

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

██████████ 2019
Signature confirmation

Case: ██████████
Client: ██████████
Request: 129373

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ ██████████ 2018, Connecticut Dental Health Partnership (“CTDHP”), the Department of Social Services’ dental subcontractor for HUSKY Health, issued ██████████ ██████████ (the “Appellant”) a *Notice of Action* denying her dental provider’s request for prior authorization of interceptive orthodontic treatment for her minor daughter, ██████████ (the “child”).

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s ██████████ 2018 postmarked hearing request.

On ██████████ 2018, the OLCRAH issued a notice to the Appellant scheduling an administrative hearing for ██████████, 2018. The OLCRAH granted the Appellant’s two postponement requests.

On ██████████ 2018, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following attended the proceeding by video or telephone conferencing:

██████████, Appellant
Rosario Monteza, CTDHP’s representative
Vincent Fazzino, D.M.D., CTDHP’s witness
Eva Tar, Hearing Officer

The hearing record closed ██████████, 2018.

STATEMENT OF ISSUE

The issue to be decided is whether CTDHP correctly determined on [REDACTED] 2018 that interceptive orthodontic treatment for the child was not medically necessary.

FINDINGS OF FACT

1. The child's date of birth is [REDACTED]. (Appellant's testimony)(CTDHP's Exhibit 1)
2. The child has HUSKY Health medical coverage. (CTDHP's Exhibit 4)
3. CTDHP received from [REDACTED] (the "treating orthodontist") of [REDACTED] a request for prior authorization of orthodontic treatment for the child. (CTDHP's Exhibit 1)
4. On [REDACTED] 2018, the treating orthodontist completed a *Preliminary Handicapping Malocclusion Assessment Record*, indicating that the child had an anterior crossbite on teeth #8 and #9, had gingival recession on teeth #24 and #25. (CTDHP's Exhibit 2)
5. On [REDACTED] 2018, the treating orthodontist recommended the following treatment: Phase One limited upper braces with lower bite turbos. (CTDHP's Exhibit 2)
6. Interceptive orthodontic treatment is limited treatment or transitional treatment to take place in the interim before all the adult teeth are in place; it may involve an appliance such as a palate expander. (CTDHP's witness' testimony)
7. CTDHP grants approval of prior authorization of interceptive orthodontic treatment if the patient demonstrates that he has in his dentition one of the following seven identified conditions (at the listed level of severity): 1) deep impinging overbite (lower incisors hit palatal tissue behind upper incisors or upper incisors hit labial tissue of lower incisors); 2) functional deviation – midline shift of at least a half lower incisor with unilateral crossbite; 3) Class III malocclusion – lower jaw growth exceeds growth of upper jaw with a negative ANB difference and four upper incisors in crossbite; 4) gingival recession – anterior crossbite which causes gingival recession of two to three millimeters as compared to adjoining teeth as evidenced on study models; 5) severe overjet of more than nine millimeters; 6) open bite- minimum of five millimeters, or severe protrusion of at least six millimeters with anterior spacing present; or 7) anterior impacted tooth present. (CTDHP's witness' testimony)(CTDHP's Exhibit 2)(CTDHP's Exhibit 3)(CTDHP's Exhibit 6)
8. The treating orthodontist marked "N" for "No" to each of the seven identified conditions on the child's *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP's Exhibit 2)
9. Benson Monastersky, D.M.D. (the "first dental reviewer") is a CTDHP orthodontic dental consultant. (CTDHP's Exhibit 3)

10. On [REDACTED] 2018, the first dental reviewer marked “N” for “No” to each of the seven identified conditions on the child’s *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP’s Exhibit 3)
11. On [REDACTED] 2018, the first dental reviewer noted that the child’s gingival margins were within normal limits. (CTDHP’s Exhibit 3)
12. On [REDACTED] 2018, CTDHP issued a *Notice of Action* denying the request for prior authorization for interceptive orthodontic treatment for the child. (CTDHP’s Exhibit 4)
13. Vincent Fazzino, D.M.D., (the “second dental reviewer”) is a CTDHP orthodontic dental consultant. (CTDHP’s witness’ testimony)(CTDHP’s Exhibit 6)
14. On [REDACTED] 2018, the second dental reviewer marked “N” for “No” to each of the seven identified conditions, with respect to the child’s dentition on a *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP’s Exhibit 6)
15. On [REDACTED] 2018, CTDHP again denied the request for prior authorization for interceptive orthodontic treatment. (CTDHP’s Exhibit 7)
16. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. The Appellant mailed her request on [REDACTED] 2018, but subsequent to the OLCRAH’s scheduling of an [REDACTED] 2018 hearing date, the OLCRAH granted the Appellant two postponements to the hearing date. As the postponements resulted in a 52-day delay to the hearing date, the deadline for issuing this final decision was [REDACTED] 2018. Therefore, this final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 (a)(6) of the Connecticut General Statutes as provided in the 2018 Supplement to the General Statutes of Connecticut designates the Department of Social Services as the state agency to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

Section 17b-262 of the Connecticut General Statutes provides in part that the Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program.

2. “Orthodontic services will be paid for when: (1) provided by a qualified dentist; and (2) deemed medically necessary as described in these regulations.” Conn. Agencies Regs. § 17-134d-35 (a).
3. “*Preliminary Handicapping Malocclusion Assessment Record*”¹ means the method of determining the degree of malocclusion and eligibility for orthodontic services. Such

¹ The *Preliminary Handicapping Malocclusion Assessment Record* is also known as the *Salzmann Handicapping Malocclusion Index*.

assessment is completed prior to performing the comprehensive diagnostic assessment. Conn. Agencies Regs. § 17-134d-35 (b)(3).

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. 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.” Conn. Gen. Stat. § 17b-282e.

“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).

The child’s dental records as submitted to CTDHP do not objectively support a total score of 26 points or more on a correctly scored *Preliminary Handicapping Malocclusion Assessment Record*.

The child’s dental records as submitted to CTDHP do not establish that there existed severe deviations affecting the oral facial structures that, if untreated, would cause irreversible damage to the child’s teeth and underlying structures.

5. “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 (a).

"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." Conn. Gen. Stat. § 17b-259b (b).

Interceptive orthodontic treatment is not medically necessary for the child at this time.

CTDHP correctly denied the medical provider's request prior authorization for interceptive orthodontic treatment for the child.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
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 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.