DHA-15 (R10/97)

STATE OF WISCONSIN
Department of Health and Family Services

In the Matter of

DECISION

(petitioner)

MPA-70/57811

The proposed decisiono fthe hearing examiner dated July 9, 2003 is hereby amdned as follows and as such is adopted as the final order of the Department

Modify **FINDINGS OF FACT** #5 AS FOLLOWS:

Dental screening of petitioner revealed the following defects related to his teeth: occlusal discrepancies such as posterior occlusal contact, spacing, and discrepancy with his alignment. The requested orthodontic services are ~~treatment designed to correct these defects.~~ Dental services within the mearning of EPSDT law, 42 USC § 1396d(r)(3)(B) and 42 CFR § 441.56(c)(2).

Modify paragraphs 7 and 8 of the **DISCUSSION** section on page 3 as follows:

EPSDT requires that all ~~necessary~~ dental services needed for relief of pain and infections, restoration of teeth and maintenance of dental health ~~(including treatment) to correct or ameliorate defects discovered by screening services~~ be provided to recipients - whether or not such services are covered under the state plan. 42 USC § 1396d(r)~~(5)~~ (3)(B) (2003); 42 CFR § 441.56(c)(2) (2002). EPSDT dental care includes "emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures." *State Medicaid Manual*, § 5124 B.2.b. Within the meaning of this provision, "therapeutic malocclusion." Id. See also, *Chappell by Savage v. Bradley*, 834 F.Supp. 1030 (N.D. Ill 1993) clarified by *Chappell by Savage v. Wright*, 1993 WL 496700 (N.D. Ill. 1993); ~~42 C.F.R. § 441.56(c)(2) (2002).~~ The requested orthodontic services for petitioner are not medically necessary to correct handicapping malocclusion ~~treatment designed to correct defects discovered by screening~~. Thus, under federal law, the requested orthodontic treatment for petitioner was correctly limited to study models ~~must be approved~~.

~~This Decision holds that official DHFS policy is invalid or limited under federal law. Therefore, this Decision will be issued as a Proposed Decision and sent to the DHFS Secretary for final Decision making. Wis. Admin. Code § HA 3.09(9)(b)1. (September 2001).~~

Modify the **CONCLUSIONS OF LAW** section as follows:

For the reasons discussed above, DHCF was ~~not~~ correct in modifying ~~to modify~~ petitioner's request for PA for orthodontic treatment by granting PA for study models and denying PA for full banding and monthly adjustments~~; PA must be approved for both the study models and the full banding and monthly adjustments~~.

Replace the **ORDERED** section with the following:

That the request for hearing is hereby dismissed.

REQUEST FOR A REHEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can be found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850..

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Madison, Wisconsin, this 14th day of October, 2003.

/s

Thomas E. Alt, Deputy Secretary
Department of Health and Family Services

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

PROPOSED DECISION

MPA-70/57811

PRELIMINARY RECITALS

Pursuant to a petition filed on April 16, 2003, under Wis. Stat. § 49.45(5) (1999-00) and Wis. Admin. Code § HA 3.03(1) (September 2001), to review a decision by the Division of Health Care Financing (DHCF) in regard to Prior Authorization (PA) for orthodontic treatment, a hearing was held on May 21, 2003 in Oshkosh, Wisconsin.

The issue for determination is whether it was correct for DHCF to modify petitioner's request for PA for orthodontic treatment by granting PA for study models and denying PA for full banding and monthly adjustments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

(redacted), petitioner's father

Wisconsin Department of Health and Family Services
Division of Health Care Financing
Room 250
1 West Wilson Street
P.O. Box 309
Madison, Wisconsin 53707-0309

BY: Robert Dwyer, DDS [Dr. Dwyer did not appear at the May 21, 2003 hearing, but submitted a letter dated April 30, 2003 with attachments (Exhibit #2)]

Division of Health Care Financing
Room 250
1 West Wilson Street
P.O. Box 309
Madison, Wisconsin 53707-0309

OTHER PERSONS PRESENT:
(redacted), petitioner's mother

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx; DOB November 20, 1989) is a resident of Winnebago County.

2. On February 3, 2003 petitioner's provider, Dental Associates, Ltd. of Milwaukee, Wisconsin, requested PA (P.A. # (redacted); dated January 31, 2003) for Medical Assistance (MA) coverage for orthodontic treatment for petitioner at a total cost of $4,500.00; the following specific procedures were requested: study models; full banding; monthly adjustments. Exhibit #2.

3. On March 12, 2003 DHCF modified the PA request by granting PA for study models and denying PA for full banding and monthly adjustments. Exhibits #1 & #2.

4. Petitioner is eligible for the MA program known as Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT).

5. Dental screening of petitioner revealed the following defects related to his teeth: occlusal discrepancies such as posterior occlusal contact, spacing, and discrepancy with his alignment. The requested orthodontic services are treatment designed to correct these defects.

DISCUSSION

Petitioner appeals because DHCF denied PA for orthodontic treatment. Orthodontic treatments require PA. Wis. Admin. Code § 107.07(2)(c)11. (February 2002).

The policy of the Wisconsin Department of Health and Family Services (DHFS) is that orthodontic treatment is not authorized for cosmetic reasons. DHFS policy is that orthodontic treatment can be approved in any of the following circumstances:

(1) a severe and handicapping malocclusion determined by a minimum Salzmann Index of 30;
(2) in extenuating circumstances, the dental consultant may, after comprehensive review of the case, determine that a severe handicapping malocclusion does exist, and approve the orthodontic treatment even though the Salzmann score is less than 30; and,
(3) certain cases of minor treatment (1-4 teeth) can be approved for minor fixed or removable orthodontic treatment;
(4) if the request for orthodontic services is the result of a personality or psychological problem or condition and a patient does not meet the criteria listed above, then a referral from a mental health professional is required.

"Wisconsin Medicaid Provider Handbook", Part B (Dental Handbook), Appendix 17, page B118 (issued 11/98); See also, "Prior Authorization Guidelines Manual" pages 125.004.03-04 & 125.005.03-04 (10/04/95); Wis. Admin. Code § 107.02(3)(e)9. (February 2002).

It appears, from the evidence in the record of this matter, that petitioner does not satisfy any of the above criteria. Information in the record of this matter is that petitioner has a Salzmann Index of 27. Exhibit #2. Therefore, according to DHFS policy PA cannot be approved as requested by petitioner.

However, states, such as Wisconsin, that participates in the MA program are required by federal law to provide Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) to persons receiving MA who are under 21 years old. 42 USC § 1396a(a)(10)(A) & 1396d(a)(4)(B) (2003); 42 C.F.R. §§ 441.50 & 441.55 (2002); *Miller by Miller v. Whitburn*, 10 F.3d 1315 (7th Cir. 1993). Petitioner is receiving MA and is under 21 years old. Thus, Wisconsin is required by federal law to provide EPSDT to petitioner.

EPSDT requires that all necessary dental services (including treatment) to correct or ameliorate defects discovered by screening services be provided to recipients -- whether or not such services are covered under the state plan. 42 USC § 1396d(r)(5) (2003); See also, *Chappell by Savage v. Bradley*, 834 F.Supp. 1030 (N.D. Ill 1993) clarified by *Chappell by Savage v. Wright*, 1993 WL 496700 (N.D. Ill. 1993); 42 C.F.R. § 441.56(c)(2) (2002). The requested orthodontic services for petitioner are treatment designed to correct defects discovered by screening. Thus, under federal law, the requested orthodontic treatment for petitioner must be approved.

This Decision holds that official DHFS policy is invalid or limited under federal law. Therefore, this Decision will be issued as a Proposed Decision and sent to the DHFS Secretary for final Decision making. Wis. Admin. Code § HA 3.09(9)(b)1. (September 2001).

CONCLUSIONS OF LAW

For the reasons discussed above, DHCF was not correct to modify petitioner's request for PA for orthodontic treatment by granting PA for study models and denying PA for full banding and monthly adjustments; PA must be approved for both the study models and the full banding and monthly adjustments.

NOW, THEREFORE, it is

ORDERED

That, if this Proposed Decision is adopted as the Final Decision by the DHFS Secretary, Dental Associates, Ltd. of Milwaukee, Wisconsin may provide petitioner with all of the orthodontic treatment services requested in P.A. # (redacted) and may submit its bill, along with a photocopy of this Decision, to EDS-Federal Corporation for payment.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed

Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison, Wisconsin, this 8th day of July, 2003.

/s

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
625/SPM