

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

██████████ 2016
Signature confirmation

Client: ██████████
Request: 772995

NOTICE OF DECISION

PARTY

██████████
████████████████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2016, Connecticut Dental Health Partnership (“CTDHP”) issued ██████████
██████████ (the “Appellant”) a *Notice of Action* denying a dental provider’s prior authorization
request for approval of Medicaid payment for a root canal and crown procedure on one
of his teeth.

On ██████████ 2016, the Appellant filed a request for an administrative hearing with the
Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) to
contest the CTDHP’s action.

On ██████████ 2016, the OLCRAH issued a notice scheduling the administrative hearing for
██████████ 2016.

On ██████████ 2016, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189,
inclusive, of the Connecticut General Statutes, the undersigned OLCRAH hearing
officer initiated an administrative hearing. The following individuals participated in the
proceeding initiated on ██████████ 2016:

██████████ Appellant
Kate Nadeau, CTDHP’s representative
Julius Gold, D.M.D., CTDHP’s witness (by telephone)
Eva Tar, Hearing Officer

On [REDACTED] 2016, the Appellant orally withdrew his [REDACTED] 2016 administrative hearing request in a telephone call to the OLCRAH.

On [REDACTED] 2016, the OLCRAH issued a notice acknowledging the Appellant's oral withdrawal of his hearing request.

On [REDACTED] 2016, the Appellant orally rescinded his [REDACTED] 2016 withdrawal in a telephone call with the OLCRAH.

On [REDACTED] 2016, the OLCRAH issued a notice scheduling the Appellant's [REDACTED] 2016 administrative hearing to be reconvened on [REDACTED] [REDACTED] 2016 with the undersigned hearing officer. The following individuals participated on [REDACTED] 2016:

[REDACTED] Appellant
 Michael Massarelli, CTDHP's representative
 Brett Zanger, D.M.D., CTDHP's witness (by telephone)
 Eva Tar, Hearing Officer

The administrative hearing record closed [REDACTED] 2016.

STATEMENT OF ISSUE

The issue to be decided is whether CTDHP's [REDACTED] 2016 denial of prior authorization for approval of Medicaid payment for a root canal and crown procedure for the Appellant's tooth #4 was in accordance with state statutes and regulations.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] 1967. (CTDHP's Exhibit 1: Dr. Dental's Prior Authorization Claim Form, [REDACTED]/16)
2. The Appellant is a Medicaid recipient. (CTDHP's Exhibit 4: *Notice of Action*, [REDACTED]/16)
3. CTDHP is the Department of Social Services' contractor for reviewing dental providers' request for prior authorization of dental treatment. (CTDHP's representative' testimony-Nadeau)
4. The Appellant's dental provider is Dr. Dental/Hamden Plaza Family Dental (the "dental provider"). (CTDHP's Exhibit 1)(CTDHP's Exhibit 2: CTDSS Review, [REDACTED]/16)(CTDHP's Exhibit 3: UCONN's Review, [REDACTED]/16)
5. On [REDACTED] 2016, the dental provider took seven X-rays of the Appellant's teeth. (CTDHP's Exhibit 1)

6. The Appellant is missing tooth #16. (CTDHP's Exhibit 1)
7. On ██████████ 2016, the Appellant's dental provider submitted a request for prior authorization for root canal treatment of the Appellant's tooth #4 to CTDHP; included in the request were the Appellant's ██████████ 2016 X-rays. (CTDHP's Exhibit 1)
8. On ██████████ 2016, CTDHP issued the dental provider a notice that the denial of root canal, post/core, and crown on the Appellant's root #4 was upheld, as the decay went to the osseous level; the notice referenced a Department of Social Services review. (CTDHP's Exhibit 2)
9. On ██████████ 2016, CTDHP issued the dental provider a notice that in consideration of the amount of decay, the necessity for crown lengthening, and the resulting poor alveolar bone support, endodontic treatment on the Appellant's tooth #4 should be denied because of poor prognosis; the notice referenced a University of Connecticut staff review. (CTDHP's Exhibit 3)
10. On ██████████ 2016, CTDHP issued a *Notice of Action*, denying the dental provider's request for prior authorization for a root canal procedure. (CTDHP's Exhibit 4)
11. On ██████████ 2016, CTDHP issued the Appellant correspondence that affirmed the denial of the dental provider's request for approval of a root canal procedure on tooth #4. (CTDHP's Exhibit 7: Determination Letter, ██████████/16)
12. On ██████████ 2016, two more X-rays were taken of the Appellant's tooth #4. (CTDHP's Exhibit 11)
13. "Caries" is decay. (CTDHP's witness's testimony-Gold)
14. The Appellant's decay on tooth #4 is below the level of where the tooth is anchored in the bone. (CTDHP's witness's testimony-Zanger)(CTDHP's Exhibit 2)(CTDHP's Exhibit 11: X-rays, ██████████/16)
15. There needs to be a sufficient ratio of root-to-crown in order for a root canal to succeed. (CTDHP's witness's testimony-Zanger)
16. If there is insufficient amount of root due to decay, the tooth will loosen and the crown will fracture. (CTDHP's witness's testimony-Gold)
17. A root canal procedure involving the Appellant's tooth #4 will not succeed, as there is insufficient foundation to support the crown structure, based on the root-to-crown ratio. (CTDHP's witness's testimony-Zanger)
18. Other methods of dental treatment include removing the tooth, capping the teeth on either side for a bridge, or a clip-on partial denture. (CTDHP's witness's testimony-Gold)

19. On [REDACTED] 2016, the undersigned hearing officer initiated an administrative hearing with respect to the [REDACTED] 2016 *Notice of Action*.
20. On [REDACTED] 2016, the Appellant's [REDACTED] 2016 administrative hearing was reconvened with the undersigned hearing officer.
21. In the period from [REDACTED] 2016 through [REDACTED] 2016, communications between Appellant and CTDHP representatives occurred. (CTDHP's Exhibit 16: Email, [REDACTED]/16)(CTDHP's Exhibit 17: Email, [REDACTED]/16)(Administrative Hearing Summary, [REDACTED]/16)
22. CTDHP's attempt to negotiate a compromise and/or resolution with the Appellant in the period from [REDACTED] 2016 through [REDACTED] 2016 is not probative to the issue of CTDHP's [REDACTED] 2016 denial of prior authorization.
23. The Appellant's testimony is not reliable because it is internally inconsistent and uncorroborated by the evidence in the hearing record; it is not credible.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stats.") provides in part that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-262.
3. Section 17b-60 of the Connecticut General Statutes provides in part that the Commissioner of Social Services and any person authorized by him to conduct any hearing under the provisions of this section shall have the power to administer oaths and take testimony under oath relative to the matter of the hearing and may subpoena witnesses and require the production of records, papers and documents pertinent to such hearing.
4. In contested cases: (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) agencies shall give effect to the rules of privilege recognized by law; (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency conducting the proceeding shall be given an opportunity to compare the copy with the original; (5) a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of

judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge; (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and (8) the agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence. Conn. Gen. Stat. § 4-178.

5. Section 17-2a-6 (b) of the Regulations of Connecticut State Agencies provides that the hearing officer shall be in charge of the proceedings.
6. The Fair Hearing official determines the issue of the hearing. Uniform Policy Manual ("UPM") § 1570.25 (C)(2)(c).
7. The Fair Hearing official requests, receives, and makes part of the Fair Hearing record all evidence necessary to decide the issues being raised. UPM § 1570.25 (C)(2)(h).
8. The Fair Hearing official regulates the conduct and course of the Fair Hearing consistent with due process to insure an orderly Fair Hearing. UPM § 1570.25 (C)(2)(i).
9. The undersigned hearing officer had the authority under state statute to conduct an administrative hearing as to CTDHP's ██████████ 2016 denial of the Appellant's dental provider's prior authorization request for approval of Medicaid payment for a root canal and crown procedure on the Appellant's tooth #4.
10. The undersigned hearing officer may take notice of judicially cognizable facts.
11. Not later than July 1, 2004, and prior to the implementation of a state-wide dental plan that provides for the administration of the dental services portion of the department's medical assistance, the Commissioner of Social Services shall amend the federal waiver approved pursuant to Section 1915(b) of the Social Security Act. Such waiver amendment shall be submitted to the joint standing committees of the General Assembly having cognizance of matters relating to human services and appropriations and the budgets of state agencies in accordance with the provisions of section 17b-8. Conn. Gen. Stat. § 17b-282b.
12. Sections 17b-262-862 to 17b-262-866, inclusive, of the Regulations of Connecticut State Agencies set forth limitations on the extent of non-emergency dental services provided to adults twenty-one years of age and older who receive services under the Connecticut Medicaid program. Such limitations include coverage limits, prior authorization requirements and services that are not covered under Medicaid. These regulations supplement but do not supplant Department Medical Services Policies for dental services, including but not limited to, provider participation, eligibility, coverage limitations, billing procedures and payment, to the extent that such policies

have the force of law pursuant to section 17b-10 of the Connecticut General Statutes. Conn. Agencies Regs. § 17b-262-862.

13. The Appellant is subject to the limitations for non-emergency dental services for individuals in excess of 21 years of age who are Medicaid recipients.
14. The Commissioner of Social Services shall modify the extent of nonemergency adult dental services provided under the Medicaid program. Such modifications shall include, but are not limited to, providing one periodic dental exam, one dental cleaning and one set of bitewing x-rays each year for a healthy adult. For purposes of this section, "healthy adult" means a person twenty-one years of age or older for whom there is no evidence indicating that dental disease is an aggravating factor for the person's overall health condition. Conn. Gen. Stat. § 17b-282d (a).
15. All nonemergency dental services provided under the Department of Social Services' dental programs, as described in section 17b-282b, shall be subject to prior authorization. Nonemergency services that are exempt from the prior authorization process shall include diagnostic, prevention, basic restoration procedures and nonsurgical extractions that are consistent with standard and reasonable dental practices. Dental benefit limitations shall apply to each client regardless of the number of providers serving the client. The commissioner may recoup payments for services that are determined not to be for an emergency condition or otherwise in excess of what is medically necessary. The commissioner shall periodically, but not less than quarterly, review payments for emergency dental services and basic restoration procedures for appropriateness of payment. For the purposes of this section, "emergency condition" means a dental condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate dental attention to result in placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, cause serious impairment to body functions or cause serious dysfunction of any body organ or part. Conn. Gen. Stat. § 17b-282c (a).
16. The cavity in the Appellant's tooth #4 is not an "emergency condition," as defined by section 17b-282c (a) of the Connecticut General Statutes.
17. The department considers a number of factors in determining whether coverage of a particular procedure or service shall be subject to prior authorization. These factors include, but are not limited to, the relative likelihood that the procedure may be subject to unnecessary or inappropriate utilization, the availability of alternative forms of treatment and the cost of the procedure or service. Conn. Agencies Regs. § 17b-262-866 (c).
18. Coverage of non-emergency dental services provided to all adults twenty-one years of age and older shall be limited as follows: (1) One topical fluoride treatment for

clients who have xerostomia or have undergone head or neck radiation or chemotherapy. (2) Prosthodontics: (A) Coverage of complete and removable partial dentures for functional purposes when there are fewer than eight posterior teeth in occlusion or missing anterior teeth is subject to prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies. (B) Coverage of removable partial dentures when there are more than eight posterior teeth in occlusion and no missing anterior teeth is allowed on a case-by-case basis conditioned upon a demonstration of medical necessity and subject to prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies; (C) One complete and partial denture prosthesis construction is covered per seven-year period. Clients shall sign an acceptance form upon receipt of a new denture prosthesis acknowledging that the prosthesis is acceptable and that he or she understands the department's replacement policy as described in subsection (d) of this section; and (D) Replacement of denture prosthesis more than once in a seven-year period shall be limited to replacement for reasons of medical necessity. Replacement shall not be made for cosmetic reasons. Replacement shall not be made if the prosthesis was lost, stolen or destroyed as a result of misuse, abuse or negligence. (3) Coverage of periodontics is allowed on a case-by-case basis conditioned upon a demonstration of medical necessity and subject to prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies; (4) Coverage of implants and unilateral removable appliances is allowed on a case-by-case basis conditioned upon a demonstration of medical necessity and subject to prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies; and (5) Coverage of vestibuloplasty is allowed on a case-by-case basis conditioned upon a demonstration of medical necessity and subject to prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies. Conn. Agencies Regs. § 17b-262-864 (b).

19. Treatment of the Appellant's tooth #4 by means of a root canal and crown procedure is subject to the provisions set forth in statutes and regulations for nonemergency dental services.
20. Treatment of the Appellant's tooth #4 by means of a root canal and crown procedure falls within the scope of periodontics.
21. Treatment of the Appellant's tooth #4 by means of a root canal and crown procedure is subject to the prior authorization process.
22. The limitations on coverage of certain non-emergency dental services in subsection (a) of this section apply to healthy adults. The limitations on non-emergency dental services in subsection (b) of this section apply to all adults twenty-one years of age and older and are subject to the prior authorization requirements in section 17b-262-866 of the Regulations of Connecticut State Agencies. Conn. Agencies Regs. § 17b-262-864.

23. Coverage of non-emergency dental services provided to healthy adults shall be limited as follows: (1) One comprehensive oral examination per client per lifetime. If a client changes dental providers, the new provider may request approval to conduct an additional comprehensive oral examination through the prior authorization process described in section 17b-262-866 of the Regulations of Connecticut State Agencies; (2) One periodic oral examination per client per year; (3) Four intraoral periapical x-rays per year; (4) One set of bitewing x-rays per year; and (5) One prophylaxis procedure per year. Conn. Agencies Regs. § 17b-262-864 (a).
24. Prior authorization, in a form and in a manner specified by the department, shall be required for certain dental services. In order for a prior authorization request for coverage to be considered by the department, the dental provider requesting authorization and payment shall complete and submit all necessary forms and information as specified by the department. Depending on the service requested, this information may include, but is not limited to, a treatment plan, narrative description of the client's medical condition and radiographs. Authorization does not guarantee payment unless all other requirements for payment are met. Conn. Agencies Regs. § 17b-262-866 (a).
25. 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 (a).
26. 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. Conn. Gen. Stat. § 17b-259b (b).
27. CTDHP acted within the scope of its authority as the Department of Social Services' dental contractor when it reviewed the Appellant's dental provider's request for prior

authorization and the Appellant's X-rays for the purpose of determining whether the root canal and crown procedure was medically necessary, as the term "medically necessary" is defined by section 17b-259b (a) of the Connecticut General Statutes.

28. The treatment of the Appellant's tooth #4 by a root canal and crown procedure is not 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, taking into account the severity and location of the decay with respect to the Appellant's tooth #4.
29. The treatment of the Appellant's tooth #4 by a root canal and crown procedure is not clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective, taking into account the severity and location of the decay within that tooth.
30. CTDHP correctly determined that a root canal and crown procedure for the Appellant's tooth #4 was not "medically necessary," as the term "medically necessary" is defined by section 17b-259b (a) of the Connecticut General Statutes.
31. CTDHP correctly issued the Appellant a *Notice of Action* denying the Appellant's dental provider's request for Medicaid coverage for a root canal and crown procedure for tooth #4.
32. CTDHP's ██████████ 2016 denial of prior authorization for approval of Medicaid payment for a root canal and crown procedure for the Appellant's tooth #4 was in accordance with state statute and regulations.

DISCUSSION

It is a general principle of law that an offer of compromise—on behalf of either party—does not prove or disprove the validity of a disputed claim. An offer of compromise does not serve to impeach by a prior inconsistent statement or a contradiction.¹

¹ **General rule.** Evidence of an offer to compromise or settle a disputed claim is inadmissible on the issues of liability and the amount of the claim." Conn. Code Evid. § 4-8 (a).

Prohibited Uses. Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction: (1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and (2) conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority." Fed. R. Evid. 408 (a).

Failed attempt(s) by CTDHP to arrive at an amicable compromise with the Appellant during the pendency of these administrative hearing proceedings neither strengthens the Appellant's argument nor weakens CTDHP's position. They simply are not relevant to the issue of CTDHP's [REDACTED] 2016 denial of the Appellant's dental provider's [REDACTED] 2016 request for prior authorization.

CTDHP argues a root canal and crown procedure would not succeed on the Appellant's tooth #4, due to the location and severity of decay in that tooth. CTDHP relies on the opinion of its dental consultants who have reviewed X-rays of the Appellant's tooth #4. These dental consultants have degrees in dentistry.

The Appellant submits no medical evidence to support his opinion that the proposed root canal and crown procedure would be clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for treatment of the decay in his tooth #4, based on the location and severity of that decay.

A root canal and crown procedure for the Appellant's tooth #4 is not medically necessary, as "medically necessary" is defined at section 17b-259b (a) of the Connecticut General Statutes. The Medicaid program does not pay for procedures that are not medically necessary.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature

Eva Tar
Hearing Officer

Pc: Diane D'Ambrosio, CTDHP
Rita LaRosa, CTDHP

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.