, model, and photographs would not have shown such destruction, the accompanying examination documentation should have revealed such tissue destruction. (Exhibit 9) Further, I fully credit Hoyer's testimony that neither the Claimant's regular dentist nor Dr. Honig identified any soft tissue destruction when she contacted them by telephone. While the Claimant's parents testified that a person can clearly see such destruction by looking at the Claimant's mouth, there is no documentation that the Claimant suffered from such an injury when she applied for coverage of orthodontic care. As a result, it cannot be determined that the Claimant suffered any soft tissue destruction prior to DMMA's June 9, 2011 decision to deny her orthodontic services. The Claimant is encouraged to report any pain or bleeding that she experiences to either her regular dentist or orthodontist, so that such soft tissue destruction can be documented, which would warrant coverage of orthodontic services.

VI.

For these reasons, the decision of the Division of Medicaid and Medical Assistance to deny the Claimant's request for orthodontic care is AFFIRMED.

Date: September 16, 2011



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE DIVISION OF MEDICAID
AND MEDICAL ASSISTANCE

September 16, 2011

POSTED

cc: Ms. Smith
Dave Michalik, DMMA
Gabrielle Hoyer, DMMA

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DMMA Hearing Summary consisting of two (2) pages date-stamped July 7, 2011.

EXHIBIT #2 – Copy of Claimant's request for a fair hearing, date-stamped July 5, 2011, consisting of one (1) page.

EXHIBIT #3 – Copy of a blank Delaware Special Dental Orthodontic Evaluation Form, consisting of one (1) page.

EXHIBIT #4 – Copy of an undated Delaware Special Dental Orthodontic Evaluation Form completed by Dr. Honig, consisting of one (1) page.

EXHIBIT #5 – Copy of the California Modification of the Handicapping Labiolingual Deviation {HLD(CalMod) Index}, consisting of three (3) pages.

EXHIBIT #6 – Copy of a Delaware Special Dental Orthodontic Evaluation Form completed by Dr. Steckel on December 14, 2010, consisting of one (1) page.

EXHIBIT #7 – Copy of initial photographs of the Claimant's mouth, dated September 16, 2010, consisting of one (1) page.

EXHIBIT #8 – Copy of X-rays of the Claimant's mouth, dated September 14, 2010, consisting of one (1) page.

EXHIBIT #9 – Copy of Initial Examination Notes completed by Dr. Honig on September 14, 2010, consisting of two (2) pages.