

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,742  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his request for comprehensive orthodontic authorization under the Dr. Dynasaur (Medicaid) program. The issue is whether the petitioner's condition meets the standard of severity for treatment adopted by PATH.

FINDINGS OF FACT

1. The petitioner is an eleven-year-old boy whose orthodontist has recommended comprehensive orthodonture for him. The orthodontist submitted a request for orthodontic treatment on March 27, 2002 on a form prepared by PATH. On that form he checked that the boy's dentition met one minor criteria, an "overjet 10+ mm." He also sent diagnostic materials including models and X-rays.

2. After review of the diagnostic materials, PATH's dental consultant agreed that the boy met the criteria for an "overjet of 10+ mm" but did not meet a second minor criteria

needed to meet severity standards. On April 4, 2002, PATH notified the petitioner that his orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment.

3. The petitioner appealed that decision. At a hearing held on August 15, 2002, the petitioner's mother appeared bringing some photographs and diagrams of the petitioner's dentition. She also presented a letter, almost two years old, describing her son's condition as a "Class II, Division I malocclusion with a 9mm overjet and a fifty percent vertical overbite." His upper anterior teeth were further described as "severely mal-aligned" and he was noted to have a "posterior crossbite on the right side." Another more recent letter from her orthodontist to her family contained a similar description.

4. The petitioner's mother stated that he had teeth pulled in June of 2000 in order to relieve crowding and that he actually got braces in June of 2002 which seemed to relieve headaches he was having. She paid for the entire cost of the braces (\$3,980) up front with a credit card.

5. PATH took the position at the hearing that the petitioner had not shown that his condition was severe enough because he did not meet the criteria and because his

combination of problems was not as serious as the criteria. The record was left open for three weeks for the petitioner to provide a written opinion from her orthodontist that her son's condition either met or equaled the listings in severity. Once such a letter was provided, PATH would have an opportunity to respond to that opinion in writing in ten days.

6. The petitioner did not provide the written information in three weeks. After no additional information had been provided in three months, PATH asked for a decision on the information of record.

ORDER

The decision of PATH denying coverage is affirmed.

REASONS

PATH has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. M622.1, 622.2 and 622.3. The regulations further provide that "to be considered medically necessary, the patient's condition must have one major or two minor malocclusions according to diagnostic criteria adopted by the department's dental consultant or if

otherwise medically necessary under EPSDT found at M100."

M622.4.<sup>1</sup> PATH interprets EPSDT and M100 as requiring that it cover only "handicapping malocclusions." See Fair Hearing No. 17,070 et al.

A person asserting eligibility for coverage under a PATH program has the burden of presenting evidence showing that he or she should be covered. Fair Hearing Rule 11. In this matter, the petitioner presented evidence that he met one of the minor criteria used by PATH to determine severity for the orthodonture program, but did not present any evidence that he met any other criteria or that his combination of problems is

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<sup>1</sup> The criteria used by PATH require that the malocclusion be severe enough to meet a minimum of 1 major or 2 minor diagnostic treatment criteria as follows:

Major Criteria

Cleft palate  
2 impacted cuspids  
Other severe cranio-facial anomaly

Minor Criteria

1 Impacted cuspid  
2 Blocked cuspids per arch  
(deficient by at least  
1/3 of needed space)  
3 Cogenitally missing  
teeth, per arch  
(excluding third molars)  
Anterior open bite 3 or  
More teeth (4+mm)  
Crowding, per arch  
(10+ mm)  
Anterior crossbite  
(3+ teeth)  
Traumatic deep bite  
Impinging on palate  
Overjet 10+mm  
(measured from labial  
to labial)

equally as severe or "handicapping" as any combination of impairments listed as sufficiently severe. Since the petitioner has failed to meet his evidentiary burden, the decision of PATH that his condition is not sufficiently severe for orthodontic coverage under the Medicaid program must be upheld.

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