



EOHHS regulation 210-RICR-10-05-2.

### **III. ISSUE**

The issue before this Hearing Officer is whether the Appellant's denial of orthodontic services by OHHS was proper and in accordance with federal and state regulations as set forth below.

### **IV. STANDARD OF REVIEW**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

### **V. PARTIES AND EXHIBITS**

Appellant's Guardian, her grandmother (hereinafter "[REDACTED]") attended both hearings. [REDACTED] testified on behalf of [REDACTED] (hereinafter "Appellant"). She submitted a letter of complaint, dated January 12, 2021, which included an x-ray with several teeth referenced. At hearing she offered the same photo, marked as Appellant A; and, an 8-picture display of Petitioner's mouth/teeth, as referenced by [REDACTED], marked as Appellant B. There were no objections.

At the June hearing, OHHS representatives Jack Demus, Senior Medical Care Specialist and Dr. Samuel Zwetchkenbaum (hereinafter “Dr. Sam”), State Dental Director, Medicaid Program were present. They offered the following Exhibits into evidence: 2-page RI Medicaid (MA) Severe Malocclusion Treatment Request Form marked as Exhibit #1; an Authorization for [REDACTED] form, marked as Exhibit #2; a [REDACTED] x-ray, marked as Exhibit #3; and a United Healthcare Rite Smiles Prior Authorization Fax Notice, marked as Exhibit #4. Post-hearing, the RI EOHHS Medicaid Program Dental Manual was submitted to both parties, marked as Exhibit #5. There were no objections. The following representatives attended the July 1 reconvene: Sheila O’Connor-Santos, Account Manager Rite Smiles, Dr. Allen Chusid, Dental Director Rite Smiles; Dr. Ankit Amin, Dental Consultant for United Health Care (hereinafter “UNC”), and John Neubauer (hereinafter “Mr. Neubauer”), Interdepartmental Project Manager at OHHS Medicaid. No additional evidence was submitted. There were no objections. All parties attended the hearings telephonically.

**VI. RELEVANT LAW and/or POLICY**

Title 210 RICR-30-05-2, Medicaid for Children, Families and Affordable Care Act (ACA) Adults, part 2-Medicaid Managed Care Delivery Options, in part, establishes procedures and policies for Rite Care Services which includes Rite Smiles Dental Plan Overview (see Appendix). The program is a statewide dental benefit managed care delivery system established to improve access to oral health services for children in RI who receive Medicaid. The Rhode Island Executive Office of Health and Human Services Medicaid Program, Dental Services Coverage Manual, Version 1.7, revised September 2019 (RI EOHHS MA Dental Manual) (see Appendix) further establishes Medicaid reimbursement requirements which include reimbursement for medically necessary services. This section discusses definitions for medical

necessity, prior authorization, and appeal instructions for denial of medical necessity. Page 28 of the manual entitled "Orthodontic Services" further establishes the process to determine eligibility for services and reimbursement.

## **VII. REVIEW OF EVIDENCE**

1. OHHS contracts with United Health Care, Rite Smiles, to administer the dental program.
2. For braces, that benefit requires prior authorization for which the member's dentist or orthodontist submits a request which includes clinical documents and such.
3. Appellant's Orthodontist, [REDACTED] submitted the required forms and was denied.
4. Per Dr. Amin, for Orthodontist (Ortho) services within state guidelines, a severe handicapping malocclusion must be present. This means teeth or jaw are so misaligned one cannot bite down, speak, or cannot eat.
5. OHHS requires use of the HLD (handicapping localized detection) scoring system, which reviews two categories- Part A/Part B.
6. Any items checked in Part A would allow an automatic approval - there was nothing checked. For part B, a score of 26 or above would warrant authorization. Appellant had a score of 17.
7. Per Dr. Sam, if the score is not met, the other requirement is EPSDT (early and periodic screening diagnosis and treatment), which states that if there is a potential for harm Rite Care treats. He could not see any current evidence of harm. He would contact United again to determine if there was potential for harm.
8. Per Dr. Amin, there were two reviews at the initial review level as well as at the internal review level, and an additional review with Dr. Sam, all of which resulted in agreement

that the case was adjudicated correctly. The team reviewed the treatment request form as well as x-rays submitted by Appellant.

9. Per Dr. Amin, although the provider referenced teeth 20 and 29 as impacted, impacted posterior teeth are not auto disqualifiers, nor is distal angulation.
10. Per testimony of Mr. Neubauer, upon an additional review with United, Dr. Sam concurred that United had taken appropriate steps, and the denial was justified per the HLD index score. HLD index is cut and dry, with no exceptions.
11. With respect to harm, Mr. Neubauer testified that, if the situation changes and the risk grows, the request could be resubmitted at that time. The future is unknown at this time. Rite Smiles is available until the age of 21.
12. ██████ argued that this was not cosmetic, but a necessity.
13. ██████ testified that her regular dentist, not ortho, believes the baby teeth are not coming out and, if they start to ruin the adult teeth, they must come out in the future, which will require surgery.
14. ██████ argued that braces are needed to avoid surgery.

#### **VIII. FINDINGS OF FACT**

1. A November 16, 2020 Initial Notice of Adverse Determination - Full Denial informed the appellant of a denial for braces, Code 2464, for the reason ...” you do not meet the State Medicaid guidelines for braces.”
2. Appellant completed two appeals at the initial review level as well as an internal review.
3. Appellant filed an administrative appeal on February 19, 2021. An additional review was completed with Dr. Sam following the June 9 hearing.

4. Medicaid regulations allow reimbursement to providers for medically necessary services as determined by numerous staff and consultants under contract with OHHS. Some services, including braces, require prior authorization.
5. A RI Medicaid treatment form (Exhibit 1) was signed by [REDACTED] on November 9, 2020. No automatic disqualifiers were identified on Part A of the form. Part B, Diagnostic information, showed a total score of 17 calculated.
6. RI EOHHS MA Dental Manual (see Regulations above/Appendix) allows for automatic disqualifiers or requires a score of 26 or more in order to qualify for authorization.
7. An Administrative hearing was held on June 9, 2021; and, a reconvene hearing was held on July 1, 2021.

#### **IX. DISCUSSION**

Under the Medicaid programs, Agency Rules and Regulations establish procedure and policies for Rite Smiles Dental plans, administered through UnitedHealthcare Dental. This statewide dental benefit managed care delivery system was established to improve access to oral health services for children in Rhode Island who receive Medicaid. Only Medically necessary services are reimbursed. Medical necessity is determined by staff under OHHS contract and per regulations, with Medicaid as the final arbiter of determination of necessity. Prior authorization for some dental procedures is required, as in the case of orthodontic services.

Orthodontics is considered medically necessary when needed to correct a severe handicapping malocclusion for youth under age 21. The HDL Index is applied to each case by Board certified orthodontic consultants in order to determine a clear demonstration of medical necessity by determining the degree of the malocclusion. Appellant's orthodontist, [REDACTED], completed the forms. In Part A, if any of the six conditions exist, the malocclusion is

considered severe. For Appellant there were no boxes checked indicating no automatic disqualifiers. The scoring in Part B, 7-13, then determines if the case qualifies for treatment. A score of 26 or greater qualifies for authorization. [REDACTED] indicated a score of 17, well below the standard. Dr. Akin further noted that, although teeth 20 and 29 listed under Ectopic Eruption are listed as impacted, impacted posterior teeth are not automatic disqualifiers. Dr. Akin summarized that a severe handicap means that the teeth are so misaligned one cannot bite down, speak, or cannot eat. The record does not support that Appellant presents with these handicaps currently. The Agency determined that Appellant did not meet the medically necessary criteria based upon the evidence presented by the orthodontist.

[REDACTED] argues that the adult teeth, as seen in the x-rays, are presenting sideways in the gums. She testified that her dentist feels that the baby teeth are not coming out. She argues that either braces will be required, or surgery will be needed to remove the baby teeth in order to have proper alignment. She believes the adult teeth will end up going into the roots of major teeth, causing irreparable harm. She requests the braces. Mr. Neubauer expressed sympathy for Appellant's concerns but noted no exception to the HDL scoring. With respect to Appellant's arguments, he stated that the future is unknown. He concurred that there have been several reviews and denials prior to the Administrative hearing. The following parties concurred that the denial at this time was correct: Rite Smiles Account Manager, Dental Director of Rite Smiles, EOHHS Interdepartmental Project Manager for Medicaid, Dental Consultant for United Health Care, Senior Medical Care Specialist, and the State Dental Director for Medicaid. Mr. Neubauer informed [REDACTED] that, in the event of changes in the condition, Appellant has Rite Smiles coverage through Medicaid up to the age of 21, allowing for a resubmission of any requests for Orthodontia treatment in the future.

In summary, the record shows that [REDACTED] arguments are based upon her concerns about the future and wellbeing of Appellant, her granddaughter. She made a heartfelt argument for her and Appellant's needs. However, the current scoring system and the current medical needs of Appellant do not meet the medically necessary criteria per the Medicaid regulations. The scoring index, as completed by her Orthodontist, revealed no automatic disqualifiers and resulted in a score much lower than that allowed for consideration of a severely handicapping malocclusion. However, the Agency did not rule out the possibility of a redetermination in the future if Appellant's condition changed.

#### **X. CONCLUSIONS OF LAW**

1. Per Medicaid regulations and including the RI EOHHS Medicaid Dental program, in order to have coverage for services, a determination of medical necessity is required.
2. Appellant did not meet the criteria for medical necessity based upon the HDL scoring index. She is therefore ineligible for covered services through the Rite Smiles Medicaid program.
3. Appellant was correctly denied full braces coverage per the Medicaid regulations.
3. Per regulations, Appellant's Orthodontia denial on November 16, 2020 through UnitedHealthcare-Rite Smiles was proper and in accordance with state regulations.

#### **XI. CONCLUSION**

After a careful review of the Agency's regulations and policies, as well as the evidence and testimony given, this Appeals Officer finds that the Appellant's denial was proper and correct. Based on the foregoing Findings of Fact and Conclusions of Law, a final order shall enter denying Appellant's request for relief.

#### **APPEAL DENIED**

/s/ Karen Walsh

Karen E. Walsh, OHHS Appeals Officer

### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

## APPENDIX

### **210-RICR-30-05-2**

#### **TITLE 210 – EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES CHAPTER 30 – MEDICAID FOR CHILDREN, FAMILIES AND AFFORDABLE CARE ACT (ACA) ADULTS SUBCHAPTER 05 – SERVICE DELIVERY OPTIONS**

##### **PART 2 – Medicaid Managed Care Delivery Options (pertinent parts)**

### **2.1 RIte Care Overview**

- A. RIte Care was initially established as a statewide managed care demonstration project in 1994 under a Medicaid Title XIX Section 1115 waiver. The project's goal was to use a managed care delivery system to increase access to primary and preventative care for certain individuals and families who otherwise might not be able to afford or obtain affordable coverage. Medicaid members participating in RIte Care are enrolled in a managed care organization (MCO). EOHHS contracts with MCOs to provide these health services to members at a capitated rate (fixed cost per enrollee per month). RIte Care managed care plans serve the following MACC coverage groups: families, children, parent caretakers, foster children (DCYF custody), and pregnant women.

### **2.8 Overview of RIte Care Services**

- A. Individual and families enrolled in RIte Care receive the full scope of services covered under the Medicaid State Plan and the State's Section 1115 waiver, unless otherwise indicated. Covered services may be provided through the MCO or through the fee-for-service delivery system if the service is "out-of-plan" – that is, not included in the MCO but covered under Medicaid. Fee-for-service benefits may be furnished by any participating provider. Rules of prior authorization apply to any service required by EOHHS. Each RIte Care member selects a primary care provider (PCP) who performs the necessary medical care and coordinates referrals to specialty care. The primary care provider orders treatment determined to be medically necessary in accordance with MCO policies. Beneficiaries in the Extended Family Planning (EFP) coverage group do not require a PCP. The extended family planning group is entitled only to family planning services.

2. Delivery of Benefits – The coverage provided through RIte Care is categorized as follows:
- a. In-Plan Benefits
  - b. Out-of-Plan Benefits.

3. Medical necessity – The standard of "medical necessity" is used as the basis for required and appropriate. A "medically necessary service" means medical, surgical or other services required for the prevention, diagnosis, cure, or treatment of a health-related condition including any such services that are necessary to prevent a detrimental change in either medical or mental health status or substance use disorder or services needed to achieve age-appropriate growth and development or to attain, maintain, or regain functional capacity. Medically necessary services must be provided in the most cost-efficient and appropriate setting and must not be provided solely for the convenience of the member or service provider.

## **2.10 Out-of-Plan Benefits**

- A. Out-of-plan benefits are not included in the capitated rate paid to the MCOs and are not the responsibility of the MCO to provide. These services are provided by existing Medicaid-approved providers who are reimbursed directly by EOHHS on a fee-for-service basis. Out-of-plan benefits are provided to all RItE Care enrollees with the following exceptions: Individuals eligible for Extended Family Planning only; Pregnant women who are otherwise ineligible for Medicaid and post-partum women with income above 253% of FPL; and anyone enrolled in the guaranteed enrollment period but otherwise ineligible for Medicaid. The covered benefits are as follows:

**ELIGIBLE GROUP** - All Rhody Health Partners, RItE Care and Expansion members

**BENEFIT(S) PROVIDED OUT-OF-PLAN** - Dental services

## **2.55 Rite Smiles Dental Plan Overview**

A. The RItE Smiles Program is a statewide dental benefits managed care delivery system established under a federal waiver. The program's goal is to improve access to oral health services for Rhode Island children who receive Medicaid. Emphasis is placed on preventive and primary care dental services and education.

B. Children born on or after May 1, 2000 who are receiving dental benefits through Medicaid are enrolled in a RItE Smiles dental plan. EOHHS contracts with one or more dental plans to provide oral health services to these Medicaid-eligible children.

## **2.56 Legal Authority**

Title XIX of the Social Security Act provides the legal authority for the Medicaid Program. The RItE Smiles Program operates under a waiver under the authority of Section 1115 of the Social Security Act.

## **2.57 Coverage Groups**

A. Participation in the RIte Smiles Program is mandatory for all children in the following populations who were born on or after May 1, 2000 and who are receiving Medicaid:

1. Section 1931 children and related populations (including poverty level groups and RI Works cash recipients);
2. Blind and/or disabled children;
3. Foster care children who are receiving foster care or adoption subsidy assistance (Title IV-E), are in foster care, or are otherwise in an out-of-home placement;
4. Section 1115 Waiver Children.

## **Rhode Island Executive Office of Health and Human Services Medicaid Program, Dental Services Coverage Manual, Version 1.7, Rev. September 2019 (pertinent parts)**

### **ORTHODONTIC SERVICES**

*Orthodontics is medically necessary services needed to correct handicapping malocclusion in recipients under age 21.* The HLD (RI Mod) Index (Handicapping Labio-lingual Deviation Index) is applied to each individual case by Board qualified orthodontic consultants to identify those cases that clearly demonstrate medical necessity by determining the degree of the handicapping malocclusion. The HDL Index is a tool that has proven to be successful in identifying a large range of very disfiguring malocclusions and two known destructive forms of malocclusion (deep destructive impinging bites and destructive individual anterior crossbite). *Please see example HDL scoring sheet at the end of this section.*

#### **Handicapping Malocclusion**

An occlusion that has an adverse effect on the quality of a person's life that could include speech, function or esthetics that could have sociocultural consequences. Examples would be significant discrepancies in the relationships of the jaws and teeth in anteroposterior, vertical or transverse directions.

#### **Medically Necessary**

When a situation exists, that could have a detrimental effect on the structures that support the teeth, and if damaged sufficiently, could lead to the loss of function.

1. Eligibility for Medicaid is maintained;
2. The request for prior authorization is approved and the work is initiated prior to the recipient's

21<sup>st</sup> birthday.

### **Prior Authorization Requests**

All requests for prior authorization of payment must include the diagnosis, length, and type of treatment. Records, which include diagnostic casts (study models), cephalometric film, panoramic film or a complete series of intraoral radiographs, and diagnostic photographs, must be submitted for full orthodontic treatment review. Orthodontic treatment will be approved only where there is evidence of a favorable prognosis and a high probability of patient compliance in completing the treatment program.

### **Payment for Orthodontic Records**

If an orthodontic case is not approved for payment, Medicaid will pay the orthodontist a fee for examination and records when a claim is submitted using procedure code **D8660**. ***This is limited to once every two (2) years.*** This code is tied to each distinct Prior Authorization (PA) request for full orthodontic treatment. If a subsequent request is received in less than two years, and denied at that time, an allowance would not be made. If a subsequent request is received in less than two years and approved because of changes in the child's mouth, an allowance would be made.

If an orthodontist sees a patient for an examination only, and the patient does not proceed with diagnostic records, Medicaid will pay for a Comprehensive Oral Evaluation.

Post-treatment maintenance retainers will not be replaced if lost or damaged.

### **Orthodontic Services Claims Coding and Reimbursement DENTITION**

***Primary Dentition:*** Teeth developed and erupted first in order of time.

***Transitional Dentition:*** The final phase of the transition from primary to adult teeth, in which the deciduous molars and canines are in the process of shedding and the permanent successors are.

***Adolescent Dentition:*** The dentition that is present after the normal loss of primary teeth AND PRIOR to cessation of growth; that would affect orthodontic treatment.

***Adult Dentition:*** The dentition that is present after the cessation of growth that would affect orthodontic treatment.

### **LIMITED ORTHODONTIC TREATMENT**

Orthodontic treatment with a limited objective, not involving the entire dentition. May be directed at the only existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego therapy that is more comprehensive.

### **INTERCEPTIVE ORTHODONTIC TREATMENT**

Orthodontic therapy that reduces or eliminates the severity of an existing malocclusion. It most

often involves early correction of vertical, horizontal, or anteroposterior skeletal discrepancies. Included would be such procedures as distalization, protraction, expansion, space maintenance, and in control of harmful oral habits.

### **COMPREHENSIVE ORTHODONTIC TREATMENT**

The coordinated diagnosis and treatment leading to the improvement of a patient's dentofacial deformity or dentoalveolar skeletal discrepancies including anatomical, functional and esthetic relationships. Treatment usually, but not necessarily, utilizes fixed orthodontic appliances. Adjunctive procedures, such as extractions, maxillofacial surgery, nasopharyngeal surgery, myofunctional or speech therapy and restorative or periodontal care may be coordinated disciplines. Optimal care requires long-term consideration of patients' needs and periodic re-evaluation. Treatment may incorporate several phases with specific objectives at various stages of dentofacial development. Orthodontic treatment involves the placement of bands or bonded brackets for at least a two-year period during which time appropriate adjustments are made to achieve a proper occlusion for the patient. Comprehensive treatment ends when the entire adult dentition (except third molars) has been placed in proper occlusion.

Certain appliances, such as a lingual arch, tooth positioner, head gear therapy or Hawley appliance, may be required in conjunction with a full course of orthodontic treatment. In other instances, these appliances may be utilized alone and preclude the necessity for a full course of orthodontic treatment.

## CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED]; copies were sent via email to EOHHS representatives: Jack Demus, Deborah Meiklejohn, Dr. Samuel Zwetchkenbaum, John Neubauer; and to UnitedHealth Representatives: Sheila O'Connor-Santos; Dr. Ankit Amin, and Dr. Alan Chusid.

on this 8th day of July, 2021.

*/s/ Rebecca Abramson*

