

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

[REDACTED], 2018  
Signature Confirmation

Client ID # [REDACTED]  
Request # 122854

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2018, Connecticut Dental Health Partnership/Benecare Dental Plans (“Benecare”) sent [REDACTED] (“Appellant”) a notice of action denying a request for prior authorization of orthodontia indicating that the proposed orthodontia treatment is not medically necessary.

On [REDACTED] 2018, the Appellant requested an administrative hearing to contest Benecare’s denial of the prior authorization request for orthodontia treatment.

On [REDACTED] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED] 2018, [REDACTED] for the Appellant requested a continuance which OLCRAH granted.

On [REDACTED] 2018, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED], 2018.

On [REDACTED], 2018, 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:

[REDACTED], Appellant

[REDACTED] Witness for the Appellant

Magdelina Carter, Benecare Representative

Dr. Stanley Wolfe, Benecare Dental Consultant, participated by telephone

Lisa Nyren, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Benecare's denial of prior authorization through the Medicaid program for the Appellant's orthodontic services as not medically necessary was in accordance with state statutes and state regulations.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old born on [REDACTED]. (Exhibit 1: Prior Authorization Request, Exhibit 2: Preliminary Malocclusion Assessment Record and Exhibit 5: Hearing Request)
2. The Appellant 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. [REDACTED], (the "treating orthodontist") is the Appellant's treating orthodontist. (Hearing Summary, Exhibit 1: Prior Authorization Request and Exhibit 2: Preliminary Malocclusion Assessment Record)
5. On [REDACTED] 2018, Benecare received a prior authorization request from the treating orthodontist to complete orthodontic services for the Appellant. (Hearing Summary and Exhibit 1: Prior Authorization Request)
6. On [REDACTED] 2018, Benecare received from the treating orthodontist, a Preliminary Handicapping Malocclusion Assessment Record with a score listed as 38 points, models and x-rays. The treating orthodontist commented, "Class II molar & canine relationship with deep bite, hypodivergent skeletal pattern." (Exhibit 2: Preliminary Malocclusion Assessment Record)
7. On [REDACTED], 2018, Dr. Vincent Fazzino, DMD, Benecare's orthodontic dental consultant, independently reviewed the Appellant's models and x-rays, and arrived at a score of 17 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Fazzino commented, "Please note

poor quality models were submitted." Dr. Fazzino did not find evidence of severe irregular placement of the teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Fazzino found no evidence presented stating the presence of emotional issues directly related to the Appellant's dental situation and determined that orthodontia services were not medically necessary. (Hearing Summary, Exhibit 3: Preliminary Handicapping Malocclusion Assessment Record)

8. On [REDACTED] 2018, Benecare notified the Appellant that the request for orthodontic services was denied. Benecare denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that orthodontia treatment is not medically necessary under the factors set forth in state statutes and state regulations. Specifically, the scoring of the Appellant's mouth was less than the 26 points needed for coverage, there was no additional evidence of the presence of severe deviations affecting the mouth or underlying structures, which, if left untreated, would cause irreversible damage. In addition, there was no evidence that a diagnostic evaluation has been done by a licensed child psychologist or a licensed child psychiatrist indicating the Appellant has the presence of a severe mental, emotional, or behavior problem as defined in the current edition of the Diagnostic Statistical Manual which orthodontic treatment will significantly improve such problems, disturbances or dysfunctions. (Exhibit 4: Notice of Action for Denied Services or Goods)
9. On [REDACTED] 2018, the Department received a request for an administrative hearing from the Appellant. (Exhibit 5: Hearing Request)
10. On [REDACTED] 2018, Dr. Robert Gange, DDS, a Benecare dental consultant, independently reviewed the Appellant's models and x-rays and arrived at a score of 17 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Gange commented, "Study models not properly trimmed." Dr. Gange did not find evidence of severe irregular placement of the Appellant's teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Gange found no evidence presented stating the presence of emotional issues directly related to the Appellant's dental situation and determined the treatment was not medically necessary. (Hearing Summary, Exhibit 6: Preliminary Handicapping Malocclusion Assessment Record)
11. On [REDACTED] 2018, Benecare notified the Appellant that the request for orthodontic services was denied because the Appellant's score of 17 points was less than the 26 points needed for coverage, lack of evidence of the presence of severe deviations affecting the mouth or underlying structures, and there was no evidence presented of any treatment by a licensed child psychiatrist or child psychologist related to the condition of the Appellant's teeth. (Exhibit 7: Determination Letter)

12. Properly trimmed dental models are needed to accurately complete the Preliminary Handicapping Malocclusion Assessment Record. (Dental Consultant's Testimony)
13. A qualified child psychiatrist or child psychologist is not treating the Appellant for mental, emotional, or behavior problems, disturbances or dysfunctions as defined by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association related to the Appellant's malocclusion. (Appellant's Testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2(6) of the Connecticut General Statutes states that the Department of Social Services is the designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. State statute provides in part that the Department may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-262].
3. Regulations of the Connecticut State Agencies ("Conn. Agency Regs.") § 17-134d-35(a) provide that orthodontic services will be paid for when (1) provided by a qualified dentist and (2) deemed medically necessary as described in these regulations.
4. State statute 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. [Conn. Gen. Stat. § 17b-259b]

5. State regulation defines the Preliminary Handicapping Malocclusion Assessment Record as the method of determining the degree of malocclusion and eligibility for orthodontic services. Such assessment is completed prior to performing the comprehensive diagnostic assessment. [Conn. Agencies Regs. § 17-134d-35(b)(3)]
6. State statute provides that clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a request health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity. [Conn. Gen. Stat. § 17b-259b(b)]
7. State statute 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 than 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. The commissioner may implement policies and procedures necessary to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the commissioner publishes notice of intent to adopt regulations on the eRegulations System not later than twenty days after the date of implementation. [Conn. Gen. Stats. § 17b-282e]
8. State regulation provides that prior authorization is required for the comprehensive diagnostic assessment. The qualified dentist shall submit: (A) the authorization request form; (B) the completed Preliminary Handicapping Malocclusion Assessment Record; (C) Preliminary assessment study models of the patient's dentition; and (D) additional supportive information about the presence of other severe deviations described in Section (e) (if necessary). The study models must clearly show the occlusal deviations and support the total point score of the

preliminary assessment. If the qualified dentist receives authorization from the Department, he may proceed with the diagnostic assessment. [Conn. Agencies Regs. §17-134d-35(f)(1)]

9. State statute requires upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity. [Conn. Gen. Stats. § 17b-259b(c)]
10. It cannot be determined from the hearing record whether Benecare notified the treating orthodontist that the study models were of poor quality and improperly trimmed.
11. It cannot be determined from the hearing record whether the Appellant's malocclusion meets the criteria for severity, or 26 points as established in state statute as the scoring of the Malocclusion Severity Assessment was based on x-rays, photographs, and study models of the Appellant's dentition which were of poor quality and improperly trimmed.
12. It cannot be determined from the hearing record whether there is the presence of severe deviations affecting the mouth and underlying structures as the study models of the Appellant's dentition submitted by the treating orthodontist were of poor quality and improperly trimmed.
13. It cannot be determined from the hearing record whether orthodontic services are medically necessary for the Appellant.

### **DECISION**

The Appellant's appeal is remanded back for further review.

### **ORDER**

1. Benecare must allow the Appellant the opportunity to obtain a new evaluation for orthodontic treatment by a participating dentist/orthodontist under the Medicaid program. This includes the required authorization request form, a completed Preliminary Handicapping Malocclusion Assessment Record, preliminary assessment study models of the

Appellant's dentition, and any supportive information of the presence of other severe deviations.

2. Compliance is due 10 days from the date of the hearing decision.



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Lisa A. Nyren  
Fair Hearing Officer

PC: Diane D'Ambrosio, CTDHP, P.O. Box 486 Farmington, CT 06032  
Rita LaRosa, CTDHP, P.O. Box 486 Farmington, CT 06032

### **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 Administrative Hearings and Appeals, 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 the Commissioner's 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.