

girl's orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment.

2. On November 8, 2004, the orthodontist sent the petitioner a letter that summarized their daughter's dental problems as follows:

As you are aware, (daughter's) orthodontic problems include crowding in both upper and lower dental arches, an overbite, and the impaction of the lower right second bicuspid tooth. This certainly is not a healthy condition and could lead to more serious problems later in life. In order to provide (daughter) with a healthy functioning bite, a period of fixed orthodontic therapy will be indicated.

3. However, as part of a further review by the Department, on December 23, 2004 the girl's orthodontist filled out a "Medical Need Form", on which he stated the following:

Orthodontic treatment is not a medical necessity. Tooth #29 is badly impacted and needs attention. It can be removed and replaced with an artificial tooth, or orthodontically repositioned, possibly.

4. On January 3, 2005 the girl's treating physician submitted a letter noting the orthodontist's November 8, 2004 letter (see *supra*), and also including the following:

In addition to numerous dental issues, (daughter) has been diagnosed with epilepsy and requires daily medication to control seizure activity. (Daughter) and her parents feel braces are the appropriate option at this time. (Daughter's) parents feel that braces would help (daughter) with self-esteem issues, resulting in (daughter's) success in all areas of her life. The

family is requesting Medicaid coverage for the braces procedure.

5. At a hearing in this matter held on March 15, 2005, the petitioner brought x-rays she had obtained from her daughter's orthodontist. The record was left open for four weeks for the petitioner to attempt to provide either a written opinion from her orthodontist that her daughter's condition either meets or equals the listings in severity, or any other evidence upon which it could be concluded that orthodonture is medically necessary or recommended based on some other condition.¹

6. A further hearing was held on April 12, 2005. The petitioner's husband indicated at that time that they could not obtain any further medical statements from their daughter's providers.

ORDER

The Department's decision denying coverage is affirmed.

¹ It was pointed out to the petitioner that the January 3, 2005 statement from her daughter's doctor (see *supra*) notes only that *the parents and daughter* feel that there are self-esteem issues associated with the need for orthodonture.

REASONS

The Department has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. W.A.M. §§ M622.1, 622.2, and 622.3. The regulations, and rulings by the Board and the Vermont Supreme Court, further provide that to be considered medically necessary the patient's condition must meet or equal 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. See M622.4.²

² 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)
 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)

In this matter, the petitioner presented evidence that her daughter meets one of the minor criteria used by PATH to determine severity for the orthodonture program, but was unable to obtain any evidence that she met any other criteria or that her combination of dental problems is equally as severe or "handicapping" as any combination of those impairments that are listed. Nor could she obtain sufficient medical evidence that her daughter has any other condition that necessitates orthodonture as part of its treatment. Therefore, the decision of the Department that her daughter's condition is not sufficiently severe for orthodontic coverage under the Medicaid program must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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