

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,748
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Appeal of)
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INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying her coverage for orthodontic treatment under the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a fourteen-year-old girl who is under the care of an orthodontist who has worked in this field for almost thirty years. Her orthodontist requested coverage for interceptive orthodonture on April 3, 2002. He made this request on a form supplied by PATH which requires him to check off boxes next to certain listed malocclusions.

2. The petitioner's treating orthodontist checked next to the box marked "anterior open bite 3 or more teeth (4+ mm)"; the box next to "crowding per arch (10+ mm)"; and, the box next to "anterior crossbite (3+ teeth)". The form says that eligibility requires a minimum of 1 major or 2 minor

diagnostic treatment criteria. The boxes checked by the orthodontist are all listed as minor criteria.

3. PATH reviewed the records and models and concluded that the petitioner did not have an "open" bite, that the crowding was only 8 mm and that that only one tooth is in crossbite. Based on this finding the petitioner was notified on April 9, 2002 that her condition is not severe enough to warrant coverage for orthodonture.

4. The petitioner's treating orthodontist disagrees with these findings. He says that the petitioner does have an open bite which is clear when she is examined and from the models but does not show up on the X-rays because her head is tipped back. He agrees that only one of three teeth in question is open to the extent of 4 mm but categorizes the opening in the other 2, 2.5 and between 1-3 mm, as significant and as has having an equal impact on her dental health as three teeth with 4 mm. He describes these malocclusions as creating a potential for interference with the ability to chew and for breakdown of supporting dental structures. He also says that it is difficult to gauge the exact level of crowding which he describes as between 7 and 11 mm in the upper dentition and probably 8-9 mm in the lower dentition. He describes this condition as of equal significance with the 10

mm in the listings in terms of ability to maintain oral health. With regard to the anterior crossbite, he agrees that only one tooth is involved and that the involvement of one tooth is less serious than the involvement of three. However, he feels that in combination with the other malocclusions this problem significantly contributes to a serious dental problem. Finally, the orthodontist brought up a condition which he has since found and which is not checked on the initial application, "blocked cuspids". He claims that the petitioner has two blocked cuspids per arch which he feels will lead to lack of cuspid guidance, possible breakdown of dental supports and possible TMD (temporomandibular joint dysfunction). He describes the petitioner as meeting at least one and a half of the listed criteria and as having many other conditions not specifically listed in the criteria. He believes that in combination these many malocclusions have the same impact on the petitioner's dentition as actually meeting any of the two minor criteria. Without this interceptive treatment, he sees the petitioner as needing full comprehensive treatment and tooth extraction to accommodate her problems. She is, in his opinion, at risk for gum disease, chewing dysfunction, pain and infection.

5. Models, photos and records of the petitioner's dentition were reviewed by PATH's orthodontic consultant, a practitioner with credentials and experience equal to the petitioner's treating orthodontist. He describes the petitioner as having an open bite of 2 mm on one tooth and 1-3 mm on two others, a value less than that described by the criteria. He measured the degree of her crowding in both upper and lower dentition as 8 mm. He says that only one tooth is in an anterior bite. He did not respond to the treating orthodontist's opinion that the child has two blocked cuspids. He concluded that the conditions he did discuss are not equal to the state's criteria in terms of functional compromise. He also concluded that the petitioner does not have a "handicapping" condition although he does not define what he means by that term.

6. Another dentist who reviewed the models for PATH felt that the degree of crowding is about 5-6 mm in the lower dentition and 4-6 mm in the upper dentition. He offered no opinion about the severity of the petitioner's condition but only stated that she did not meet the criteria adopted by PATH.

7. Based on the above evidence, it is concluded that the treating physician's opinion of the condition of the child

is most reliable as he has both seen the child's teeth and has offered persuasive facts that her combination of four conditions are at least equal in severity to any two of the listings adopted by PATH. PATH's expert orthodontist's opinion is not found to be accurate because it did not consider all of the conditions described by the orthodontist (particularly the blocked cuspids) and does not define the use of the term "handicapping" condition. It is therefore found that the petitioner has a number of conditions as described by her treating orthodontist which impact her dentition as severely as any of the two combined minor conditions listed by PATH as meeting severity tests for orthodonture coverage.

ORDER

The decision of PATH denying coverage is reversed.

REASONS

PATH says that it will only cover a child for orthodontic treatment under the Medicaid program if she has a "handicapping malocclusion". As the Board has found in a prior set of cases on this issue, the statutes and regulations require PATH to make an individual assessment of whether each child's dental condition is sufficiently severe considering all of her impairments, not just those listed on PATH's form.

Fair Hearing No. 17,070 et al. PATH has not defined "handicapping malocclusion" except with reference to the criteria requiring that one major or two minor criteria on their listings be met. As the Board said in its prior opinion, if a petitioner can show that her condition is as severe as one major or two minor criteria listed by PATH, she has met the definition for "handicapping malocclusion". The petitioner has made such a showing in this case. The Board's prior decision is attached hereto as the basis for this decision. All facts found in those decisions relating to the operation of the program by PATH, are also incorporated herein by reference.

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