

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

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

Client ID # ██████████  
Request # 798747

NOTICE OF DECISION  
PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, BeneCare Dental Health Plans (“BeneCare”), sent ██████████ ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying a request for prior authorization of orthodontia for the Appellant’s child, ██████████ (“the Applicant”). The NOA informed the Appellant that orthodontia for ██████████ was not medically necessary because the severity of ██████████ malocclusion did not meet requirements set in state statute and regulations for medical necessity.

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 OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2017.

On ██████████ 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:

██████████ Appellant

Isabel Diaz, Interpreter  
 Magdalena Carter, BeneCare's Representative  
 Dr. Vincent Fazzino, BeneCare's Clinical Consultant, by telephone  
 Marci Ostroski, Hearing Officer

The Hearing Record remained open for the submission of additional information, Exhibits were received from the Appellant and the Department and the record closed on [REDACTED] 2017.

A copy of this decision has been issued in English and in Spanish.

### **STATEMENT OF THE ISSUE**

The issue is whether BeneCare's denial of prior authorization through the Medicaid program for [REDACTED] orthodontic services was in accordance with state law.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] mother. (Hearing Record)
2. [REDACTED] (D.O.B. [REDACTED]/02) is a participant in the Medicaid program, as administered by the Department of Social Services through Benecare. (Hearing Record, Exhibit 1: Orthodontia Services Claim Form)
3. Benecare is the Department's contractor for reviewing dental providers' requests for prior authorization of orthodontic treatment. (Hearing Record)
4. Dr. Mark Pollack is [REDACTED] treating orthodontist (the "treating orthodontist"). (Hearing record, Ex. 1: Orthodontia Services Claim Form)
5. On [REDACTED] 2016, the treating orthodontist submitted a request for prior authorization to complete orthodontic services for [REDACTED] (Hearing record, Ex. 1: Orthodontia Services Claim form)
6. On [REDACTED] 2016, BeneCare received from the treating orthodontist, a Preliminary Handicapping Malocclusion Assessment Record with a score of 26 points (though due to an addition error his Grand Total read 20 points), dental models and X-rays of [REDACTED] mouth. The treating orthodontist commented "Please accept due to 1. Bilateral Class II, 2. Severe Anterior Crowding, 3. Excessive Overjet". (Hearing record, Ex. 2: Malocclusion Assessment Record)
7. On [REDACTED] 2016, Dr. Robert Gange, BeneCare's orthodontic dental consultant, independently reviewed [REDACTED] models and x-rays, and arrived at a score of 22 points on a completed Preliminary Handicapping

- Malocclusion Assessment Record. Dr. Gange found no presence of severe deviations affecting the mouth and underlying structures. He commented “Class II scores 8 points, Upper crowding scores 8 points, overjet scores 4 points. Not enough to qualify”. There was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of [REDACTED] teeth (Ex. 3: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]/16)
8. 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 that there is no substantial information about the presence of severe deviations affecting the mouth and underlying structures. (Ex. 4: Notice of Action for Denied Services or Goods, [REDACTED]/16)
  9. On [REDACTED] 2016, the Appellant requested an administrative hearing on the denial of braces for [REDACTED] (Ex. 5: Hearing request, [REDACTED]/16)
  10. On [REDACTED] 2016, Dr. Geoffrey Drawbridge, a Benecare dental consultant, reviewed [REDACTED] models and x-rays and arrived at a score of 23 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Drawbridge found no presence of severe deviations affecting the mouth and underlying structures. There was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of [REDACTED] teeth. Dr. Drawbridge commented “Approval for scores less than twenty six points: overjet greater than nine mm. (single tooth or arch) does not meet criteria”. (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED] 16)
  11. An overjet is classified as a severe deviation on the Salzmann Handicapping Malocclusion Index used by the Department when the overjet is measured at a minimum of 9 millimeters. The Appellant’s overjet measured by his dentist Dr. Woo J. Kwon ranged from 3 mm to 7 mm. The Appellant’s measurement did not meet those criteria. (Clinical Consultant’s testimony, Ex. 6: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]/16, Ex. 13: Letter from Woo Kwon, DMD, [REDACTED]/16)
  12. On [REDACTED] 2016, BeneCare notified the Appellant that [REDACTED] score of 23 points did not meet the criteria for orthodontic treatment. (Ex. 7: Letter Regarding Orthodontic Services, [REDACTED]/16)
  13. The Appellant submitted a letter dated [REDACTED] 2017 from Nancy Oporto-Brown, JD, MSW, LCSW from Hartford Psychological Services stating in part that [REDACTED] attended an intake appointment on [REDACTED] [REDACTED] 2016 and a follow up appointment on [REDACTED] 2016 for symptoms of anxiety and depression with regards to his dental appearance. The

- letter further stated that [REDACTED] was diagnosed with Generalized Anxiety Disorder and has been recommended to follow through with therapeutic intervention for at least 6 months at a rate of once a week. (Ex. 9: Letter from Hartford Psychological Services/Nancy Oporto-Brown, [REDACTED]/16)
14. On [REDACTED] 2016 Dr. Geoffrey Drawbridge, a BeneCare Consultant reviewed the letter from Hartford Psychological services and determined it did not meet the criteria for approval. BeneCare sent the Appellant a letter upholding the denial of orthodontic treatment and stated that “the Department will only consider cases where a diagnostic evaluation has been performed by a licensed child psychiatrist or a licensed child psychologist. The evaluation must clearly and substantially document how the dentofacial deformity is related to the child’s mental, emotional and or behavioral problems and that orthodontic treatment is necessary”. (Ex. 10: Letter from Dr. Drawbridge, [REDACTED]/16)
  15. On [REDACTED] 2016 the Appellant resubmitted the same letter from Hartford Psychological Services with the addition of a signature of Rafael Mora de Jesus, Ph.D, Supervisor, Lic., Psych [REDACTED]. (Department’s testimony, Ex. 11: Letter from Hartford Psychological Services/Nancy Oporto-Brown/Rafael Mora de Jesus, [REDACTED]/16)
  16. On [REDACTED] 2017 Dr. Geoffrey Drawbridge, a BeneCare Consultant reviewed the letter from Hartford Psychological services and determined it did not meet the criteria for approval. BeneCare sent the Appellant a letter upholding the denial of orthodontic treatment and stated that “The evaluation must clearly and substantially document how the dentofacial deformity is related to the child’s mental, emotional, and or behavioral problems. Current goals and strategies mentioned to reduce anxiety and develop coping skills do not include orthodontic treatment at this time”. (Ex. 12: Letter from Geoffrey Drawbridge, [REDACTED]/17)
  17. The Appellant submitted a letter from Woo J Kwon, DMD dated [REDACTED] 2016 and a summary of dental visits from Woo J Kwon, DMD dated [REDACTED] 2017. (Ex. 13: Letter from Woo Kwon [REDACTED]/16, Ex. 14: Letter from Woo Kwon, [REDACTED]/17)
  18. On [REDACTED] 2017 Dr. Geoffrey Drawbridge, a BeneCare Consultant reviewed the letters and determined that the letters do not alter the assessment findings, indicating criteria for orthodontic treatment have not been met. (Ex. 15: Letter from Dr. Drawbridge, [REDACTED]/17)

### **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. 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.
5. 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.
6. Sec 17-134d-35(e)(2) of the Regulations of Connecticut State Agencies states in part 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.
  6. In ██████ case the study models submitted for prior authorization do not meet the requirement of a 26 point score on the preliminary assessment. There is no presence of severe deviations affecting the mouth and underlying structures.
  7. In ██████ case, the therapist's evaluation does not establish that orthodontic treatment is necessary to ameliorate his mental emotional or behavioral problems. The evaluation also failed to establish that a licensed psychiatrist or licensed psychologist who has limited his or her practice to child psychiatry or child psychology has provided treatment to ██████ in order to significantly ameliorate his mental, emotional, and or behavior problems, disturbances or dysfunctions.
  8. BeneCare was correct to deny prior authorization because ██████ does not meet the medical necessity criteria for orthodontic services, in accordance with state statutes and regulations.

### **DISCUSSION**

State regulations provide that when a child is correctly scored with at least 26 points on a Preliminary Handicapping Malocclusion Assessment Record, a test

measuring severity of malocclusion and dentofacial deformity, the Medicaid program will authorize and pay for orthodontic treatment.

The treating orthodontist scored the malocclusion of [REDACTED] teeth to equal 26 points. Two dentists in blind reviews independently assessed [REDACTED] models and both scored the malocclusion to equal 22 points and 23 points respectively. It is reasonable to conclude that the models do not support the severity of malocclusions and dentofacial deformity.

The letter that the Appellant provided from a therapist and signed off by a licensed psychologist regarding [REDACTED] emotional well-being based on an intake and a follow up appointment does not meet the medical necessity criteria for orthodontic services in accordance with state statutes and regulations.

The undersigned Hearing Officer finds that the Appellant's minor child's malocclusion did not meet the criteria for severity, or 26 points, as established in state regulations to allow the Medicaid program to pay for orthodontic services

### **DECISION**

The Appellant's appeal is **DENIED**.

*Marci Ostroski*

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Marci Ostroski  
Hearing Officer

Pc: 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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

### **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.