

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

Client ID # ██████████  
Request # 778503

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, BeneCare Dental Plans (“BeneCare”) sent ██████████ (the “Appellant”) a notice of action (“NOA”) denying a request for prior authorization of orthodontic treatment for ██████████ her minor niece, indicating that the severity of ██████████ malocclusion did not meet the medical necessity requirement to approve the proposed treatment.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department’s denial of prior authorization to complete orthodontia.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“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, 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  
James Hinckley, Hearing Officer

## STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization for [REDACTED] orthodontic services as not medically necessary was in accordance with state statute and regulations.

## FINDINGS OF FACT

1. The Appellant is the aunt and legal guardian of the minor child, [REDACTED] (Hearing Record)
2. [REDACTED] is 11 years old (D.O.B. [REDACTED]/2004) 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. *Smiles in Bloom* is [REDACTED] treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On [REDACTED] 2016, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for [REDACTED] (Summary, Ex. 1)
6. On [REDACTED] 2016, BeneCare received from the treating orthodontist a *Preliminary Handicapping Malocclusion Assessment Record* with a score of 12 points, dental models, photographs, and panoramic and cephalometric x-ray films of [REDACTED] mouth. The treating orthodontist noted the presence of severe deviations affecting [REDACTED] mouth and underlying structures and commented, "Odontoma removed from mandibular right anterior region in [REDACTED] 2016, impacted LR2/LR3, see Pan". (Ex. 2: Preliminary Handicapping Malocclusion Assessment Record)
7. An odontoma is a benign tumor composed of dental tissue that is related to the development of a supernumerary (extra) tooth. (Dr. Fazzino's testimony)
8. The LR2 and LR3 teeth listed as impacted by the treating orthodontist are the lower right lateral incisor and the lower right cuspid; the treating orthodontist used a different dental nomenclature to refer to the teeth, and the teeth are known as #26 and #27 in the *Universal Numbering System* used on the *Preliminary Handicapping Malocclusion Assessment Record*. (Dr. Fazzino's testimony)
9. [REDACTED] lower right lateral incisor, tooth #26, has erupted and is not impacted, and must have been listed in error as impacted by the treating orthodontist; tooth #26 was scored by Dr. Fazzino on the *Preliminary Handicapping Malocclusion*

*Assessment Record*, which indicates that the tooth has erupted, and the Appellant reports that [REDACTED] has only one tooth that is missing from her mouth, the cuspid that is impacted. (Dr. Fazzino's testimony, Appellant's testimony, Hearing Record)

10. [REDACTED] lower right cuspid is buried sideways below the gum line and not in a position to erupt. (Dr. Fazzino's testimony, Hearing Record)
11. On [REDACTED] 2016, Geoffrey Drawbridge, D.D.S., a BeneCare orthodontic dental consultant, independently reviewed [REDACTED] models, photographs and panoramic and cephalometric radiographs, and arrived at a score of 20 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Drawbridge did not find the presence of severe deviations affecting [REDACTED] mouth and underlying structures and commented, "Impacted mandibular cuspids that cannot be brought into the dental arch, will not be approved (page 8 guidelines for scoring)". (Ex. 3: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Drawbridge)
12. On [REDACTED] 2016, BeneCare denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that the scoring of [REDACTED] mouth was less than the 26 points required for coverage and there was no additional substantial information about the presence of severe deviations affecting the mouth and underlying structures that if left untreated would cause irreversible damage to the teeth and underlying structures, or evidence that a diagnostic evaluation had been done by a licensed child psychologist or a licensed child psychiatrist indicating that the dental condition is related to a severe mental health condition and that orthodontic treatment would significantly improve the mental health problems. (Ex. 4: Notice of Action for Denied Services)
13. On [REDACTED] 2016, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)
14. On [REDACTED] 2016, Vincent Fazzino, D.M.D., another BeneCare orthodontic dental consultant, conducted an independent appeal review of [REDACTED] dental records and arrived at a score of 21 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Fazzino found no presence of severe deviations affecting [REDACTED] mouth and underlying structures and commented, "Guidelines state – impacted mandibular cuspids that cannot be brought into the dental arch will not be approved". (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Fazzino)
15. On [REDACTED] 2016, BeneCare notified the Appellant that the result of the appeal review was that its original decision, that orthodontic treatment is not medically necessary for [REDACTED] was upheld. (Ex. 7: Appeal Review Decision Letter)

16. The treating orthodontist wishes to have [REDACTED] cuspid surgically exposed by an oral surgeon so that the tooth can be guided to erupt into its normal position in conjunction with orthodontic treatment. (Appellant's testimony, Hearing Record)
17. [REDACTED] tooth #27, her lower right cuspid, is not in position to erupt normally and its eruptive path, even after surgical exposure and intervention to guide the tooth, cannot be predicted with certainty. (Dr. Fazzino's testimony)
18. The treatment plan proposed by the treating orthodontist involves the risk of damaging surrounding teeth while the impacted tooth #27 tries to erupt. (Dr. Fazzino's testimony)
19. Extraction of the impacted tooth by an oral surgeon is the recommended treatment. (Dr. Fazzino's testimony)
20. [REDACTED] receives individual therapy from a therapist who is a licensed clinical social worker. (Appellant's testimony, Appellant's Ex. A: Letter from LCSW)
21. [REDACTED] has never been seen by a psychiatrist or psychologist for any mental health treatment, or been diagnosed with any disorder classified in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (the "DSM"). (Appellant's 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) provides 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. Sec. 17b-282e of the Supplement to the General Statutes 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.
5. Connecticut Agencies Regulations §17-134d-35(f) provides that the study models submitted for prior authorization must clearly show the occlusal deviations and support the total point score of the preliminary assessment.
6. ██████ treating orthodontist did not find that she qualified for a score of 26 points or greater on the preliminary assessment, and the study models submitted for prior authorization did not show the occlusal deviations necessary to support a 26 point score.
7. BeneCare was correct to find that ██████ malocclusion did not meet the criteria for severity, or 26 points, as established in state statute.
8. ██████ impacted tooth #27 does not represent a severe deviation affecting her oral facial structures because the condition can be alternatively and more safely treated by having an oral surgeon extract the impacted tooth.
9. Connecticut Agencies Regulations §17-134d-35(e)(2) provides in relevant part that [when the existence of a mental disorder is being considered] "the Department will only consider cases where a diagnostic evaluation has been performed by a licensed psychiatrist or licensed psychologist who has accordingly limited his 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 problem”.

10. [REDACTED] has been seen by a therapist, but has never been treated by a psychologist or psychiatrist, or been diagnosed with any severe mental health condition defined in the DSM which is related to the condition of her teeth and which would be significantly helped by orthodontic treatment.
11. BeneCare was correct to find that there was no substantive information regarding the presence of severe deviations affecting the oral facial structures, or regarding the presence of severe mental, emotional or behavioral problems or disturbances, which had to be considered in determining whether orthodontic treatment was medically necessary for [REDACTED]
12. BeneCare was correct to deny prior authorization because [REDACTED] did not meet the medical necessity criteria for orthodontic services, in accordance with state statute and regulations.

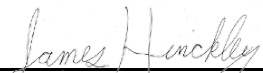
### **DISCUSSION**

[REDACTED] treating orthodontist requested prior approval to perform comprehensive orthodontic treatment, not because [REDACTED] qualified for a score of 26 points or greater on the Salzmann scoring index, but because [REDACTED] mandibular cuspid was impacted and the orthodontic treatment was part of a plan to help the abnormally positioned tooth erupt into its normal position.

Both of BeneCare’s orthodontists who consulted on the case determined that the position of [REDACTED] impacted cuspid was such that the tooth could not be successfully brought into the dental arch. The proposed treatment risks damaging adjacent teeth in the process, and the Department’s standard of practice is to not approve orthodontic treatment in such cases. Removal of the impacted tooth by an oral surgeon is the recommended treatment.

### **DECISION**

The Appellant’s appeal is **DENIED**.

  
\_\_\_\_\_  
James Hinckley  
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.