

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

In the Matter of	)	
	)	
S X	)	OAH No. 21-0266-MDX
_____	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Health Care Services denied a request for authorization for comprehensive orthodontic services for S X.<sup>1</sup> However, as discussed below, she does not qualify for the comprehensive services sought under the Department of Health and Social Services’ regulation. Because S does not meet the required standard, the Division’s decision to deny comprehensive services is affirmed.

**II. Facts**

S is an 11-year-old girl who is afflicted with Dentinogenesis Imperfecta and Class II Div. 1 Malocclusion.<sup>2</sup> Due to these conditions, Dr. F E, with City A Orthodontics, performed an early and periodic screening, diagnostic and treatment evaluation of S.<sup>3</sup> In his evaluation, he opines that S’s prognosis is good with orthodontic treatment and poor without. He indicates that orthodontics will normalize growth patterns and open the bite so that the prosthodontist can crown the remaining teeth.<sup>4</sup> Accordingly, he recommended comprehensive fixed braces, with a growth modification appliance.<sup>5</sup>

Based on the screening and evaluation performed by Dr. E, S’s mother, L X, requested Medicaid orthodontia benefits on her daughter’s behalf.<sup>6</sup> Dr. E completed the necessary request for services.<sup>7</sup> He sought that S be authorized for “Comprehensive Orthodontic Treatment” – the most extensive form of orthodontic services.<sup>8</sup> Included with the request was an index that is used in the industry to assess a person’s severity of need for orthodontia services, called the

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<sup>1</sup> Because S is a minor who was represented in this proceeding by her mother and legal guardian, L X. To avoid confusion, S will be referred by her first name and her mother will be referred to as Ms. X.  
<sup>2</sup> Ex. E, p. 9.  
<sup>3</sup> Ex. E, p. 9.  
<sup>4</sup> Ex. E, p. 9.  
<sup>5</sup> Ex. E, p. 4.  
<sup>6</sup> Ms. X testimony.  
<sup>7</sup> See generally Ex. E.  
<sup>8</sup> Ex. E, p. 1.

Handicapping Labiolingual Deviation Index.<sup>9</sup> This index is frequently referred to as the “HLD Index.” Dr. E scored S as an 11 on the HLD Index.<sup>10</sup>

Under the Division’s regulations, an applicant who does not have one of the automatic qualifying conditions must score at least a 26 on the HLD Index to be eligible for comprehensive orthodontia services.<sup>11</sup> S does not have any of the deformities or bite conditions that would be an automatic qualifier.<sup>12</sup> Because her score on the HLD Index was only 11, the Division denied the request for comprehensive orthodontia services.<sup>13</sup> A fair hearing was then requested on S’s behalf to challenge the Division’s denial.<sup>14</sup>

A telephonic hearing occurred on March 30, 2021. Following the hearing, the Division was ordered to supplement the record with an email referenced by the Division’s primary witness during the hearing, Division Dental Program Manager, Carrie Crouse.<sup>15</sup> The email was provided as requested.<sup>16</sup> The evidence and arguments presented at the hearing are discussed below.

### III. Discussion

The starting point for the present analysis is 7 AAC 110.153(a)(3), which is the regulation of the Department of Health and Social Services addressing payment of comprehensive orthodontic services. Specifically, it provides that the Department will pay for such services for recipients under the age of 21 for:

comprehensive orthodontic procedures for treatment of cleft palate, for treatment in conjunction with orthognathic surgery for a class III skeletal malocclusion, or for treatment based on 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. . . .<sup>17</sup>

Therefore, under the regulation, what is required when comprehensive orthodontic procedures are sought is that a recipient must either have one of the conditions specified in the regulation, or alternatively, the need for treatment based on medical necessity *and* an HLD score of 26 or greater.

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<sup>9</sup> Ex. E, p. 3.

<sup>10</sup> Ex. E, p. 3.

<sup>11</sup> 7 AAC 110.153(a)(3).

<sup>12</sup> Compare 7 AAC 110.153(a)(3) with Ex. E.

<sup>13</sup> Ex. D.

<sup>14</sup> Ex. C.

<sup>15</sup> Order Regarding Supplementation of the Record (March 30, 2021).

<sup>16</sup> Ex. G (March 30, 2021).

<sup>17</sup> 7 AAC 110.153(a)(3).

Here, there is no dispute that despite her need for comprehensive orthodontic procedures, S does not have one of the requisite deformities or bite conditions that would be an automatic qualifier under the regulation. Further, as S’s mother testified, she too has long been afflicted with the genetic condition, Dentinogenesis Imperfecta. She understands it well and is very familiar with what is required concerning her daughter’s medical treatment and the likely risks if that treatment is not timely received.<sup>18</sup>

The regulations of the Department, however, are binding on the Divisions and in this proceeding.<sup>19</sup> “Administrative agencies are bound by their regulations just as the public is bound by them.”<sup>20</sup> Further, 7 AAC 110.153(a)(3) is unambiguous. Absent an automatic qualifying condition, a score of 26 is an absolute requirement for comprehensive orthodontic services for a child under 21.<sup>21</sup> Because S does not meet the standard established by the regulation, the Division’s decision must be affirmed.

#### **IV. Conclusion**

The Division’s decision denying comprehensive orthodontic services to S is affirmed.

DATED this 19<sup>th</sup> day of April 2021.

By: Signed \_\_\_\_\_  
Z. Kent Sullivan  
Administrative Law Judge

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<sup>18</sup> Ms. X testimony.

<sup>19</sup> 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.”).

<sup>20</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>21</sup> 7 AAC 110.153(a)(3).

## 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 3<sup>rd</sup> day of May, 2021.

By: Signed

Name: Z. Kent Sullivan

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]