

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

██████████ 2016
SIGNATURE CONFIRMATION

REQUEST #729405

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

██████████
RE: ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, Connecticut Dental Health Partnership (“CTDHP”), the Dental Administrator for the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) stating that it had denied a prior authorization request for approval of braces for the Appellant as not medically necessary, pursuant to Section 17b-259b of the Connecticut General Statutes, based on documents provided by his dentist indicating that his malocclusion did not meet the statutory and regulatory requirements for receiving approval of Medicaid payment for braces.

On ██████████ 2015, the Appellant’s representative ██████████ requested an administrative hearing to contest CTHDP’s denial of the Appellant’s prior authorization request for approval of braces.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling an administrative hearing for ██████████ 2015 @ ██████████ to address CTDHP’s denial of the Appellant’s prior authorization request for approval of Medicaid coverage for braces. OLCRAH granted the Appellant’s representative a continuance.

On ██████████ 2015, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing to address CTDHP’s denial of the Appellant’s prior authorization request for approval of Medicaid coverage for braces.

The following individuals were present at the hearing:

██████████ Appellant's Representative/Mother
Awilda Maldonado, Representative for CTDHP
Dr. Greg Johnson, Dental Consultant for CTDHP by telephone
Hernold C. Linton, Hearing Officer

The hearing record was closed on ██████████ 2016.

STATEMENT OF THE ISSUE

The issue to be decided is whether CTDHP's denial of a prior authorization request for approval of Medicaid coverage for braces for the Appellant is correct and in accordance with state law.

FINDINGS OF FACT

1. The Appellant is a recipient of medical assistance under the Medicaid/HUSKY program. (Appellant Representative's testimony; Hearing Summary)
2. The Appellant is fifteen (15) years of age (DOB ██████████/2000). (Appellant Representative's testimony; Hearing Summary)
3. On ██████████ 2015, CTDHP, the Department's dental subcontractor, received a prior authorization request from the Appellant's treating orthodontist for approval of Orthodontia ("braces") for the Appellant. (Hearing Summary; Dept.'s Exhibit # 1: Dental Claim Form)
4. The Appellant's prior authorization request included a completed Malocclusion Severity Assessment with a total point value of eighteen (18). The request also included models and x-rays of the Appellant's teeth and underlying structures. (Hearing Summary; Dept.'s Exhibit #2: Malocclusion Severity Assessment)
5. The treating orthodontist indicated that there were other severe deviations affecting the Appellant's mouth and underlying structures, and noted fremitus for the Appellant's teeth #8 and #9, with significant lower incisor wear on teeth #24, #25, and #26. (Hearing Summary; Dept.'s Exhibit #2)
6. An Orthodontic Consultant for CTDHP evaluated the dental records and evidence provided by the Appellant's treating orthodontist and found no evidence of severe irregular placement of the Appellant's teeth within his dental arches, no irregular growth or development of his jaw bones, and gave the Appellant a score of seventeen (17) points on the Salzmann Malocclusion Severity Assessment, and determined that the Appellant's condition did not meet the criteria for being medically

necessary. (Hearing Summary; Dept.'s Exhibit #3: ██████/15 Preliminary Handicapping Malocclusion Assessment Record)

7. CTDHP did not receive evidence from a qualified Psychiatrist or Psychologist specifying the presence of related mental, emotional, and/or behavioral issues, disturbances, or dysfunctions, and did not receive evidence that the requested orthodontic treatment is necessary to ameliorate the Appellant's emotional problems. (Hearing Summary)
8. On ██████ 2015, CTDHP sent a Notice of Action to the Appellant advising him that the prior authorization request received from his provider for approval of braces was denied as not medically necessary, because his score of seventeen (17) points on the assessment is less than the needed twenty-six (26) points required; and there is no additional substantial information about the presence of severe deviations affecting his mouth and underlying structures which, if left untreated, would cause irreversible damage to his teeth or underlying structures. Also, there was no evidence presented of any treatment from a licensed psychiatrist or psychologist related to the condition of his mouth and no evidence that the requested orthodontic treatment would significantly improve the Appellant's emotional/behavior problems. (See Facts # 1 to 7; Hearing Summary; Dept.'s Exhibit # 4: ██████/15 Notice of Action)
9. A second Dental Consultant for CTDHP conducted an appeal review of the Appellant's dental records, assigned the Appellant's malocclusion severity twelve [12] points based on the Salzmann Malocclusion Severity Assessment criteria, found no evidence of severe irregular placement of his teeth within the dental arches, and no irregular growth or development of his jaw bones; there was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of his mouth and that the requested orthodontic treatment would significantly improve the Appellant's emotional/behavioral problems. (Hearing Summary; Dept.'s Exhibit #7: ██████/15 Preliminary Handicapping Malocclusion Assessment Record)
10. The Dental Consultant for CTDHP also noted that there were no other severe deviations affecting the Appellant's mouth and underlying structures. (Dept.'s Exhibit #7)
11. On ██████ 2015, CTDHP sent a determination letter to the Appellant informing him that his provider's request for approval of braces was once again denied. (Hearing Summary; Dept.'s Exhibit # 9: CTDHP Letter dated ██████/15)
12. The Dental Consultant for CTDHP also noted that the Appellant did not qualify for Orthodontic treatment, and possible mucco/gingival tissue variations associated with teeth #8 and #9 which are not significant to require any interventions. (Dept.'s Exhibit #10: ██████/15 Preliminary Handicapping Malocclusion Assessment Record)

13. The Salzmann Malocclusion Severity Assessment used by CTDHP to evaluate the severity of the Appellant's dental condition does not provide for the scoring of the fremitus of the Appellant's maxillary incisor teeth. (Testimony of the Dental Consultant for CTDHP)
14. There will be significant enamel wear and periodontal issues from the Appellant's occlusal relationship in the long term without orthodontic treatment. (Dept.'s Exhibit #5: ██████ 15 Letter from East Hartford Orthodontics)
15. The fremitus affecting the Appellant's maxillary incisor teeth is not reflected in the model and x-rays provided with the Appellant's prior authorization request, and can only be evaluated through a physical examination of the Appellant's mouth and underlying structures. (Testimony of the Dental Consultant for CTDHP)
16. The Appellant does experience bleeding of his gums. (Appellant Representative's testimony)
17. The Appellant's gums are swollen. (Appellant Representative's testimony)
18. The Appellant complains of lower and upper incisor pain, which is attributed to occlusal trauma involving his anterior dentition. (Appellant Representative's testimony; Dept.'s Exhibit #5)
19. The Appellant's treating orthodontist did not prescribe any medications to the Appellant for the relief of pain. (Appellant Representative's testimony)
20. The Appellant takes over the counter meds regularly for the relief of his dental pain. (Appellant Representative's testimony)
21. The Appellant is on a special diet due to his diabetic condition which is currently under controlled with the use of oral medications. (Appellant Representative's testimony)
22. The Appellant is not currently insulin dependent, but at one time he was taking insulin for his diabetic condition. (Appellant Representative's testimony)
23. The Appellant's teeth are loose and move when he is chewing his food. (Appellant Representative's testimony)
24. The Appellant's treating orthodontist had the benefit of evaluating the fremitus of the Appellant's maxillary incisor teeth by doing an oral exam of his mouth and underlying structures. (Dept.'s Exhibit #2; Dept.'s Exhibit #5)
25. The Appellant does not receive treatment for emotional/behavioral issues that are attributed to his malocclusion. (Appellant Representative's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes states that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-259b of the Connecticut General Statutes states that "Medically necessary" and "medical necessity" defined. Notice of denial of services Regulations. (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.

(b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.

(c) 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.
3. State regulation provides for the need for orthodontic services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and states in part that:

When an eligible recipient is determined to have a malocclusion, the attending dentist should refer the recipient to a qualified dentist for a preliminary

examination of the degree of the malocclusion. [Conn. Agencies Regs. § 17-134d-35(e)]

State regulation provides that 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 recipients 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 the orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems. [Conn. Agencies Regs. § 17-134d-35(e)(2)]

4. Public Act 15-5 (June Sp. Session, section 390) provides, in relevant part, as follows: "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."
5. The Appellant's dental crowding is not severe enough to qualify for braces at this time.
6. The Appellant's dental over jet is not severe enough to qualify for braces at this time.
7. The Appellant's dental spacing is not severe enough to qualify for braces at this time.
8. The Appellant's dental fremitus is considered a severe deviation affecting the Appellant's mouth and underlying structures.
9. The Appellant's dental fremitus affects his ability to chew his food properly and impacts the kinds of food that he is able to eat.

10. The movement and vibration of the Appellant's teeth is considered a severe condition that, if left untreated, would cause irreversible damage to his teeth and underlying structures.
11. The Appellant's occlusion trauma is severe enough to qualify for Medicaid payment for braces.
12. The Appellant's eating is impacted, and he takes medications regularly for pain due to his dental issues; consequently, his condition meets the severity criteria necessary to receive approval of Medicaid payment for braces to treat his malocclusion.
13. The Department deems orthodontic treatment to be medically necessary when an individual obtains 26 or more points on a correctly scored Malocclusion Severity Assessment.
14. The Appellant's representative provided evidence to establish that, even though the his scores on three assessments were less than 26 points, he suffers from a severe condition, if left untreated, would cause irreversible damage to his teeth and underlying structures.
15. With regards to the Appellant's other severe deviations, more weight is assigned to the findings of the treating orthodontist as he had the benefit of examining the Appellant's mouth and underlying structures.
16. CTDHP's comment regarding possible malocclusion/gingival tissue variations associated with the Appellant's teeth #8 and #9 appears to be speculative and inconclusive, and does not carry any weight.
17. CTDHP incorrectly concluded that the malocclusion of the Appellant's teeth does not qualify him for braces, under the statutory and regulatory guidelines.
18. The Appellant's malocclusion severity meets the statutory definition of medical necessity for receiving approval of his prior authorization request for orthodontic services.
19. CTDHP incorrectly determined that the requested orthodontic treatment for the Appellant is not medically necessary.

DISCUSSION

The regulation provides that the Department shall not pay for procedures in excess of those deemed medically necessary. The Department utilizes the Salzman's Malocclusion Severity Assessment, as outlined in the regulation. If a score of twenty-six

points or greater is assigned, orthodontic services are deemed medically necessary, and there are other reasons such services are considered medically necessary.

In the Appellant's situation, although he scored below the threshold of twenty-six points in three separate reviews, he has other severe deviations affecting his mouth and underlying structures that, if left untreated, would cause irreversible damage to his teeth. Consequently, CTDHP's denial of the Appellant's request for orthodontic services is not in accordance with the statutory and regulatory guidelines.

DECISION

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

ORDER

1. CTDHP will approve the Appellant's prior authorization request for orthodontic services, based on the findings of this hearing decision.
2. No later than thirty (30) days from the date of this hearing decision, CTDHP will provide the undersigned with a memorandum as proof of the Department's compliance with this order.



Hernold C. Linton
Hearing Officer

Pc: **Diane D'Ambrosio**, Connecticut Dental Health Partnership,
P.O. Box 486, Farmington, CT 06034

Rita LaRosa, Connecticut Dental Health Partnership,
P.O. Box 486, Farmington, CT 06034

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 06105-3725.

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.