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

[redacted] **2018**
Signature Confirmation

Client ID # [redacted]
Request # 121208

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] BeneCare Dental Health Plans ("BeneCare"), administered by the Connecticut Dental Health Partnership ("CTDHP"), sent [redacted] (the "Child") a Notice of Action ("NOA") denying a request for prior authorization of interceptive orthodontic treatment.

On [redacted], foster mother of the Child (the "Appellant") and [redacted], DCF caseworker for the child, requested an administrative hearing to contest the Department's denial of prior authorization of interceptive orthodontic treatment.

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

On [redacted], in accordance with sections 17b-60, 17-61, and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were presented at the hearing:

[redacted], the Appellant, and foster mother of the child,
[redacted], DCF caseworker
Rosaria Monteza, CTDHP Grievance & Appeals Representative
Dr. Brett Zanger, DMD, CTDHP Dental Consultant, via telephone conference call

Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open for the submission of additional evidence. No additional evidence was received and the record closed on [redacted]

[redacted], the hearing officer discovered that information had been submitted to the Dental Health Partnership prior to the deadline. The hearing officer reopened the hearing record to allow the Dental Health Partnership to review the dental records with the new information. The hearing record closed on [redacted]

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization for interceptive orthodontic treatment through the Medicaid program for the Appellant's minor child was correct.

FINDINGS OF FACT

1. The Appellant is the foster mother of the minor child, [redacted] ("the child) whose date of birth is [redacted] is nine years old. (Hearing record and Exhibit 1: Dental Claim form)

2. The child is a participant in the Medicaid program, as administered by the Department of Social Services ("DSS"). (Hearing Record)

3. CTDHP is the Department's contractor for reviewing dental provider's requests for prior authorization of orthodontic treatment. (Hearing Record)

4. The child still has some baby teeth. (Appellant's testimony)

5. Due to neglect, the child has had difficulty with her teeth and mouth, including abscesses. This has resulted in oral surgeries and the child now has metal caps on some of her teeth. (Appellant's testimony).

6. The child snores and sometimes bites the inside of her mouth when she is eating. (Appellant's testimony)

7. On [redacted], BeneCare received a prior authorization request from Dr. Desai at New Haven Orthodontics for interceptive orthodontic treatment for the child. (Exhibit 1: Prior Authorization Request)

8. Dr. Desai submitted a Preliminary Handicapping Malocclusion Assessment Record with a score of 12 points, dental models and X-rays of the child's mouth. The assessment form contains a checklist of the criteria for

interceptive orthodontic treatment. There is a question “anterior impacted tooth present?” Dr. Desai crossed off “anterior” and wrote in “posterior” and marked “yes” in response. Dr. Desai responded “no” to all of the other questions regarding the criteria for interceptive treatment. (Exhibit. 2: Malocclusion Assessment Record signed [redacted] 2018)

9. Dr. Desai noted that teeth number 6 and 11 were impacted and that an upper RPE was needed to create more space. (Exhibit 2)

10. Interceptive orthodontic treatment would not prevent the need for future tooth extractions. (Dr. Zanger’s testimony)

11. An RPE is a palate expander, designed to create more space in the mouth. (Dr. Zanger’s testimony)

12. At nine years old, the skull is not fully fused. The child will continue to grow. (Dr. Zanger’s testimony)

13. The criterion for interceptive orthodontic treatment differs from the criteria for full orthodontic treatment. The score totals on the Malocclusion Assessment record are irrelevant for interceptive treatment. (Dr. Zanger’s testimony)

14. The Salzmann malocclusion Assessment instrument considers tooth #6 and tooth # 11 as posterior teeth. Generally, dentists would consider tooth # 6 to be an anterior tooth. (Dr. Zanger’s testimony)

15. On [redacted], Dr. Benson Monastersky, BeneCare’s orthodontic consultant, reviewed the X Rays and models submitted by the treating orthodontist and determined that there were no severe deviations affecting the child’s mouth or underlying structures. Dr. Monastersky also noted that there were no anterior impacted teeth and that the child did not meet the criteria for phase one treatment. Dr. Monastersky suggested that a reevaluation be conducted upon dental maturity. (Exhibit. 3: Dr. Monastersky’s Malocclusion Assessment Record)

16. On [redacted], BeneCare issued a notice denying the request for interceptive orthodontic treatment for the child. (Exhibit 4: Notice of Action for Denied Services)

17. On [redacted], Dr. Robert Gange, DDS, consultant for BeneCare independently reviewed the child’s models and X rays. Dr. Gange noted that there were no anterior impacted teeth and no severe deviations. He commented that the child did not “score for phase one interceptive.” (Exhibit 6: Dr. Gange’s Malocclusion Assessment Record)

18. The child does not have a deep impinging overbite, where the lower incisors hit palatal tissue behind upper incisors or upper incisors hit labial tissue of lower incisors. (Exhibits 2, 3, 6 and 9: Assessment sheets)

19. The child does not have a functional deviation- a midline shift of at least a half lower incisor with unilateral crossbite. (Exhibits 2, 3, 6 and 9: Assessment sheets)

20. The child does not have a class III malocclusion- where the lower jaw broth exceeds the growth of the upper jaw with a negative ANB difference and the 4 upper incisors are in crossbite. (Exhibits 2, 3, 6 and 9: Assessment sheets)

21. The child does not have gingival recession- an anterior crossbite which causes gingival recession of 2 to 3 millimeters as compared to adjoining teeth as evidenced on the study models. (Exhibits 2, 3, 6 and 9: Assessment sheets)

22. The child does not have a severe overjet of more than 9 millimeters. (Exhibits 2, 3, 6 and 9: Assessment sheets)

23. The child does not have an open bite with a minimum of 5 millimeters or severe protrusion of at least 6 millimeters with anterior spacing. (Exhibits 2, 3, 6 and 9: Assessment sheets)

24. The child does not have an anterior impacted tooth. (Exhibits 2, 3, 6 and 9: Assessment sheets)

25. There was no evidence presented that the child is being treated by a mental health professional for severe mental, emotional or behavioral problems or disturbances directly relating to the condition of her teeth. (Hearing record)

26. On [redacted], BeneCare issued a letter to the Appellant notifying her that the dentist's request for approval of interceptive orthodontic treatment for her child was denied because there were no deviations affecting the mouth or underlying structures and there was no evidence of treatment by a licensed child psychiatrist or psychologist for emotional issues related to the condition of her child's teeth.

27. On [redacted], the Appellant submitted a chapter titled "Controversies Concerning Early Treatment" from the paper "Clinical Cases in Early Orthodontic Treatment" published by the Department of Orthodontics Maimonides University, Argentina and the Universidade Paulista, Sao Paulo, Brazil and a publication titled "Overcoming barriers to orthodontic treatment in the United States" published by the University of Connecticut School of Dental Medicine. (Appellant's Exhibits A and B: papers submitted)

28. On [redacted], Dr. Geoffrey Drawbridge, DDS, consultant for BeneCare reviewed the child's models, X-Rays and papers regarding phase I orthodontic treatment submitted by the Appellant. Dr. Drawbridge noted that the child did not meet the Salzmann criteria for interceptive treatment. (Exhibit 9: Dr. Drawbridge's Assessment recond)

CONCLUSIONS OF LAW

1. Section 17b-2(8) of the Connecticut General Statures states that the Department of Social Services is 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. State regulations provide 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. [Conn. Agencies Regs. §17-134d-35(a)]

4. 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)]

5. 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)]

6. For the purposes of the administration of the medical assistance programs by the Department, "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 (a)]

7. 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. [Sec. 17b-282e of the Supplement to the General Statutes]

Because the study models and x-rays submitted by the treating orthodontist do not clearly support the presence of deviations affecting the mouth and the underlying structures, BeneCare correctly determined that the child did not have a deviation of such severity that it would cause irreversible damage to the teeth and underlying structures if left untreated.

BeneCare correctly determined that there was no evidence of emotional issues directly related to the child's teeth.

BeneCare correctly determined that interceptive orthodontia was not medically necessary because it is not clinically appropriate in terms

of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease.

Benecare correctly denied the request for prior authorization as not medically necessary.

DISCUSSION

The issue of this hearing was whether interceptive orthodontia is medically necessary, as defined by the regulations, for [redacted] at this time. None of the four dentists (including her own provider) who reviewed [redacted] models and Xrays, noted that she met the very specific criteria which would make interceptive orthodontia medically necessary. It is possible that she may qualify for full orthodontic treatment in the future, as her dentition matures. The paper submitted by the Appellant advocating for early orthodontic treatment does include the point that other papers suggest waiting until post peak of growth and the importance of determining the etiology, severity and nature of the individual case.

While the definition of medical necessity does speak of prevention, the issues referred to at the hearing were **possible** effects (or impacts) to [redacted] dentition. [redacted] is only 9 years old, the palate expander is being recommended to create more space in her mouth; however, more space may naturally come about as she grows. There is no evidence that interceptive orthodontia is medically necessary at this time.

DECISION

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

Maureen Foley-Roy
Hearing Officer

CC: Diane D'Ambrosio, CTDHP
Rita LaRosa, CTDHP

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.