

codes D8080 and D8670) for E.H..⁵ In support of her request, she included the HLD Index Report, a diagnosis and treatment plan questionnaire, and photos and x-rays of E.H.'s teeth.⁶

The Division had two separate dentists, Dr. P.N., DDS and Dr. E.C., DDS, review the request. Dr. P.N. and Dr. E.C. are dental consultants who work with Conduent State Healthcare, an independent agency that reviews Medicaid dental coverage requests. Neither of them physically examined E.H.. In her review, Dr. P.N. wrote on the service request: "HLD overscored no OJ issue – does not amount to 5 mm. – program cannot approve."⁷ In his review, Dr. E.C. wrote "HLD overscored photos do not substantiate HLD score. PT has stable functional occl."⁸

On May 4, 2022, the Division notified E.H.'s parents that the request for orthodontia services for E.H. was denied because E.H.'s "HLD score is less than the minimum 26 and no documentation that supports medical necessity was submitted."⁹ S.N. appealed the denial on May 20, 2022, stating that E.H. has a very deep bite which crowds his teeth and causes him to snore.¹⁰

Dr. E.C. testified at the hearing. He has been a dentist since 1985 and specializes in the field of prosthodontics, concerning the replacement and restoration of missing and broken teeth, and neuromuscular dentistry, regarding oral function and occlusion (i.e., the way teeth fit together.)¹¹ He discussed the photos in the record and the reasons for his opinion that they do not support the HLD scoring by Dr. K.N. Pointing to specific photos, he observed that there is only minimal crowding in E.H.'s teeth, with only his upper lateral incisor minimally twisted.¹² He said the overjet score, which measures the distance from the front upper teeth to the front lower teeth when a person bites down, was too high. He opined that the score should have 2 to 3 mm rather than 5 mm, as E.H.'s front center teeth are only slightly hyper-erupted.¹³ Further, he said the labiolingual spread, which measures the distance between the most displaced upper tooth to the most displaced lower tooth, should have been 3 to 4 mm rather than 8 mm, because E.H.'s teeth would be much more rotated if the distance were actually 8 mm. Taking these adjustments alone into account, he said the HLD score should have been 21 to 23. Moreover, he said this

⁵ Ex. F, p. 1.

⁶ Ex. F, pp. 4-7.

⁷ Ex. F, p. 1; Ms. Crouse's testimony.

⁸ Ex. F, p. 1; Dr. E.C.'s testimony.

⁹ Ex. D, p. 1.

¹⁰ Ex. C, p. 1.

¹¹ E.C. testimony.

¹² E.C. testimony, Ex. F, p. 6, bottom row left and right photos, center row photos.

¹³ E.C. Burke testimony; Ex. F, p. 6, bottom row center photo.

score does not even account for adjustments he believes are warranted in the overbite measurement. He believed the overbite score of 6 mm was too high, because such a score would mean all of the bottom teeth would be covered by the front teeth when E.H. bites down, which is not borne out by the photos.¹⁴

Further, Dr. E.C. testified that dental records do not support a conclusion that E.H. is functionally impaired. Referencing specific photos, E.C. said E.H.'s canines and molars are in a normal position, as supported by K.X.'s characterization of them as "Class 1" in the diagnosis and treatment plan. Based on the position of the teeth and the presence of only minimal crowding, he opined that a finding of functional impairment was not justified. He acknowledged that E.H.'s teeth are not perfect, but he did not believe they are bad enough to require coverage under the Medicaid program.¹⁵

S.N. testified that she was present when K.X. took measurements of E.H.'s mouth, and she believes the measurements were accurate.¹⁶ She commented that E.C. did not examine E.H. like K.X. did.

III. Discussion

The Medicaid program will pay for comprehensive orthodontic treatment for recipients under 21 years of age, but only for the following conditions: (1) a cleft palate, (2) treatment "in conjunction with orthognathic surgery for a class III skeletal malocclusion," or (3) "medical necessity due to functional impairment **and** a score of 26 or greater on the Handicapping Labiolingual Deviation (HLD) Index Report."¹⁷ The dental records filed in this case do not show the E.H. had a cleft palate or a class III skeletal malocclusion requiring orthognathic surgery. Thus, E.H. would only qualify for comprehensive orthodontic coverage if he had a functional impairment necessitating medical treatment **and** an HLD score of 26 or greater.

In this case, a difference of opinion exists regarding the correct HLD scoring for E.H. and whether he had a functional impairment. K.X., who examined E.H., opined that the correct HLD score is 29, and that E.H. has a deep bite with crowding. Drs. P.N. and E.C. disagreed. P.N. believed the overjet score of 5 mm was too high. E.C. opined that an overjet score of 2 to 3 mm and a labiolingual spread of 3 to 4 mm were more accurate measurements, which would reduce

¹⁴ E.C. testimony; Ex. F, p. 6, bottom row photos.

¹⁵ E.C. also testified that he did not believe anything could be done orthodontically to E.H.'s teeth to impact his snoring.

¹⁶ S.N. testimony.

¹⁷ 7 AAC 110.153(a)(3) (emphasis supplied).

the HLD score to 21 to 23. He also suggested that the overbite score of 6 mm was too high, which would drop the HLD score further. Finally, he opined that the dental records do not support a finding of functional impairment, because E.H.'s teeth are in a normal position and are only minimally crowded.

As a general rule, more weight is given to the opinion of a treating physician than doctors who do not treat the claimant.¹⁸ Where a treating or examining physician's opinion is not contradicted by another doctor, it may be rejected only for "clear and convincing" reasons.¹⁹ An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.²⁰ Even when a treating or examining physician's opinion is contradicted, that opinion "can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record."²¹ "The opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician *or* a treating physician."²²

Applying these principles in this case, Drs. P.N. and E.C. are nonexamining dentists. Their opinions contradict that of K.X., who is the examining orthodontist. K.X.'s opinion can only be rejected for specific and legitimate reasons supported by substantial evidence in the record showing that the HLD score should be less than 26, or that E.H. does not have a functional impairment.

Although the opinions of Drs. P.N. and E.C. alone would be insufficient to meet this threshold, there is more evidence in the record than just their opinions. The record also includes photos and x-rays of E.H.'s mouth and a diagnosis and treatment plan questionnaire. The photos show, even to this untrained eye, that there is only minimal crowding of E.H.'s upper and lower teeth, only minimal twisting of, at most, a few teeth, and the upper teeth do not completely cover the lower teeth. Moreover, the teeth appear to be positioned normally – a conclusion further supported by K.X.'s own characterization of the molars and canines as "Class 1" in the questionnaire. This evidence, combined with E.C.'s detailed and consistency testimony, supports the conclusion that E.H. does not have a functional impairment necessitating medical treatment. Although this conclusion alone is sufficient to support the denial of the request for comprehensive

¹⁸ *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 830 – 831.

²² *Id.* at 831.

orthodontic services for E.H., the evidence also supports the conclusion that K.X.'s scores for the overjet, overbite, labiolingual spread, and anterior crowding were too high.²³ Even if each of these scores were adjusted downward by only one point, the HLD Index score would be less than 26. An HLD index score of less than 26 provides an additional basis for the denial of the request for E.H.'s orthodontic services.

IV. Conclusion

The Division's denial of the request for Medicaid coverage for E.H.'s orthodontic treatment is AFFIRMED.

Dated: July 20, 2022

Signed

Lisa M. Toussaint
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 4th day of August, 2022.

By: Signed

Signature
Lisa M. Toussaint

Name
Administrative Law Judge

Title

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

²³ Although E.C. did not discuss the scoring for anterior crowding on the HLD Index, his testimony and the photos show that K.X.'s score for anterior crowding was too high.