

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
 N H) OAH No. 16-0025-MDX
) Agency Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Health Care Services (Division) was correct to deny N H's request for prior authorization of certain orthodontic services.¹ The Division denied Ms. H's dentist's prior authorization request for Medicaid funding for the orthodontic services in question because Ms. H's Handicapping Labiolingual Deviation (HLD) Index score was less than the minimum score required by the Division's regulations.²

This decision concludes that Ms. H's HLD Index score is less than the minimum score required by Alaska Medicaid regulations for the orthodontic services sought by Ms. H. Accordingly, the Division correctly determined that Ms. H is not currently eligible for the Medicaid-funded orthodontic services at issue. The Division's decision, denying prior authorization for the orthodontic services requested, is therefore affirmed.

II. Facts

A. *The Dental Services at Issue*

Ms. H is 15 years old.³ At some time prior to November 2015 she began having constant pain in one of her maxillary incisors (front tooth, upper jaw).⁴ She was always "banging" that tooth against her mandibular teeth (teeth of the lower jaw).⁵ She saw at least two dentists in an effort to have this problem treated.⁶

On November 24, 2015 dentist L M, D.D.S. submitted a request for prior authorization for the orthodontic services which he proposed for Ms. H, along with Alaska Medicaid's completed

¹ Ex. D.
² Ex. D1.
³ Exs. C7, E11.
⁴ Exs. C8 and E14; undisputed hearing testimony.
⁵ Exs. C8 and E14; undisputed hearing testimony.
⁶ Z H's hearing testimony.

Handicapping Labiolingual Deviation (HLD) Index Report form.⁷ The HLD Index Report Form listed a score of 23 for Ms. H.⁸ Dr. M also wrote "please see letter" on the form.⁹ Dr. M' letter, also dated November 24, 2015, states in relevant part as follows:¹⁰

N H . . . has presented for an Orthodontic Consult and chief complaint of constant tooth pain #8, because she is constantly "banging" [it] against [her] mandibular teeth. We propose Comprehensive Orthodontics to both reduce Class II Division II and remove tooth #8 from traumatic occlusion.

The Division's HLD Index Report Form contains a provision which states that, "[i]f recipient does not score an HLD Index of 26 or higher, he/she may be eligible for services under an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) exception."¹¹ Dr. M marked the box on the form to request an EPSDT exception. The form states that, if an EPSDT exception is requested, the dentist must submit documentation concerning the following:

(1) Principal diagnosis and significant associated diagnosis; (2) Prognosis; (3) Date of onset of the illness or condition and etiology if known; (4) Clinical significance or functional impairment caused by the illness or condition; (5) Specific services to be rendered by each discipline and anticipated time for achievement of goals; (6) Therapeutic goals to be achieved by each discipline and anticipated time for achievement of goals; (7) Extent of previous services that were provided to address the illness/condition and results of the prior care; (8) Any other documentation available that may assist Xerox and [Alaska Medicaid] in making the determination.

B. Relevant Procedural History

On December 21, 2015 Xerox notified Ms. H that her dentist's request for prior authorization for her orthodontic services had been denied.¹² The notice stated in relevant part:¹³

[The Department of Health and Social Services] will only pay for your orthodontic services if your scored Handicapping Labiolingual Deviation (HLD) Index Report is

⁷ Exs. C5, C6, E9, E10. In the early 1960s the Medicaid program recognized there was a need for a method to identify those recipients with a medically handicapping malocclusion. See Ali Borzabadi-Farahani, *An Overview of Selected Orthodontic Treatment Need Indices* (2011), published in *Principles in Contemporary Orthodontics*, Dr. Silvano Naretto, Editor, accessed online at <http://cdn.intechopen.com/pdfs-wm/24350.pdf> (accessed April 18, 2016). The Handicapping Labiolingual Deviation index (HLD) was developed by Dr. Harry L. Draker, and was one of the first indices used in the United States to identify those with handicapping malocclusions. *Id.* The intent of the HLD index is to measure the presence or absence, and the degree of handicap caused by, certain dental conditions including cleft palate deformities, deep impinging overbite, cross-bite of individual anterior teeth, severe traumatic deviations, overjet, overbite, mandibular protrusion, open-bite, ectopic eruption, anterior crowding, posterior unilateral cross-bite, and labio-lingual spread. *Id.* The HLD index is used by some states to determine and prioritize eligibility for state-funded orthodontic treatment. *Id.*

⁸ Exs. C6, E10.

⁹ Exs. C6, E10.

¹⁰ Exs. C8, E14 (paragraph breaks in original omitted for brevity).

¹¹ All factual findings in this paragraph are based on Exs. C6 and E10 unless otherwise stated.

¹² Ex. D.

¹³ Ex. D1.

26 or higher or the requested services are otherwise medically necessary. Your HLD score is less than the minimum [score of] 26 and no documentation that supports medical necessity was submitted.

On January 13, 2016 Ms. H's mother requested a hearing to contest the Division's decision.¹⁴ Ms. H's hearing was held on March 3, 2016. Ms. H and her mother, Z H, attended the hearing and testified. Terri Gagne participated in the hearing by phone and represented the Division. Mary Hansen participated in the hearing by phone and testified for the Division. Interpreter Sergie Serov participated by phone and provided translation services. The record closed at the end of the hearing.

III. Discussion

The regulations adopted by the State of Alaska Department of Health and Social Services (DHSS) pertaining to Medicaid dental services are set forth at 7 AAC 110.140 – 7 AAC 110.160. Certain dental services are available to persons under 21 years of age.¹⁵ Orthodontic services are among the dental services available to persons under age 21.¹⁶ The Alaska Medicaid regulation dealing with orthodontic services for persons under age 21, 7 AAC 110.153, states in relevant part:

(a) The department will pay for orthodontic services for recipients under 21 years of age, if the services are for:

....

(3) comprehensive orthodontic procedures for treatment of cleft palate, in conjunction with orthognathic surgery for a class III skeletal malocclusion, medical necessity due to functional impairment *and a score of 26 or greater on the Handicapping Labiolingual Deviation (HLD) Index Report* completed by an orthodontist; a prior authorization submitted by the orthodontist is required for comprehensive orthodontic treatment and must include (A) a description of the condition including medical information to determine functional impairment; (B) a description of the orthodontic appliance; (C) a scored Handicapping Labiolingual Deviation (HLD) Index Report, adopted by reference in 7 AAC 160.900, completed and signed by the orthodontist; (D) a treatment plan for correcting the condition; (E) panoramic films; (F) intraoral and extraoral photographs; (G) study models, if requested in the process of reviewing the prior authorization. [Emphasis added].

In this case, Mr. H's dentist sought prior authorization to provide "Comprehensive Orthodontics" for Ms. H,¹⁷ so 7 AAC 110.153(a)(3), dealing with "comprehensive orthodontic procedures," applies. Regulation 7 AAC 110.153(a)(3) specifically requires, as a prerequisite for

¹⁴ Exs. C1, C2.

¹⁵ 7 AAC 110.150.

¹⁶ 7 AAC 110.153.

¹⁷ Exs. C8, E14.

Medicaid authorization, "a score of 26 or greater on the Handicapping Labiolingual Deviation (HLD) Index Report." Dr. M listed Ms. H's (HLD) Index Report score as 23.¹⁸ It is undisputed that Ms. H's HLD Index Report score is three points less than the minimum score required by regulation. Accordingly, the Division was correct to deny Dr. M' request for prior authorization for the orthodontic services requested pursuant to 7 AAC 110.153(a)(3).

Another issue arises due to provision, at the bottom of the Division's Handicapping Labiolingual Deviation (HLD) Index Report form (Exhibits C6 and E10), which states in relevant part that "if recipient does not score an HLD index of 26 or higher, he/she may be eligible for services under an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exception." Dr. M marked the box on the form stating "EPSDT exception requested."

The Division's witness testified at hearing that the Division could not process Dr. M' prior authorization request as to the EPSDT exception because Dr. M did not include the eight items of documentation requested in the Division's form (listed at page 2, above). None of the exhibits filed in this case include anything from Dr. M addressing these eight items, and Ms. H did not assert that Dr. M provided the information necessary to qualify for an EPSDT exception to the Division. Accordingly, the Division was correct to deny (or to not process) the request for an EPSDT exception based on the information (or lack thereof) submitted by Dr. M.

IV. Conclusion

Ms. H's HLD Index score is less than the minimum score required by Alaska Medicaid regulations for the orthodontic services sought by Ms. H. Accordingly, the Division correctly determined that Ms. H is not currently eligible for the Medicaid-funded orthodontic services at issue. The Division's decision, denying prior authorization for the orthodontic services requested, is therefore affirmed.

Dated this 26th day of April, 2016.

Signed _____
Jay Durych
Administrative Law Judge

¹⁸ Exs. C6, E10.

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of May, 2016.

By: Signed _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

[This document has been modified to conform to the technical standards for publication.]