

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

In the Matter of)	
)	
B Q)	OAH No. 16-1314-MDX
_____)	Agency No.

DECISION

I. Introduction

The Division of Health Care Services denied a request for authorization for comprehensive orthodontic services for B Q. Although B does need some orthodontic services, she does not qualify for comprehensive services under the Department of Health and Social Services’ regulation. Because TB does not meet the standard set in law, the Division’s decision denying comprehensive services is affirmed.

II. Facts

B Q is an 11-year-old girl. One of B’s molars (tooth no. 31) has come in at an angle. That means that instead of coming in straight so that it could provide a flat chewing surface, it has lodged against the tooth next to it (tooth no. 30).

B’s mother, T Q, is a former dental hygienist who currently manages a dental office. Although she did not claim expertise in orthodontia, she was able to explain in layman’s terms why B needs orthodontia. Essentially, if B’s tooth no. 31 is not straightened, the impact of tooth no. 31 against tooth no. 30 will eventually compromise the roots of both teeth, and the bone in which the roots sit. She could lose both teeth, with discomfort and possible disease as the teeth, roots, bones, and gums deteriorate.¹ As Ms. Q put it, “[t]here is no good situation regarding #31 without the proper orthodontic treatment.”²

Given this situation, Ms. Q requested Medicaid orthodontia benefits for B. B’s orthodontist, Dr. U X, filled out the necessary request for orthodontia services.³ He requested that B be authorized for comprehensive orthodontic treatment—the most extensive form of orthodontic services. Attached to the request was an index that is used in the industry to assess a person’s severity of need for orthodontia services, called the *Handicapping Labiolingual*

¹ T.Q testimony.
² Division Exhibit C at 2.
³ Division Exhibit E at 1.

Deviation Index.⁴ This index is frequently referred to as the “HLD Index.” Dr. X scored B as a 13 on the HLD index.⁵

Under the Division’s regulations, a child who does not have one of the automatic qualifying conditions must score at least a 26 to be eligible for *comprehensive* orthodontia services. B does not have any of the deformities or bite conditions that would be an automatic qualifier.⁶ Because her score on the HLD index was only 13, on October 17, 2016, the Division sent Ms. Q a notice denying the request for comprehensive orthodontia services.⁷ On November 10, 2016, Ms. Q requested a fair hearing to contest the Division’s denial of orthodontia services for B.⁸ A telephonic hearing was held on November 23, 2016. The evidence and arguments presented at that hearing are discussed below.

III. Discussion

The Division has requested that its ruling be upheld because the regulations governing authorization for orthodontia services are strict. As Mary Hansen, the Dental Program Manager for Medicaid Services explained, a request for comprehensive orthodontic services must meet the HLD index score of 26.⁹ For patients whose need does not rise to this level, the Division may be able to offer one of the lower levels of orthodontia services, which are “limited orthodontic treatment,” or “interceptive orthodontic treatment.”¹⁰

Ms. Q acknowledged that the regulations require an index score of 26, and that B did not meet that score. She argued, however, that comprehensive services would be a better choice for B because it would allow the orthodontist to address all aspects of B’s bite, not just the most pressing need caused by tooth no. 31. She asks that an exception be made to the regulation in order to achieve a better result consistent with commonsense.

The regulations of the Department, however, are binding on the Divisions and on this hearing.¹¹ The regulation is not ambiguous—absent an automatic qualifying condition, a score of 26 is an absolute requirement for comprehensive orthodontic services for a child under 21.¹² I am not permitted to ignore the regulations or to add or subtract terms in order to achieve a different

⁴ Division Exhibit E at 2.

⁵ *Id.*

⁶ *Id.*

⁷ Division Exhibit C at 3.

⁸ Division Exhibit C.

⁹ 7 AAC 110.153

¹⁰ 7 AAC 110.153(a)(1) – (2).

¹¹ See, e.g., *United States v. RCA Alaska Commc'ns, Inc.*, 597 P.2d 489, 498 (Alaska 1978) (“In general, an administrative agency must comply with its own regulations.”).

¹² 7 AAC 110.153(a)(3).

result.¹³ Because B does not meet the standard established in regulation, the Division’s decision must be affirmed.

IV. Conclusion

The Division’s decision denying comprehensive orthodontic services to B Q is affirmed. B’s parent may apply for a lower level of orthodontic services to address B’s current need.

DATED this 2nd day of December, 2016.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 20th day of December, 2016.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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

¹³ Cf., e.g., *Hickel v. Cowper*, 874 P.2d 922, 927–28 (Alaska 1994) (holding that in construing constitutional provision, “we are not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result.”).