

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 #128242

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, Benecare Dental Plans (“Benecare”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) stating that it had denied a request for prior authorization of orthodontia for her minor child, ██████████, because orthodontia was not medically necessary.

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

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

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice rescheduling 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
Kate Nadeau, Dental Plans, Department representative
Dr. Vincent Fazzino, Clinical Consultant for Benecare via telephone
Miklos Mencseli, Hearing Officer

The hearing officer held the record open for CTDHP to review the submission of additional evidence presented at the hearing by the Appellant. On [REDACTED], 2018, the hearing officer closed the record.

CTDHP requested additional time to review the original progressive photos as they now have all 4 photos in color for a post review. On [REDACTED], 2018, the hearing officer closed the record.

STATEMENT OF THE ISSUE

The issue is whether Benecare's denial of prior authorization through the Medicaid program for the Appellant's child's orthodontic services is correct because such services are not medically necessary.

FINDINGS OF FACT

1. [REDACTED] is an 11 year old participant in the Medicaid program, as administered by the Department of Social Services through Benecare, its contractor.
2. Dr. [REDACTED] is the Appellant's treating orthodontist ("treating orthodontist"). (Dept. Ex. 2)
3. In [REDACTED] 2018 Bridgeport Orthodontics placed braces on the child. (Hearing Record Testimony)
4. At that time the Appellant's private insurance she has through her employer provided covered for the placement of the braces. (Appellant's Testimony)
5. The Appellant has a monthly payment plan of \$169.00. (Appellant's Testimony)
6. The Appellant and her spouse are both employed, the Appellant's hours have been reduced since the placement of the braces. (Appellant's Testimony)
7. The Appellant has a household of 5 members, 2 adults and 3 children. (Appellant's Testimony)
8. The Appellant is unable to make the monthly payments due to the reduction of her work hours. (Appellant's Testimony)
9. On [REDACTED], 2018, the treating orthodontist completed a *Preliminary Handicapping Malocclusion Assessment Record* form for the child. (Dept. Ex. 2)

10. The treating orthodontist scored the child's teeth to be 20 points on the *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 2)
11. The treating orthodontist scored the *Preliminary Handicapping Malocclusion Assessment Record* based on the initial photos of the child's teeth. (Dept. Ex. 2)
12. The treating orthodontist commented on the assessment record; "Continuation of care – eighteen months of treatment left, no initial study models available, patient had braces placed [REDACTED] 2018, Deep bite." (Dept. Ex. 2)
13. On [REDACTED], 2018, the treating orthodontist requested prior authorization for continuation of orthodontic services for the child. (Summary)
14. On [REDACTED], 2018, Dr. Benson Monastersky, Benecare's orthodontic dental consultant, independently reviewed the child's photos and arrived at a score of 19 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 3)
15. Dr. Monastersky found no evidence of severe irregular placement of her teeth within the dental arches and no irregular growth or development of the jaw bones. There was no evidence presented of emotional issues related to the child's mouth. (Summary)
16. Dr. Monastersky commented; "Scored from photos." (Dept. Ex. 3)
17. On [REDACTED] 2018, Benecare denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that the scoring of the child's mouth was less than the 26 points needed for coverage and because the other requirements for medical necessity were not met. (Dept. Ex. 4A, 4B, 4C, 4D)
18. On [REDACTED], 2018, the Appellant filed a request for an administrative hearing. (Dept. Ex. 5A, 5B)
19. On [REDACTED], 2018, Dr. Geoffrey Drawbridge, the dental consultant for CTDHP, reviewed the child's photos and arrived at a score of 20 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 6)
20. Dr. Drawbridge found no evidence of severe irregular placement of her teeth within the dental arches and no irregular growth or development of the jaw bones. There was no evidence presented of emotional issues

directly related to the child's dental situation. (Summary)

21. On [REDACTED] 2018, Benecare notified the Appellant that orthodontic treatment was denied as the score of 20 points was less than the 26 points needed to be covered. There was no presence found of any deviations affecting the mouth or underlying structures. There was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of your teeth. (Dept. Ex. 7A, 7B)
22. All three reviewers scored teeth for the child in the intra-arch deviation section of the *Preliminary Handicapping Malocclusion Assessment Record* with scores of 14, 11 and 12 points. (Dept. Ex. 2, 3, 6, Dr. Fazzino's Testimony)
23. There is a slight variance in the total scoring in the section on the *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 2, 3, 6, Dr. Fazzino's Testimony)
24. All the reviewers scored an overjet for the child in the inter-arch section of the *Preliminary Handicapping Malocclusion Assessment Record* with the scores of 6, 8 and 6 points. (Dept. Ex. 2, 3, 6)
25. The variance is due to the total number of teeth scored as an overjet. In addition the treating orthodontist scored tooth #24 as an overbite. (Dept. Ex. 2, 3, 6)
26. Too properly score an overbite or "deep bite" the lower incisor tooth must touch the roof of the mouth. The two reviewers did not have the tooth as meeting the required criteria to be scored. (Dr. Fazzino's Testimony)
27. The 2nd reviewer scored the left canine and left 1st premolar as openbite in the Posterior Segments section of the *Preliminary Handicapping Malocclusion Assessment Record*. The treating orthodontist and 1st reviewer did not score any teeth in the section. (Dept. Ex. 2, 3, 6)
28. The Appellant submitted photos of the child for the period of 2015 through 2018. (Hearing Record)
29. CTDHP requested additional time to review the child's photos as they now have 4 color photos in the series as previously only two of the four were in color. (Dept. Ex. 9: emailed dated [REDACTED]-18)
30. On [REDACTED] 2018, CTDHP conducted a third review for the child.
31. Dr. Robert Gange dental consultant for CTDHP, reviewed the child's photos and arrived at a score of 20 points on a completed Preliminary

Handicapping Malocclusion Assessment Record. (Dept. Ex. 10)

32. Dr. Gange commented; "Scored from photos. (in color)" (Dept. Ex. 10)
33. Dr. Gange scored teeth for the child in the intra-arch deviation section of the *Preliminary Handicapping Malocclusion Assessment Record* with a score of 12 points. That score is in line with the other scores of 14, 11 and 12. (Dept. Ex. 10)
34. Dr. Gange is in agreement with the treating orthodontist and the two reviewers that the child has an overjet. Dr. Gange scored six points in the inter-arch section of the *Preliminary Handicapping Malocclusion Assessment Record*. (Dept. Ex. 10)
35. ██████ does not qualify for orthodontic treatment based on the scoring of the *Preliminary Handicapping Malocclusion Assessment Record* and no medical documentation was submitted to substantiate medically necessary/medical necessity. (Dept. Ex. 2, 3, 6, Dr. Fazzino Testimony, Ex. 10)
36. No current documentation was provided that the child is being treated by a qualified psychiatrist or psychologist for related mental emotional or behavior problems, disturbances or dysfunctions.
37. No documentation was provided that the child has medical issues.
38. "The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on ██████, 2018. Therefore, this decision is due not later than ██████ 2018."
39. "However, the hearing, which was originally scheduled for ██████, 2018, was rescheduled for ██████, 2018, at the request of the Appellant, which caused a 25-day delay. Because this 25-day delay resulted from the Appellant's request, this decision is not due until ██████, 2019, and is therefore timely."

CONCLUSIONS OF LAW

1. State statute provides that the Department may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-262]
2. "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations. (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.

- (b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.
 - (c) 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.
3. State regulations provide that orthodontic services for services provided for individuals under 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. 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]

5. State regulations provides, in relevant part as follows; 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 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 problems. [Conn. Agencies Regs. §17-134d-35(e)(2)]
6. State regulations provide that the study models submitted for prior authorization must clearly show the occlusal deviations and support the total point score of the preliminary assessment. [Conn. Agencies Regs. §17-134d-35(f)]
7. In the child's case, the photos submitted for prior authorization do not clearly support the twenty-six points or greater, subject to prior authorization requirements.
8. In the child's case, a licensed psychiatrist or licensed psychologist who has limited his or her practice to child psychiatry or child psychology has not recommended that the child receive orthodontic treatment to significantly ameliorate her child's mental, emotional, and or behavior problems, disturbances or dysfunctions.
9. The Department was correct to find that the child's malocclusion did not meet the medical necessity criteria for orthodontia, as established in state regulations.

DISCUSSION

The treating orthodontist did not provide documentation to establish medical necessity or medically necessary for [REDACTED] to warrant braces. The child has braces as she was not on Husky Medical in [REDACTED] 2018. The Appellant has private insurance through her employment. There is no point requirement that has to be met for placement of braces. The Appellant is seeking continuation of coverage as she cannot afford the monthly payment plan. The treating orthodontist is request 18 months of treatment. CTDHP can only base its scoring on the initial photos as the models are unavailable. No explanation was given by the treating orthodontist as to the reason the models were not available. On [REDACTED], 2018, CTDHP conducted a third review with all the photos in color for a post review.

All the reviewers agree [REDACTED] does not have a perfect malocclusion. All the reviewers agree [REDACTED] has an overjet. The issue is the degree of severity. [REDACTED] does not meet the point score required on the Preliminary Handicapping Assessment Record.

DECISION

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


Miklos Mencseli
Hearing Officer

C: Fred Presnick, Operations Manager, DSS R.O. # 30 Bridgeport
Diane D'Ambrosio, Connecticut Dental Health Partnership, P.O. Box 486,
Farmington, CT 06034

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.