

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

██████████ 2017  
Signature Confirmation

Client ID # ██████████  
Request # 797700

**NOTICE OF DECISION**

**PARTY**

██████████  
For: ██████████ ██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2016, Connecticut Dental Health Partnership/Benecare Dental Plans (“Benecare”) sent ██████████ ██████████ (“██████████”) a notice of action denying a request for prior authorization of orthodontia indicating that the proposed orthodontia treatment is not medically necessary.

On ██████████ 2016, ██████████ (“Appellant”) requested an administrative hearing to contest Benecare’s denial of prior authorization of orthodontia for ██████████

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

On ██████████ 2016, the Appellant requested a continuance that OLCRAH granted.

On ██████████ ██████████ 2016, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, the Appellant requested a continuance that OLCRAH granted.

On ██████████ 2017, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2017.

On [REDACTED] 2017, 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  
Magdalena Carter, Benecare Representative  
Dr. Jonathan Gorman, DDS, Benecare Dental Consultant, participated by telephone  
Lisa Nyren, Hearing Officer

The record remained open for the submission of additional evidence. The record closed on [REDACTED] 2017.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Benecare's denial of prior authorization through the Medicaid program for [REDACTED] orthodontic services as not medically necessary was in accordance with state statutes and state regulations.

### **FINDINGS OF FACT**

1. [REDACTED] [REDACTED] (the "Appellant") is [REDACTED] mother. (Hearing Record)
2. [REDACTED] is eleven (11) years old born on [REDACTED] 2005. (Exhibit 1: Prior Authorization Request and Exhibit 2: Preliminary Malocclusion Assessment Record)
3. [REDACTED] is a participant in the Medicaid program, as administered by the Department of Social Services (the "Department"). (Hearing Record)
4. Benecare is the Department's contractor for reviewing dental providers' requests for prior authorization of orthodontic treatment. (Hearing Record)
5. Connecticut Braces Bridgeport Orthodontic, PC (the "treating orthodontist") is [REDACTED] treating orthodontist. (Hearing Summary, Exhibit 1: Prior Authorization Request and Exhibit 2: Preliminary Malocclusion Assessment Record)

6. On [REDACTED] 2016, the treating orthodontist requested prior authorization to complete orthodontic services for [REDACTED] (Hearing Summary and Exhibit 1: Prior Authorization Request)
7. On [REDACTED] 2016, Benecare received from the treating orthodontist, a Preliminary Handicapping Malocclusion Assessment Record with a score listed as 28 points, dental models and x-rays. (Hearing Summary and Exhibit 2: Preliminary Malocclusion Assessment Record)
8. On [REDACTED] 2016 Dr. Benson Monastersky, DDS, Benecare's orthodontic dental consultant, independently reviewed [REDACTED] models and x-rays, and arrived at a score of 17 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Monastersky did not find evidence of severe irregular placement of the teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Monastersky found no evidence presented stating the presence of emotional issues directly related to her dental situation and determined that orthodontia services were not medically necessary. (Hearing Summary and Exhibit 3: Preliminary Handicapping Malocclusion Assessment Record)
9. On [REDACTED] 2016, Benecare notified [REDACTED] that the request for orthodontic services was denied. Benecare denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that orthodontia treatment is not medically necessary under the factors set forth in state statute and state regulations. Specifically, the scoring of [REDACTED] mouth was less than the 26 points needed for coverage, there was no additional evidence of the presence of severe deviations affecting the mouth or underlying structures, which, if left untreated, would cause irreversible damage. In addition, there was no evidence that [REDACTED] has the presence of a severe mental, emotional, or behavior problem as defined in the current edition of the Diagnostic Statistical Manual which orthodontic treatment will significantly improve such problems, disturbances or dysfunctions. (Exhibit 4: Notice of Action for Denied Services or Goods)
10. On [REDACTED] 2016, the Department received a request for an administrative hearing from the Appellant. (Exhibit 5: Hearing Request)
11. On [REDACTED] 2016, Dr. Geoffrey Drawbridge, DDS, a Benecare dental consultant, independently reviewed [REDACTED] models and x-rays and arrived at a score of 20 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Drawbridge did not find evidence of severe irregular placement of [REDACTED] teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Drawbridge found no evidence presented stating the presence of emotional issues directly related to her dental situation and determined the treatment was not medically necessary. (Hearing

Summary and Exhibit 6: Preliminary Handicapping Malocclusion Assessment Record)

12. On [REDACTED] 2016, Benecare notified the Appellant that the request for orthodontic services was denied because [REDACTED] score of 20 points was less than the 26 points needed for coverage, lack of evidence of the presence of severe deviations affecting the mouth or underlying structures, and there was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of [REDACTED] teeth. (Exhibit 7: Determination Letter)
13. A qualified psychiatrist or psychologist is not treating [REDACTED] for mental, emotional, or behavior problems, disturbances or dysfunctions as defined by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association that affects [REDACTED] daily functioning. (Appellant's Testimony)
14. [REDACTED] has scoliosis and wears a brace at night while sleeping. (Appellant's Testimony)
15. [REDACTED] has enlarged tonsils and snores while sleeping. [REDACTED] was referred to an Ear Nose and Throat Specialist ("ENT") and Sleep Specialist on [REDACTED] [REDACTED] 2017 by Dr. Dental of Bridgeport. No appointment has been made to date. (Appellant's Testimony and Exhibit A: Dr. Dental Referral)

### **CONCLUSIONS OF LAW**

1. Section 17b-2(8) of the Connecticut General Statutes states that the Department of Social Services is the designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. State statute provides that the Department may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-262].
3. Regulations of the Connecticut State Agencies ("Conn. Agency Regs.") § 17-134d-35(a) provide that orthodontic services will be paid for when provided by a qualified dentist and deemed medically necessary as described in these regulations.

4. State statute 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. [Conn. Gen. Stat. § 17b-259b]
5. State statutes provide that clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a request 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)]
6. Section 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. The commissioner may implement policies and procedures necessary to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the commissioner publishes notice of intent to adopt

- regulations on the eRegulations System not later than twenty days after the date of implementation.
7. State regulations provides that if the total score is less than [twenty-six (26) points] 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 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 that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems. [Conn. Agencies Regs. § 17-134d-35(e)(2)]
  8. State regulations define the Preliminary Handicapping Malocclusion Assessment Record as the method of determining the degree of malocclusion and eligibility for orthodontic services. Such assessment is completed prior to performing the comprehensive diagnostic assessment. [Conn. Agencies Regs. § 17-134d-35(b)(3)]
  9. State regulations provide that prior authorization is required for the comprehensive diagnostic assessment. The qualified dentist shall submit: (A) the authorization request form; (B) the completed Preliminary Handicapping Malocclusion Assessment Record; (C) Preliminary assessment study models of the patient's dentition; and (D) additional supportive information about the presence of other severe deviations described in Section (e) (if necessary). The study models must clearly show the occlusal deviations and support the total point score of the preliminary assessment. If the qualified dentist receives authorization from the Department, he may proceed with the diagnostic assessment. [Conn. Agencies Regs. §17-134d-35(f)(1)]
  10. State statute requires 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. [Conn. Gen. Stats. § 17b-259b(c)]

11. The study models and x-rays submitted by the treating orthodontist do not clearly support the total point score of 26 as required by state regulations for the authorization of orthodontia treatment.
12. Benecare correctly determined that [REDACTED] malocclusion did not meet the criteria for severity, or 26 points as established in state regulations and that there was no presence of severe deviations affecting the mouth and underlying structures.
13. Testimony provided regarding [REDACTED] medical diagnoses of scoliosis and enlarged tonsils at the administrative hearing does not meet the technical criteria found at section 17-134d-35(e)(2) of the Regulations of Connecticut State Agencies.
14. Benecare was correct to find that [REDACTED] malocclusion did not meet the criteria for medically necessary as established in state regulations.
15. Benecare was correct to deny prior authorization because [REDACTED] does not meet the medical necessity criteria for orthodontic services, in accordance with state statutes and regulations.
16. On [REDACTED] 2016, Benecare correctly issued the Appellant a notice of action denying the Appellant's request for orthodontia treatment for [REDACTED]

### **DECISION**

The Appellant's appeal is denied.

  
\_\_\_\_\_  
Lisa A. Nyren  
Fair Hearing Officer

Pc: Diane D'Ambrosio, CTDHP, P.O. Box 486 Farmington, CT 06032  
Rita LaRosa, CTDHP, P.O. Box 486 Farmington, CT 06032

### **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.