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

In the Matter of	)	
	)	
J.C	)	OAH No. 22-0359-MDX
	)	

DECISION

I. Introduction

J.C is a minor who receives Medicaid benefits. She requested that Medicaid pay for her orthodontic treatment. That request was denied. C.C, J's father, requested a hearing to challenge the denial.

J's hearing was held on May 27, 2022. J was represented by Mr. C. The Division of Health Care Services was represented by Laura Baldwin. Carrie Crouse, the Division's dental program manager, testified for the Division. Dr. S.N, DDS, also testified for the Division.

The evidence shows that J's dental condition is serious and that orthodontics are an appropriate treatment. However, the Medicaid program has stringent regulatory requirements that J's dental condition does not meet. As a result, the denial of J's request for Medicaid coverage for her orthodontic treatment is AFFIRMED.

II. Facts

J's dentist referred her to an orthodontist for an assessment on December 14, 2021.[1] The orthodontist examined her on February 9, 2022, and concluded that she had a 7 mm overjet, a 5 mm overbite, and crowding on both arches of 6 mm, diagnosing her with "Class II with crowding, large overjet, deep bite."[2] Consistent with the orthodontist's report, the orthodontist completed a Medicaid "Handicapping Labiolingual Deviation (HLD) Index Report" that concluded that J had a HLD score of 28, consisting of the following:

7 points for a 7 mm Overjet

5 points for a 5 mm Overbite

10 points for anterior crowding (5 points apiece for mandible and maxilla)

6 points for a 6 mm Labiolingual spread.[3]

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1 Ex. F, p. 4.
2 Ex. F, p. 5.
3 Ex. F, p. 2.

The orthodontist then completed a request that Medicaid provide comprehensive orthodontic services and periodic orthodontic treatment visits (procedure codes D8080 and D8670) for J.[4] There are x-rays and photos of J's teeth in the record.[5]

The Division had two separate dentists review J's request. Dr. D, DDS and Dr. N, DDS. Both Dr. D and Dr. N are dental consultants who work with an independent agency that reviews Medicaid dental coverage requests. Neither physically examined the patient. Dr. D wrote on the application: "HLD overscored there is no anterior crowding, so based on that 1 aspect alone – program cannot approve."[6] Dr. N also reviewed the request and concurred with Dr. D's opinion.[7]

The Division notified Mr. C on March 11, 2022 that the request for orthodontia services for J was denied because the "HLD score is less than the minimum 26 and no documentation that supports medical necessity was submitted."[8]

Dr. N discussed the x-rays and photographs in the record. She specifically pointed out, referencing the x-rays and photographs in the record, that a visual review of those showed no crowding on either arch, and that the upper (maxilla) arch actually showed space between the teeth. Her professional opinion was that while she thought that J should have orthodontic treatment, given the condition of her teeth, that J did not satisfy the necessary criteria for scoring high enough to qualify for Medicaid coverage of her orthodontic treatment. She also thought that if she had physically examined J, that she probably would have scored her lower for both an overjet and overbite.[9]

Mr. C testified that J's dentist, who has provided treatment for her during her entire life, stated that J required orthodontic treatment.[10]

III. Discussion

The Medicaid program will pay for comprehensive orthodontic treatment. 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

4 Ex. F, p. 1.
5 Ex. F, pp. 6 – 7.
6 Ex. F, p. 1; Ms. Crouse's testimony.
7 Dr. N' testimony.
8 Ex. D, p. 1.
9 Dr. N' testimony.
10 Mr. C's testimony.

of 26 or greater on the Handicapping Labiolingual Deviation (HLD) Index Report."[11] 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, J would only qualify if there are both functional impairment and necessity and an HLD score of 26 or greater.

The orthodontist, who would qualify as an examining orthodontist because he was not J's primary dentist, opined that J had a HLD score of 28. The disputed area for this case involves the scoring for anterior crowding. The orthodontist found anterior crowding in both the upper (maxilla) and lower (mandible) arches. Drs. D and N found no such crowding. This would reduce the HLD score to 18, which is less than the required HLD qualifying score of 26.

The federal courts have held that an individual's physician's treating opinion regarding whether a treatment is necessary is presumed to be correct:

> The Medicaid statute and regulatory scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.[12]

In general, more weight is given to a treating physician's opinion than the opinions of those who do not treat a claimant.[13] An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician."[14] An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.[15] 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."[16] "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."[17]

Utilizing this test in this case, Drs. D and N are both nonexamining dentists. As such, the opinion of the examining orthodontist can only be rejected if there is clear and convincing evidence that the HLD scoring is inaccurate. The opinion of Drs. D and N alone are insufficient to overturn the examining orthodontist's HLD scoring. However, there is evidence other than

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11 7 AAC 110.153(a)(3) (emphasis supplied).
12 *Weaver v. Reagen*, 886 F.2d 194, 200 (8th Cir. 1989).
13 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).
14 *Id.* at 830 – 831.
15 *Id.*
16 *Id.* at 830 – 831.
17 *Id. at* 831.

Drs. N's and D's opinions. That evidence is the photographs and x-rays of J's mouth. A visual review of those x-rays and photographs demonstrates, even to this untrained eye, that there is spacing and not crowding on the upper (maxilla) arch. The lack of crowding on the lower (mandible) arch is not as apparent to this untrained eye. What this means is that the evidence, being the combination of Drs. N's and D's opinion and the x-rays and photographs, demonstrates by clear and convincing evidence that there is no anterior crowding on the upper (maxilla) arch. The evidence is not as conclusive for the lower (mandible) arch.[18] In terms of scoring, this would reduce J's HLD scoring by 5 points to 23:

7 points for a 7 mm. Overjet

5 points for a 5 mm Overbite

5 points for anterior crowding (5 points for mandible)

6 points for a 6 mm Labiolingual spread.[19]

J's HLD scoring is therefore found to be a total of 23, which is less than the eligibility threshold of 26. While J's primary dentist, per Mr. C's credible testimony, the orthodontist, and Dr. N agree that J should receive orthodontic care, there was no medical evidence showing that the orthodontic treatment was medically necessary due to a functional impairment. The Medicaid program only provides "orthodontic treatment based on medical necessity due to functional impairment **and** a score of 26."[20] Given an HLD score of 23 and no evidence of medical necessity due to a functional impairment, Medicaid does not allow coverage for J's orthodontic care.

IV. Conclusion

The Division's denial of J's request for Medicaid coverage for her orthodontic treatment is AFFIRMED.

Dated: June 16, 2022

Signed

Lawrence A. Pederson
Administrative Law Judge

[18] The photographs and x-rays are located on Ex. F, pp. 6 – 7.
[19] *See* Ex. F, p. 2 for scoring sheet.
[20] 7 AAC 110.153(a)(3).(emphasis supplied).

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 28th day of June, 2022.

By: *Signed*
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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