

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,978

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying Medicaid coverage for orthodontic treatment for temporomandibular joint syndrome for the petitioner's thirteen-year-old daughter.

FINDINGS OF FACT

1. The petitioner's thirteen-year-old daughter has been experiencing headaches since September of 1995, and vision problems since October of 1995. She also has ear pain on a daily basis. She is tired at school and takes over the counter medications for the pain.
2. The petitioner sought a medical opinion regarding the source of the pain and received the following on October 18, 1995, from her physician:

I have examined [child] for headaches, earaches, and dizziness which seem to have developed over the summer. Her examination is entirely normal, including her neurologic and her ears, nose and throat exams.

I do not believe there is a medical explanation for these symptoms, although there may well be a dental problem affecting her bite, and therefore her temporomandibular (TMJ, or jaw) joint. This joint lies close to the middle and inner ears, and sometimes inflammation of the TMJ can cause ear pain and dizziness as well as headaches.

It would be sensible for her to be evaluated by a qualified orthodontist, and to undertake correction of her bite if he feels that this would improve her symptoms. Again, I see no other medical explanation for her symptoms nor any other avenue of treatment.

3. The petitioner took her daughter to an orthodontist who prescribed correction of her malocclusion as a treatment for her symptoms. He applied for Medicaid authorization for the procedure on September 19,

1995, but was denied on September 26, 1995, because the child's malocclusion was not deemed severe enough to satisfy major or minor criteria developed by the Division of Dental Health of the Department of Health to aid in reviewing such requests.

4. The criteria used for review of Medicaid requests authorizes correction of malocclusions in cases where there is a major problem such as a cleft palate or other severe cranio-facial anomaly or where there are two minor problems such as an impacted cuspid, two blocked cuspids per arch, three congenitally missing teeth per arch, anterior open bite of three or more teeth, crowding per arch, anterior cross-bite, deep bite impinging on palate and overjet 10+mm.

5. The child did not meet that criteria because she had mandibular crowding, one blocked out bicuspid, normal overbite and overjet, 1 trapped mandibular molar and lower dental shift to the right with lower midline to the right. The application did not mention the existence of TMJ.

6. Following this denial, the child's dentist sent the following further explanation of her condition:

I examined [child] on November 29, 1995, for complaint of headaches earaches and dizziness that have persisted for several months. [Child's] physician [name] feels that there are no medical explanations for her symptoms.

After careful consideration, it is my opinion that [child] suffers from Temporomandibular Joint Syndrome probably brought about by poor occlusion. [Child's] headaches, earaches and dizzy spells may very well be caused by the inflammation of the area that occurs with this problem.

It would be advisable to have orthodontic treatment as recommended by a qualified orthodontist to relieve this condition.

7. The Department has declined to authorize the reconstruction of the single lower arch of the child's dentition based upon this medical report. The cost of the procedure is estimated to be \$1,900 and will take fourteen months to complete.⁽¹⁾

ORDER

The decision of the Department is reversed.

REASONS

The Department relies on the following provisions of M620 of the Medicaid regulations to deny coverage to the petitioner's child:

For recipients who have not reached their 21st birthday dental services are covered when provided by a licensed dentist (DMD or DDS) enrolled in Medicaid.

Covered services include: complete examination and diagnosis including radiographs when indicated; elimination of pain and infection; treatment of injuries; elimination of diseases of bone and soft tissue;

treatment of anomalies; restoration of decayed teeth; periodic recall of prophylaxis and treatment services; replacement of missing teeth; treatment of malocclusion with priority for interceptive treatment, treatment of disfiguring and handicapping malocclusion; dentures.

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Some services, such as prosthodontia or orthodontia require prior approval from the Medicaid Dental Consultant. A complete list of procedures which require prior authorization is available from the Medicaid fiscal agent upon request.

Definitions of handicapping or disfiguring malocclusions have not been adopted in the regulation covering dental services. It appears that the Department has left it to its review team at the Department of Health to define those terms and to employ criteria to approve or disapprove requests for treatment of malocclusions. A question certainly arises at this point as to whether criteria not adopted in the regulations can be used to deny coverage and if so, whether those criteria are consistent with the regulations.

However, in this case, it is not necessary to address that particular question because the petitioner's child is not requesting the treatment in order to alleviate a disfiguring or handicapping condition. She is requesting orthodontic treatment for the elimination of pain and infection (inflammation), a condition which is covered by the clear language of the regulation above and which is covered without any qualification. There is nothing in the regulation which says or which can be fairly interpreted as prohibiting treatment of malocclusions for the elimination of pain and infection. The Board has said repeatedly that dental services cannot be denied to a recipient when they are needed to alleviate a clearly covered condition even if a by-product of the treatment is the provision of some treatment that is usually not covered. See Fair Hearing Nos. 10,379, 11,207, 11,625, and 12,180.

In addition, the regulation at M619.1 indicates specifically that treatment for temporomandibular joint dysfunction "is a covered medical service for recipients of any age." Given the clear and unequivocal language in that regulation, it is just plain error for the Department to deny treatment to the petitioner's child who has been diagnosed as suffering from this condition and found by her dentist to be in need of orthodontic services to alleviate its effects. As the decision of the Department is not consistent with its own regulations, it must be reversed.

1. At oral argument, the Department of Social Welfare advised the Board that authorization had been given for this service on January 9, 1996. At that point the matter had already gone before the Board. As this fact was not in evidence and the petitioner was not present at oral argument, this matter could not be considered moot or withdrawn.