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Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

Y.Z.,

PETITIONER,

v.

WELLPOINT,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 03461-2024

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 5, 2024, in accordance with an Order of Extension.

This matter concerns the determination by Wellpoint that Petitioner was not eligible to receive orthodontic services. A Fair Hearing request was transmitted to the OAL on March 14, 2024, and a telephonic hearing was conducted on May 14, 2024. ID at 2. The record remained open until May 15, 2024 to allow Petitioner to submit a new document from their dentist, Dr. Krug, which was not provided to the Respondent before the hearing, not submitted during the hearing and was not supported by any testimony. Ibid. The Initial Decision upholds the denial, and for the reasons set forth therein, I concur with that determination.

Medicaid regulations only cover medically necessary dental services, and
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orthodontic treatment is limited to individuals with handicapping malocclusions that meet or exceed twenty-six points on the New Jersey Orthodontic Assessment Tool. N.J.A.C. 10:56-2.15. N.J.A.C. 10:56-2.15 provides that a handicapping malocclusion must meet or exceed twenty-four points for an individual to be eligible for treatment; however, the State adopted the New Jersey Orthodontic Assessment Tool for Comprehensive Treatment HLD (NJ-Mod3) assessment tool, which requires a score equal to or greater than twenty-six points as the criteria for eligibility. *F.T. v. Horizon N.J. Health*, OAL DKT. NO. HMA10207-16, 2016 N.J. AGEN LEXIS 957, Initial Decision (November 4, 2016).

If the HLD (NJ-Mod 3) Assessment tool indicates documented clinical criteria found in section 1-6A and 15 of the assessment tool or a total score that is equal to or greater than 26, the pre-orthodontic treatment work-up can proceed. A total score of less than 26 points on the HLD (NJ-Mod 3) Assessment tool requires documentation of the extenuating circumstances, functional difficulties and/or medical anomaly be included in the submission.

DMAHS, *Updated Criteria of Orthodontic Services and HLD (NJ Mod3)*, Vol. 32, No. 2 (Jan. 2022).

Examples of possible extenuating circumstances are: (1) facial or oral clefts; (2) extreme antero-posterior relationships; (3) extreme mandibular prognathism; (4) a deep overbite where incisor teeth contact palatal tissue; and (5) extreme bi-maxillary protrusion. N.J.A.C. 10:56-2.15(d)(2)(i).

Dr. Salvatore Pavone, DDS testified for the Respondent as an expert witness in dentistry. Dr. Pavone, a licensed dentist, is the director of Respondent's dental group and reviews requests for orthodontic procedures. *Ibid.* In determining whether medical needs and procedure meet the State-mandated requirements, he reviews patient records, X-rays, and the New Jersey Orthodontic Assessment Tool for Comprehensive Treatment HLD. *Ibid.* Dr. Pavone explained that the patient's treating physician completes the HLD from, which is then reviewed by the dental insurance provider. *Ibid.* He further testified

that even though a patient may benefit from orthodontics, the HLD criteria and score must be met to receive coverage under the plan. Id. at 3.

The Petitioner was evaluated for braces by their treating physician, Dr. Krug from Krug Orthodontics. Ibid. Dr. Krug scored the Petitioner at 26, which would have qualified them for braces under the HLD. However, after reviewing the records provided by Dr. Krug, including X-rays, diagnostic pictures, and the treatment plan, Dr. Pavone disagreed with the score of 26. Ibid. Dr. Pavone went through the scoring sheet and testified that the Petitioner scored a 17, noting that they did not have a trauma or other automatic qualifier, and as such, did not qualify for orthodontics under the State Plan. Ibid.

The Petitioner's father testified that the Petitioner needs braces because their lower jaw is growing at a faster rate than his upper jaw. Id. at 3. He further testified that there was documentation from Dr. Krug that was not submitted. Ibid. As such the Administrative Law Judge (ALJ) kept the record open for twenty-four hours to allow Petitioner to submit documents that the Respondent had not submitted. Ibid. The Petitioner submitted a letter from Dr. Krug dated May 14, 2024, the same date as the Fair Hearing. The ALJ found that this letter had not been provided to the Respondent before the hearing, and as such would not be considered. Id. at 4. Moreover, there was no testimony from Dr. Krug to corroborate the conclusions of the letter. Ibid.

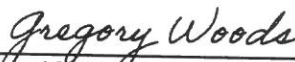
The ALJ found that the Medicaid program can only provide reimbursement for orthodontic services to patients with specific orthodontic conditions or with a combination for orthodontic conditions that result in a score of 26 or greater on the HLD. Ibid. Here Dr. Pavone credibly testified that the Petitioner only scored a 17 and did not meet any of the automatic qualifiers under the HLD. Nor was there any testimony to discredit the testimony and expert opinion of Dr. Pavone.

Accordingly, and based upon my review of the record and for the reasons set forth above, I concur with the Initial Decision that Petitioner does not meet the requirements for orthodontic treatment under the Medicaid regulations at this time. However, as noted by the ALJ, the Petitioner has the right to submit a new request to the Respondent with a subsequent report from their treating physician.

THEREFORE, it is on this 4th day of September 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services