

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 #785817

NOTICE OF DECISION
PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2016, Benecare Dental Plans (“Benecare”) sent ██████████ ██████████ (the “Appellant”) a Notice of Action (“NOA”) stating that it had denied a request for prior authorization of orthodontia for her minor child, ██████████, because orthodontia was not medically necessary.

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

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice rescheduling 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 via telephone
Kate Nadeau, Dental Plans, Department representative
Dr. Jonathan Gorman, Clinical Consultant for Benecare via telephone
Miklos Mencseli, Hearing Officer

At Appellant's request the hearing officer held the record open for the submission of additional evidence. On ██████████ 2016, the hearing officer closed the record.

STATEMENT OF THE ISSUE

The issue is whether Benecare's denial of prior authorization through the Medicaid program for the Appellant's child's orthodontic services is correct because such services are not medically necessary.

FINDINGS OF FACT

1. ██████████ is a 13 year old participant in the Medicaid program, as administered by the Department of Social Services through Benecare, its contractor.
2. Dr. Edward Cos is the Appellant's treating orthodontist ("treating orthodontist"). (Dept. Ex. 1A)
3. On ██████████ 2016, the treating orthodontist completed diagnostic casts of ██████████ teeth. (Dept. Ex. 2A)
4. The treating orthodontist completed a *Preliminary Handicapping Malocclusion Assessment Record*, scoring ██████████ teeth to be 26 points. (Dept. Ex. 2A)
5. The treating orthodontist did not comment on the assessment record. He did not check "Yes" or "No" for the question regarding the presence of other severe deviations affecting the mouth and underlying structures. (Dept. Ex. 2A)
6. On ██████████ 2016, the treating orthodontist requested prior authorization to complete orthodontic services for ██████████ (Summary)
7. On ██████████ 2016, Dr. Vincent Fazzino, Benecare's orthodontic dental consultant, independently reviewed ██████████ models and arrived at a score of 19 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 3)
8. Dr. Fazzino found no evidence of severe irregular placement of his teeth within the dental arches and no irregular growth or development of the jaw bones. There was no evidence presented of emotional issues related to ██████████ mouth. (Summary)

9. 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 needed for coverage and because the other requirements for medical necessity were not met. (Dept. Ex. 4A, 4B, 4C, 4D)
10. On [REDACTED] 2016, the Appellant filed a request for an Administrative hearing. (Dept. Ex. 5A, 5B, 5C, 5D)
11. The Appellant attached a letter with her request. The letter states what happened at [REDACTED] recent experience with an orthodontist and the reason the Appellant believes he needs braces. (Dept. Ex. 5C)
12. On [REDACTED] 2016, Dr. Benson Monastersky, the dental consultant for CTDHP, reviewed [REDACTED] models and arrived at a score of 20 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 6)
13. Dr. Monastersky found no evidence of severe irregular placement of his teeth within the dental arches and no irregular growth or development of the jaw bones. There was no evidence presented of emotional issues directly related to [REDACTED] dental situation. (Summary)
14. On [REDACTED] 2016, Benecare notified the Appellant that orthodontic treatment was denied due to your score of 20 points was less than the 26 points needed to be covered. There was no presence found of any deviations affecting the mouth or underlying structures. There was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of your teeth. (Dept. Ex. 7A, 7B)
15. All three reviewers scored teeth for [REDACTED] in the intra-arch deviation section of the *Preliminary Handicapping Malocclusion Assessment Record* with scores of 17, 10 and 11 points. (Dept. Ex. 2A, 3, 6, Dr. Gorman Testimony)
16. All three reviewers are in basic agreement in the intra-arch deviation section. There is a deviation in the scoring on the *Preliminary Handicapping Malocclusion Assessment Record* as the treating Orthodontist was more aggressive in the scoring. (Dept. Ex. 2A, 3, 6, Dr. Gorman Testimony)
17. All three reviewers scored teeth for [REDACTED] the inter-arch deviation section of the *Preliminary Handicapping Malocclusion Assessment Record* with scores of 2, 2 and 2 points. (Dept. Ex. 2A, 3, 6, Dr. Gorman Testimony)

18. All three reviewers agree [REDACTED] has a crossbite as they all scored #10 as crossbite. (Dept. Ex. 2A, 3, 6, Dr. Gorman Testimony)
19. All three reviewers scored the same teeth in the Posterior Segments Section of the *Preliminary Handicapping Malocclusion Assessment Record*. All three reviewers scored a total of 7 points in the section. (Dept. Ex. 2A, 3, 6, Dr. Gorman Testimony)
20. During the hearing it was discovered that the second reviewer, Dr. Fazzino is the orthodontist [REDACTED] had the bad experience with the Appellant described in her appeal letter. (Testimony)
21. Dr. Fazzino's scoring of the *Preliminary Handicapping Malocclusion Assessment Record* is excluded and CTDHP is to provide a new *Preliminary Handicapping Malocclusion Assessment Record* scored by different consultant.
22. On [REDACTED] 2016, Dr. Robert Gange, the dental consultant for CTDHP completed a third review for [REDACTED] Dr. Gange reviewed [REDACTED] models and arrived at a score of 24 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 9)
23. On [REDACTED] 2016, the Appellant faxed a letter from [REDACTED], Ph.D. The letter states; "I am a psychologist in private practice working with [REDACTED] [REDACTED]. He has been diagnosed with [REDACTED] Disorder." (Exhibit 10: letter dated [REDACTED]-16 signed by [REDACTED], Ph. D)
24. On [REDACTED] 2016, Dr. Benson Monastersky, the dental consultant for CTDHP reviewed the letter. Dr. Monastersky commented: "After reviewing the letter from the psychiatrist, I would approve orthodontic treatment for the above patient." (Exhibit 11: letter dated [REDACTED]-16)
25. On [REDACTED] 2016, Benecare notified the Appellant that orthodontic treatment was now approved for [REDACTED] based on a second review of documents relating to your request for orthodontic services. (Exhibit 12: notice dated [REDACTED]-16)

CONCLUSIONS OF LAW

1. State statute provides that the Department may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-262]

2. "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 regulations provide that orthodontic services for services provided for individuals under 21 years of age will be paid for when provided by a qualified dentist and deemed medically necessary as described in these regulations. [Conn. Agencies Regs. §17-134d-35(a)]
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. State regulations provides, in relevant part as follows; 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 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 problems. [Conn. Agencies Regs. §17-134d-35(e)(2)]
6. State regulations 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. [Conn. Agencies Regs. §17-134d-35(f)]

DISCUSSION

Benecare (CTDHP) has resolved the issue that resulted in the Appellant's request for this administrative hearing. The Appellant submitted additional documentation that was reviewed. Based on this new documentation, CTDHP has now recommended approval of orthodontic treatment for ██████████ CTDHP sent the Appellant an approval letter on ██████████ 2016.

DECISION

The Appellant's appeal is hereby **DISMISSED**.

A handwritten signature in black ink, appearing to read 'Miklos Mencseli', written over a horizontal line.

Miklos Mencseli
Hearing Officer

- C: Musa Mohamud, Operations Manager, DSS R.O. # 10 Hartford
Diane D'Ambrosio, 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.

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.