

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

In the Matter of)

N B)

OAH No. 19-0702- MDX

Agency No.

DECISION

I. Introduction

N B, age 13, is a minor who receives Medicaid benefits. N’s orthodontist requested that Medicaid pay for her comprehensive orthodontic treatment. That request was denied. Z B, N’s mother, requested a hearing to challenge the denial.

The evidence shows that N’s dental condition meets the Medicaid program’s requirements for comprehensive orthodontic treatment. As a result, the denial of N’s request for Medicaid coverage for her orthodontic treatment is REVERSED.

II. Facts

N was referred by her treating dentist Dr. L to Dr. K X, orthodontist, for an examination on June 28, 2019.¹ X-rays and photos were taken, as well.² The examination concluded N had “[s]keletal and dental Class II with 5 mm crowding, large overjet.”³ Dr. X gave her a Handicapping Labiolingual Deviation (HLD) score of 26.⁴

Dr. X concluded after her examination that comprehensive orthodontic treatment and periodic orthodontic visits were necessary and submitted a request to Medicaid for authorization of the treatment June 28, 2019.⁵ The Division denied authorization for the request on July 30, 2019.⁶

N’s hearing was held on August 29, 2019. Ms. B appeared on behalf of N. The Division of Health Care Services (Division) was represented by Laura Baldwin. Carrie Crause, the Division’s dental program manager, testified for the Division.

¹ Exhibit E at 1.

² Exhibit C; Exhibit E,

³ Exhibit E at 1; Exhibit E at 4.

⁴ Exhibit E at 2.

⁵ Exhibit E.

⁶ Exhibit D.

Ms. Crause explained the Division’s denial was based on Dr. Owen Mandanas’, DDS and dental consultant for Conduent State Healthcare, conclusions that N’s HDL was 14 and therefore was not medical necessity.⁷ Dr. Mandanas did not testify or explain his conclusions.

In his review, Dr. Mandanas disagreed with Dr. X’s conclusion regarding overjet, but his score of 4, instead of Dr. X’s finding of 7, had no explanation for the discrepancy.⁸ Similarly, Dr. Mandanas provided no evidence to support his finding of no overbite when Dr. X found in her examination, an overbite of 4 mm.⁹ While Dr. Mandanas did agree with Dr. X’s labiolingual spread of 5 mm, there is no explanation for his conclusion of only maxilla crowding, without mandible crowding.¹⁰ Ms. Crause cited no examples noted by Dr. Mandanas of quantifiable errors or inaccuracies made by Dr. X.

III. Discussion

The Medicaid program will pay for comprehensive orthodontic treatment.¹¹ However, the Medicaid regulations restrict coverage for comprehensive orthodontic treatment to one of the following conditions: cleft palate, treatment “in conjunction with orthognathic surgery for a class III skeletal malocclusion,” or “medical necessity due to functional impairment and a score of 26 or greater on the Handicapping Labiolingual Deviation (HLD) Index Report.”¹² The dental records filed in this case do not show a cleft palate or orthognathic surgery for a class III skeletal malocclusion. As a result, N only qualifies for comprehensive orthodontic treatment if there is medical necessity and an HLD score of 26 or greater.

Dr. X, N’s examining orthodontist, determined the comprehensive orthodontic treatment was medically necessary after examining N and reviewing her films, which resulted in an HLD score of 26.¹³ Dr. Mandanas, who reviewed N’s records as a basis for conclusions, scored her HLD at 14, and determined comprehensive orthodontic services were not medically necessary.¹⁴ Therefore, N is eligible for comprehensive orthodontic treatment according to Dr. X’s scoring, but not Dr. Mandanas’.¹⁵

⁷ Ms. Crause testimony; Exhibit D; Exhibit E at 2.

⁸ Exhibit E at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 7 AAC 110.153.

¹² 7 AAC 110.153(a)(3).

¹³ Exhibit E.

¹⁴ Exhibit E; Ms. Crause testimony.

¹⁵ 7 AAC 110.153(a)(3).

With two contradictory opinions, the question becomes which doctor's opinion, Dr. X's or Dr. Mandanas', should be given deference. The opinion of an examining physician is entitled to greater weight than the opinion of a non-examining physician.¹⁶ As Dr. X is N's examining orthodontist, and Dr. Mandanas only reviewed N's records, Dr. X's opinion, is given deference.¹⁷

This deference can be overcome, but it requires clear and convincing reasons for rejecting the examining physician's opinion must be provided.¹⁸ That means the opinion of an examining doctor can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record.¹⁹ And, the opinion of a non-examining physician cannot, by itself, constitute substantial evidence that justifies rejecting the treating physician's opinion.²⁰

Here, there were no reasons presented for the differing results. Dr. Mandanas made his determination based solely on a review of N's records, but his vastly different conclusions are unsupported by any evidence.²¹ Ms. Crause did not provide any specific examples of errors identified by Dr. Mandanas of Dr. X's evaluation.²² The evidence presented by Ms. Crause was that Dr. Mandanas simply reached a different conclusion than Dr. X.²³ But a different conclusion, without specific facts to support that differing opinion, does not overcome the priority of the examining doctor's opinion.²⁴

IV. Conclusion

Because Dr. X's finding that the comprehensive orthodontic treatment is medically necessary and N's HLD score is 26 was not refuted with clear and convincing evidence, her

¹⁶ *In re H.S.* OAH No. 114-2280-MDX (Comm'r of Health and Soc. Svcs. 2015) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5848>. See also *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir.1990); *Gallant v. Heckler*, 753 F.2d 1450 (9th Cir.1984). As set forth in *Lester*, the hierarchy of deference is a treating physician, examining physician and then reviewing physician.

¹⁷ *Id.*

¹⁸ *Lester* 81 F.3d at 830 citing *Pitzer*, 908 F.2d at 506.

¹⁹ *Lester* 81 F.3d at 830 citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.1995).

²⁰ *Id.*

²¹ Ms. Crause testimony.

²² *Id.*

²³ Ms. Crause testimony.

²⁴ *Lester* 81 F.3d at 830 citing *Pitzer*, 908 F.2d at 506 n. 4.

opinion is given deference. The Division's denial of N's request for Medicaid coverage for her comprehensive orthodontic treatment and periodic orthodontic visits is REVERSED.

DATED September 16, 2019

Signed _____
Hanna Sebold
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 30th day of September, 2019.

By: *Signed* _____
Name: Hanna Sebold
Title: Administrative Law Judge

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