

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

██████████ 2017  
Signature Confirmation

Client ID # ██████████  
Request # 830739

NOTICE OF DECISION

PARTY

██████████  
Re: ██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, BeneCare Dental Plans (“BeneCare”) sent ██████████ (the “Appellant”) a notice of action (“NOA”) denying a request for prior authorization of orthodontia services for her minor child, ██████████. The notice indicated that the severity of ██████████ malocclusion did not meet the requirements in state law to approve the proposed treatment.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the Department’s denial of prior authorization of orthodontia.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant  
Magdalena Carter, BeneCare’s representative  
Dr. Vincent Fazzino, BeneCare’s Dental Consultant, via telephone  
Scott Zuckerman, Hearing Officer

## STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization through the Medicaid program for [REDACTED] orthodontic services was in accordance with state law.

## FINDINGS OF FACT

1. The Appellant is the mother of the minor child, [REDACTED] (Hearing Record)
2. [REDACTED] is 10 years old (D.O.B. [REDACTED]/06) and is a participant in the Medicaid program, as administered by the Department of Social Services (the "Department"). (Hearing Record)
3. BeneCare is the Department's contractor for reviewing dental providers' requests for prior authorization of orthodontic treatment. (Hearing Record)
4. Dr. [REDACTED], DMD, is [REDACTED] treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On [REDACTED] 2017, the treating orthodontist requested prior authorization to complete orthodontic services for [REDACTED] (Hearing Summary, Ex. 1: Claim Form)
6. On [REDACTED] [REDACTED] 2017, BeneCare received from the treating orthodontist a *Preliminary Handicapping Malocclusion Assessment Record* with a score of 19 points, dental models and panoramic x-ray films of [REDACTED] mouth. (Ex. 2: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]/17)
7. On [REDACTED] 2017, Dr. Geoffrey Drawbridge, DDS, BeneCare's orthodontic dental consultant, independently reviewed [REDACTED] models and panoramic radiographs, and arrived at a score of 16 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Drawbridge found no evidence of severe irregular placement of [REDACTED] teeth within the dental arches and no irregular growth or development of the jawbones. (Hearing Summary, Ex. 3: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]/17)
8. On [REDACTED] 2017, BeneCare denied the treating orthodontist's request for prior authorization for orthodontic services because [REDACTED] score was less than 26 points on the Malocclusion Assessment Record, his teeth were not crooked enough to qualify for braces and the teeth currently posed no threat to the jawbone or the attached soft tissue. There is no evidence that such treatment is medically necessary. (Ex. 4: Notice of Action for Denied Services, [REDACTED]/17)

9. On [REDACTED] 2017, Dr. Vincent Fazzino, D.M.D., BeneCare's orthodontic dental consultant, conducted an appeal review of [REDACTED] models and panoramic radiographs and arrived at a score of 16 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Fazzino found no evidence of severe irregular placement of [REDACTED] teeth within the dental arches and no irregular growth or development of the jawbones. (Hearing Summary, Ex. 7: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]17)
10. On [REDACTED] 2017, BeneCare notified the Appellant that orthodontic treatment was not medically necessary for [REDACTED] (Ex. 8: Letter Regarding Orthodontic Services, [REDACTED]/17)
11. On [REDACTED] 2017, Dr. Vincent Fazzino, DMD, BeneCare's orthodontic dental consultant, independently reviewed [REDACTED] Speech/Language Triennial Evaluation. Dr. Fazzino noted that the narrative did not meet the criteria and therefore does not alter the assessment record. (Exhibit 9: Speech/Language Triennial Evaluation dated [REDACTED] 2016 and Exhibit 10: Comment from Dr. Fazzino dated [REDACTED] 2017)
12. On [REDACTED] [REDACTED] 2017, OLCRAH conducted an Administrative Hearing. (Hearing Record)
13. On [REDACTED] 2017, Dr. Vincent Fazzino, DMD, BeneCare's orthodontic dental consultant, independently reviewed photographs of [REDACTED] mouth and teeth. Dr. Fazzino reviewed the photos and commented that they did not alter the orthodontic assessment record. Dr. Fazzino further commented to resubmit case following additional dental development (9-12 months). (Appellant's Exhibit A: Photos of [REDACTED] mouth and Exhibit 12: Dr. Fazzino's response, [REDACTED]/17)
14. [REDACTED] has some problems chewing food. (Appellant's testimony)
15. [REDACTED] does not have any problems swallowing food. (Appellant's testimony)
16. [REDACTED] does not receive counseling and is not being treated by a qualified psychiatrist or psychologist for related mental, emotional or behavioral problems, disturbances or dysfunctions. (Appellant testimony)

### **CONCLUSIONS OF LAW**

1. Connecticut General Statutes §17b-262 provides that the Department may make such regulations as are necessary to administer the medical assistance program.

2. Connecticut Agencies Regulations §17-134d-35(a) provide that orthodontic services provided for individuals less than 21 years of age will be paid for when provided by a qualified dentist and deemed medically necessary as described in these regulations.
3. Connecticut General Statutes §17b-259b provides (a) For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition.
4. State regulations provides that the Department of Social Services shall cover orthodontic services for a Medicaid recipient under twenty-one years of age when the Salzmann Handicapping Malocclusion Index indicates a correctly scored assessment for the recipient of twenty-six points or greater, subject to prior authorization requirements. If a recipient's score on the Salzmann Handicapping Malocclusion Index is less that twenty-six points, the Department of Social Services shall consider additional substantive information when determining the need for orthodontic services, including (1) documentation of the presence of other severe deviations affecting the oral facial structures; and (2) the presence of severe mental, emotional or behavioral problems or disturbances, as defined in the most current edition of the Diagnostic and Statistical Manual of Mental disorders, published by the American Psychiatric Association, that affects the individual's daily functioning. [Supplement to the Conn. Gen. Statutes § 17b-282e]
5. State regulations provides that if the total score is less than [twenty-six (26) points] the Department shall consider additional information of a substantial nature about the presence of severe mental, emotional, and/or behavior problems, disturbances or dysfunctions, as defined in the most current edition of the Diagnostic Statistical Manual of the American Psychiatric Association, and

which may be caused by the recipient's daily functioning. The Department will only consider cases where a diagnostic evaluation has been performed by a licensed psychiatrist or a licensed psychologist who has accordingly limited his or her practice to child psychiatry or child psychology. The evaluation must clearly and substantially document how the dentofacial deformity is related to the child's mental, emotional, and/or behavior problems. And that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems. [Conn. Agencies Regs. § 17-134d-35(e)(2)]

6. Connecticut Agencies Regulations §17-134d-35(f) provide that the study models submitted for prior authorization must clearly show the occlusal deviations and support the total point score of the preliminary assessment.
7. In the Appellant's case, the study models submitted for prior authorization do not show severe deviations affecting the mouth and underlying structures; and do not meet the requirement of a 26 point score on the preliminary assessment.
8. In the Appellant's case, a licensed psychiatrist or licensed psychologist who has limited his or her practice to child psychiatry or child psychology has not recommended that [REDACTED] receive orthodontic treatment to significantly ameliorate [REDACTED] mental, emotional, and or behavior problems, disturbances or dysfunctions.
10. BeneCare was correct to deny prior authorization because the orthodontic services, are not medically necessary for [REDACTED] in accordance with state statutes and regulations.

### **DECISION**

The Appellant's appeal is **DENIED**.

  
Scott Zuckerman  
Hearing Officer

cc: Diane D'Ambrosio, Connecticut Dental Health Partnership  
Rita LaRosa, Connecticut Dental Health Partnership

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.