

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

██████████ 2018
Signature Confirmation

Client ID # ██████████
Request # 124079

NOTICE OF DECISION

PARTY

██
Re: ██████████
██████████.
██

PROCEDURAL BACKGROUND

On ██████████ 2018, BeneCare Dental Plans (“BeneCare”) issued a notice of action (“NOA”) to ██████████ (the “Appellant”) denying a request for prior authorization to complete orthodontic treatment for ██████████, her minor child, indicating that the severity of ██████████’s malocclusion did not meet the medical necessity requirement to approve the proposed treatment.

On ██████████ 2018, the Appellant requested an administrative hearing to contest the Department’s denial of prior authorization to complete orthodontic treatment.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, 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
- ██, Appellant’s minor child
- Magdalena Carter, BeneCare’s representative
- Dr. Brett Zanger, BeneCare’s Dental Consultant, via telephone
- James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization to complete orthodontic services for ██████████ 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, ██████████ (the "child"). (Hearing Record)
2. The child is 11 years old (D.O.B. ██████████) 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. Bridgeport Orthodontics is the child's treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On ██████████ 2018, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for the child. (Summary, Ex. 1)
6. On ██████████ 2018, BeneCare received from the treating orthodontist a *Preliminary Handicapping Malocclusion Assessment Record* with a score of 10 points, digital models and panoramic x-ray films of the child's mouth. The treating orthodontist noted the presence of severe deviations affecting the child's mouth and underlying structures and wrote in the comment section, "#13 Impacted". In the section titled "Criteria for Approval of Interceptive Orthodontic Treatment", the treating orthodontist checked the box to indicate that the child had "Anterior impacted tooth present", except that he crossed out the word "Anterior" and replaced it with "Posterior". (Ex. 2: *Preliminary Handicapping Malocclusion Assessment Record* completed by Treating Orthodontist)
7. Tooth #13 is a bicuspid on the upper left side and is a posterior (back) tooth, not an anterior (front) tooth. (Dr. Zanger's testimony)
8. On ██████████ 2018, Benson Monastersky, D.M.D., a BeneCare orthodontic dental consultant, independently reviewed the child's digital models and panoramic radiographs, and arrived at a score of 16 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Monastersky did not find the presence of severe deviations affecting the child's mouth and underlying structures and commented, "Patient is 11 with primary teeth present. #13 may erupt on its own". Dr. Monastersky checked the box "No" to indicate that the child did not have "Anterior impacted tooth present", and his decision was that the

proposed orthodontic treatment was not approved. (Ex. 3: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Monastersky)

9. On [REDACTED], 2018, BeneCare denied the treating orthodontist's request for prior authorization to complete orthodontic services for the reasons that the scoring of the child's mouth was less than the 26 points required for coverage, and that 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)
10. On [REDACTED] 2018, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)
11. On [REDACTED] 2018, Robert Gange, D.D.S., another BeneCare orthodontic dental consultant, conducted an appeal review of the child's digital models and panoramic radiographs and arrived at a score of 14 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Gange found no presence of severe deviations affecting the child's mouth and underlying structures and commented, "with #A, C, J still in and patient 11, #13 may erupt on its own". Dr. Gange checked the box "No" to indicate that the child did not have "Anterior impacted tooth present", and his decision was that the proposed orthodontic treatment was not approved. (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Gange)
12. A tooth identified by a letter indicates that it is a primary or baby tooth, and tooth #J, which is still in the child's mouth according to Dr. Gange's comment, is in or near the location where tooth #13 would be expected to erupt. (Dr. Zanger's testimony, Ex. 6)
13. On [REDACTED], 2018, BeneCare notified the Appellant that the outcome of the appeal was that its original decision, that orthodontic treatment was not medically necessary for the child, was upheld by the review. (Ex. 8: Appeal Review Decision Letter)
14. The child does not have an anterior impacted (unable to erupt) tooth present; tooth #13, whether or not it is impacted, is not an anterior tooth. (Hearing record)
15. It is too early to determine whether the child's tooth #13 is impacted; based on the child's age, and the position of the unerupted tooth #13, and the fact that she still has a mix of primary and secondary teeth in her mouth, tooth #13 may eventually erupt on its own. (Ex. 3, Ex. 6, Dr. Zanger's testimony)

16. None of the three orthodontists who evaluated the child's teeth, including her own treating orthodontist, determined that she qualified for at least 26 points on the assessment. (Ex. 2, Ex. 3, Ex. 6)
17. The child has never been treated by a psychologist or psychiatrist, or diagnosed with any emotional or mental health condition. (Appellant's testimony)

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. Connecticut General Statutes § 17b-282e 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.

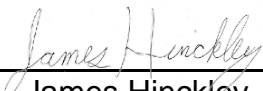
6. Connecticut Agencies Regulations §17-134d-35(e)(2) provides in relevant part that [when the existence of a mental disorder is being considered] "the Department will only consider cases where a diagnostic evaluation has been performed by a licensed psychiatrist or licensed psychologist who has accordingly 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 problem".
7. The child's study models submitted for prior authorization did not show the occlusal deviations necessary to support a 26 point score on the preliminary assessment.
8. There is no substantive information regarding the presence of severe deviations affecting the child's oral facial structures.
9. There is no substantive information that the child has any severe mental, emotional or behavioral problems or disturbances directly related to the malocclusion of her teeth.
10. BeneCare was correct when it found that the child did not have malocclusion of her teeth to a degree that met the criteria for severity, or 26 points, as established in state statute, or have the presence of other conditions required by statute to be considered when determining the need for orthodontic services.
11. BeneCare was correct when it denied prior authorization to complete comprehensive orthodontic services for the child as not medically necessary, in accordance with state statute and regulations.

DISCUSSION

The two BeneCare orthodontic consultants who evaluated the child's dental records both believed that, based on the child's dental age and the position of her tooth #13, the tooth might erupt on its own, given time. If the tooth still has not erupted after the child has otherwise reached dental maturity, a new application for treatment might be considered at that time.

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.