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

[redacted] **2016**
Signature Confirmation

Client ID # [redacted]
Request # 790398

NOTICE OF DECISION

PARTY

[redacted]
Re: [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

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

On [redacted] 2016, the Appellant requested an administrative hearing to contest the Department's denial of prior authorization to complete orthodontia.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2016.

On [redacted] 2016, at the Appellant's request, OLCRAH issued a notice rescheduling the hearing for [redacted] 2016.

On [redacted] 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:

[redacted], Appellant
[redacted] Appellant's husband
Magdalena Carter, BeneCare's representative
Dr. Vincent Fazzino, BeneCare's Dental Consultant, via telephone

James Hinckley, Hearing Officer

The hearing record was held open until [redacted] 2016 for the Appellant to provide additional information, and until [redacted] 2016 for time for BeneCare to respond to any new information. On [redacted] 2016, the hearing record closed.

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 mother of the minor child, [redacted] (Hearing Record)

2. [redacted] is 12 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. *Kelly Family Orthodontics* is [redacted] treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)

5. Craig Stasulis D.M.D., M.D., is an oral surgeon who, along with the treating orthodontist, is involved in planning [redacted] course of dental treatment (or the "oral surgeon"). (Hearing Record)

6. On [redacted] 2016, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for [redacted] (Summary, Ex. 1)

7. On [redacted] 2016, BeneCare received from the treating orthodontist a *Preliminary Handicapping Malocclusion Assessment Record* with a score of 7 points, dental models, and panoramic x-ray films of [redacted] mouth. The treating orthodontist noted the presence of severe deviations affecting [redacted] mouth and underlying structures and commented, "Impacted Upper Canines". (Ex. 2: Preliminary Handicapping Malocclusion Assessment Record)

8. The treating orthodontist's proposed treatment was to be performed in conjunction with treatment of [redacted] impacted canine teeth by an oral surgeon, who would surgically expose and bond traction attachments to the teeth; orthodontic treatment would be necessary to maintain adequate space for the canines to come in. (Hearing Record)

9. On [redacted] 2016, Vincent Fazzino, D.M.D., a BeneCare orthodontic dental consultant, independently reviewed [redacted] models and panoramic radiographs, and arrived at a score of 10 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Fazzino did not find the presence of severe deviations affecting [redacted] mouth and underlying structures and commented, "Impacted teeth #'s 6 and 11. Recommendation (due to position of canines) extraction of teeth #'s 6 and 11". (Ex. 3: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Fazzino)

10. 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)

11. On [redacted] 2016, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)

12. After the Appellant's appeal was filed, BeneCare received an additional dental record for [redacted] a cone beam CT scan (or "3-D scan"), submitted without comment by Dr. Stasulis, who practices with Connecticut Maxillofacial Surgeons, LLC. (Ex. 15: [redacted] 2016 email from Diane D'Ambrosio)

13. On [redacted] 2016, Geoffrey Drawbridge, D.D.S., another BeneCare orthodontic dental consultant, conducted an independent appeal review of [redacted] dental records. Dr. Drawbridge completed a *Preliminary Handicapping Malocclusion Assessment Record* without totaling a score, but commented regarding the two impacted teeth, "prognosis #6, #11 poor, impactions that are better off being extracted not approved". Dr. Drawbridge also commented "Not qualified to interpret attached 3D image" and included an attached note recommending that the scan be reviewed by an oral surgeon. (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Drawbridge, Ex. 7: Note from Dr. Drawbridge regarding 3D scan)

14. 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. 8: Appeal Review Decision Letter)

15. On [redacted] 2016, Dr. Fazzino appended his assessment with the comments, "The 3-D x-ray has been received and reviewed, however this does not alter the malocclusion assessment record". (Ex. 11: Preliminary Handicapping Malocclusion Assessment Record dated [redacted] 2016 with [redacted] 2016 comments added)

16. On [redacted] 2016, Dr. Stasulis wrote a letter addressing the options for treating [redacted] impacted teeth. In the letter, Dr. Stasulis said in part that "teeth #6 and #11 are complete bony impacted" and that they are "horizontal in orientation" and that the dental follicles of the teeth are "in close proximity to the root apices of the maxillary lateral incisors". The letter said that [redacted] would have "improved function and esthetics" if the canine teeth could be brought into the dental arch, but also said that "extraction is another option". The letter recommended against no treatment for the impacted teeth, as no treatment would likely result in tooth root resorption and pathology. (Ex. A: [redacted] 2016 letter from Dr. Stasulis)

17. On [redacted] 2016, Dr. Fazzino appended his assessment a second time with the comment "The letter received from Dr. Stasulis has been reviewed ([redacted]16). The letter does not alter the malocclusion assessment record. See additional letter from Dr. Stasulis [redacted]/16". (Ex. 12: Preliminary Handicapping Malocclusion Assessment Record dated [redacted] 2016 with [redacted] 2016 and [redacted] 2016 comments added)

18. On [redacted] 2016, Dr. Stasulis wrote a letter to Dr. Fazzino stating "Per our conversation earlier, regarding patient [redacted] I agree that while it may be possible to bring teeth #6,11 into the dental arch with exposure and bonding of a traction attachment and orthodontic treatment, this procedure would pose higher risk for damage to adjacent tooth roots. Since leaving the teeth in their position would likely result in root resorption of the adjacent teeth, I would still recommend not leaving the teeth alone and would recommend extraction of teeth #6,11". (Ex. 13: [redacted] 2016 letter from Dr. Stasulis)

19. On [redacted] 2016, Dr. Drawbridge, after reviewing the [redacted] 2016 letter from Dr. Stasulis, wrote a letter in support of BeneCare's decision to deny orthodontic services for [redacted] Dr. Drawbridge noted that the letter from Dr. Stasulis "confirms the bony impactions of #6 and #11 and the proximity to the apices of the maxillary laterals" and noted the potential detrimental results of attempting to bring the canines into the dental arch through exposure and bonding. The letter noted that while exposure and bonding may be the standard of care in cases where the prognosis is better, in cases such as [redacted] where the prognosis is poor, functional substitution of the bicuspids for the missing canines also meets the standard of care. (Ex. 14: [redacted] 2016 letter from Dr. Drawbridge)

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. The treating orthodontist's prior authorization request was not based upon [redacted] meeting a score of 26 points or greater on the assessment; the treating orthodontist's own score on the assessment was 7 points.

6. BeneCare was correct to find that [redacted] malocclusion did not meet the criteria for severity, or 26 points, as established in state statute.

7. It is medically necessary to treat [redacted] impacted canine teeth in some way, because not treating the teeth in any way will likely result in root resorption of adjacent teeth, and pathology.

8. It was not medically necessary to perform surgical exposure and bonding of traction attachments to [redacted] impacted teeth, because the procedure was not clinically appropriate to treat his specific condition; based on the views of BeneCare's dental consultants and of [redacted] own treating oral surgeon, the procedure would not be an effective treatment in his particular case due to the significant risk of damage to adjacent teeth.

9. Extraction of [redacted] impacted teeth is an alternative method of treatment that is consistent with generally accepted standards of dental care, and is clinically appropriate, because exposure and bonding has been ruled out as an appropriate treatment for [redacted]

10. BeneCare was correct to find that comprehensive orthodontic treatment was not medically necessary for [redacted] because the treatment was only needed if it was to be performed in conjunction with surgical exposure and bonding of traction attachments to [redacted] impacted teeth, which was not a medically necessary treatment for him.

11. 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

The comprehensive orthodontic treatment proposed by [redacted] treating orthodontist was to be performed in conjunction with treatment from his oral surgeon aimed at attempting to bring his unerupted upper canine teeth into their proper position. If [redacted] canines could be brought into the dental arch in normal position, it would undoubtedly provide him with improved esthetic appearance and dental function. However, [redacted] upper canines are so badly impacted that there is significant risk involved in attempting to bring the teeth into their normal position. The teeth are very high in vertical position, are horizontal in orientation, and are completely impacted in the bone. Furthermore, the impacted teeth are in close proximity to the bases of the roots of two of [redacted] front

teeth which have already erupted into normal position, and the proposed procedure could damage those teeth, even potentially requiring their extraction.

Medically necessary services must be clinically appropriate, must be considered effective treatment for the individual's condition, and must meet generally-accepted standards of practice. While BeneCare's dental consultants acknowledge that exposure and bonding of a traction attachment is a clinically appropriate treatment for impacted canines in some cases, the treatment is not clinically appropriate in cases where it is not expected to be an effective treatment, and where there is another alternative that meets the standard of practice. In [redacted] case, the prognosis for the proposed treatment is poor, and could even result in the loss of front teeth that are already in satisfactory position and functional. The alternative, surgical removal of the impacted teeth, while not an ideal option, is the clinically appropriate treatment in [redacted] case. [redacted] ability to use his existing bicuspid teeth in substitution for the canines, which will be missing after extraction, is an alternative that also meets the generally accepted standards of dental care.

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.