

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: 138098

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, Connecticut Dental Health Partnership (“CTDHP”), the Department of Social Services’ dental reviewer for HUSKY Health/Medicaid provider claims, issued ██████████ (the “Appellant”) a *Notice of Action* denying him prior authorization for orthodontic treatment.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s ██████████ 2019 postmarked hearing request.

On ██████████ 2019, the OLCRAH issued a notice to the Appellant scheduling an administrative hearing for ██████████ 2019.

On ██████████ 2019, 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
Magdalena Carter, CTDHP’s representative
Vincent Fazzino, D.M.D., CTDHP’s witness
Eva Tar, Hearing Officer

The hearing record closed ██████████, 2019.

STATEMENT OF ISSUE

The issue to be decided is whether CTDHP correctly determined on [REDACTED] 2019 that orthodontic treatment for the Appellant was not medically necessary.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]. (Appellant's testimony)
2. The Appellant has HUSKY Health/Medicaid medical coverage. (CTDHP's Exhibit 4)
3. Since [REDACTED] 2018, the Appellant has had pain in his mouth. (Appellant's testimony)
4. The onset of the Appellant's mouth pain occurred after the Appellant had received oral surgery to remove wisdom teeth. (Appellant's testimony)(CTDHP's Exhibit 5)
5. To the Appellant's knowledge, the Appellant has not been diagnosed by a psychiatrist or psychologist as having a mental illness or condition. (Appellant's testimony)
6. Since [REDACTED] 2019, the Appellant sees a licensed therapist once a week. (Appellant's testimony)
7. CTDHP received from [REDACTED] (the "treating orthodontist") of [REDACTED] a request for prior authorization of the Appellant's orthodontic treatment. (CTDHP's Exhibit 1)
8. On [REDACTED] 2019, the treating orthodontist completed a *Preliminary Handicapping Malocclusion Assessment Record*, scoring the Appellant's overall malocclusion to equal 32 points. (CTDHP's Exhibit 2)
9. Under "MISSING TEETH INFORMATION" on Line 34 of the [REDACTED] 2019 **ADA Dental Claim Form** submitted to CTDHP by the treating orthodontist indicates that all 32 permanent adult teeth as being present in the Appellant's mouth. The wisdom teeth are indicated as present in the Appellant's mouth. (CTDHP's Exhibit 1)
10. Under "REMARKS" on Line 35 of the [REDACTED] 2019 **ADA Dental Claim Form** submitted to CTDHP, the treating orthodontist stated: "Client has no missing teeth. Deep bite." (CTDHP's Exhibit 1)
11. The [REDACTED] 2019 **ADA Dental Claim Form** contains inaccurate information as to the number of teeth remaining in the Appellant's mouth, as it indicates that the Appellant continues to have his wisdom teeth.
12. A "deep bite" is a general, broad way of describing an overbite where the teeth touch the palatal tissue. (CTDHP's witness's testimony)
13. The treating orthodontist indicated that teeth #23, #24, #25, and #26 were in overbite on the [REDACTED] 2019 *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP's Exhibit 2)

14. Benson Monastersky, D.M.D. (the “first dental reviewer”) is a CTDHP orthodontic dental consultant. (CTDHP’s Exhibit 3)
15. On [REDACTED], 2019, the first dental reviewer completed a *Preliminary Handicapping Malocclusion Assessment Record*, scoring the Appellant’s overall malocclusion severity to equal 24 points. (CTDHP’s Exhibit 3)
16. The first dental reviewer indicated that only tooth #24 was in overbite on the [REDACTED] [REDACTED] 2019 *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP’s Exhibit 3)
17. On [REDACTED] 2019, CTDHP issued a *Notice of Action* denying the request for prior authorization for orthodontic treatment for the Appellant. (CTDHP’s Exhibit 4)
18. Geoffrey Drawbridge, D.D.S. (the “second dental reviewer”) is a CTDHP orthodontic dental consultant. (CTDHP’s Exhibit 7)
19. On [REDACTED] 2019, the second dental reviewer completed a *Preliminary Handicapping Malocclusion Assessment Record*, scoring the Appellant’s overall malocclusion severity to equal 23 points. (CTDHP’s Exhibit 7)
20. The second dental reviewer indicated that only tooth #24 was in overbite on the [REDACTED] 2019 *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP’s Exhibit 7)
21. On [REDACTED] 2019, CTDHP again denied the request for prior authorization for orthodontic treatment. (CTDHP’s Exhibit 8)
22. The second dental reviewer recommended that the Appellant return to his dentist or his oral surgeon to address the post-operative discomfort. (CTDHP’s Exhibit 7)
23. CTDHP’s witness recommended that the Appellant see his primary dentist to determine the reason why the Appellant has pain in his mouth. (Hearing record)
24. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. The OLCRAH received the Appellant’s hearing request on [REDACTED] 2019; the documents were postmarked [REDACTED] [REDACTED], 2019. This final decision was not due until [REDACTED] 2019. This final decision is timely.

CONCLUSIONS OF LAW

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

“Not later than July 1, 2004, and prior to the implementation of a state-wide dental plan that provides for the administration of the dental services portion of the department’s medical assistance, the Commissioner of Social Services shall amend the federal waiver

approved pursuant to Section 1915(b) of the Social Security Act....” Conn. Gen. Stat. § 17b-282b.

2. “*Preliminary Handicapping Malocclusion Assessment Record*”¹ means 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).

“The Department of Social Services shall cover orthodontic services for a Medicaid recipient under twenty-one years of age when the Salzman 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 Salzman 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.

“... [T]he 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 Appellant, as an individual under the age of 21 years who is requesting orthodontic services to be paid by the Medicaid program, must meet the criteria set in Section 17b-282e of the Connecticut General Statutes and Section 17-134d-35 of the Regulations of Connecticut State Agencies in order to be approved for payment by the Medicaid program of orthodontic services.

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

The Appellant's dental records as submitted to CTDHP do not support an objective score of 26 points or more on a correctly scored *Preliminary Handicapping Malocclusion Assessment Record*.

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

The Appellant did not meet the criteria provided by Conn. Agencies Regs. § 17-134d-35 (e)(2), as he has not submitted to CTDHP additional information of a substantial nature about the presence of severe mental, emotional, and/or behavior problems, disturbances or dysfunctions that affect the Appellant's daily functioning and that a licensed psychiatrist or a licensed psychologist who has limited his or her practice to child psychology has recommended orthodontic treatment to treat the Appellant's mental, emotional, and/or behavioral problems as related to his dentofacial deformity.

3. "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).

"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).

Orthodontic treatment is not medically necessary for the Appellant.

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

DISCUSSION

The Appellant testified that he continues to suffer pain from he had oral surgery in [REDACTED] 2018 to remove his wisdom teeth.² CTDHP's witness recommended that the Appellant seek treatment from his dentist to address the reason for the pain.

The Appellant's treating orthodontist did not identify the Appellant's wisdom teeth as being absent from the Appellant's mouth under "MISSING TEETH INFORMATION" (Line 34) of the [REDACTED] 2019 dental claim; under "REMARKS" (Line 35), the treating orthodontist further stated: "Client has no missing teeth."

Clearly, the Appellant's treating orthodontist's submission of the [REDACTED] 2019 dental claim contains gross inaccuracies. As such, the hearing officer cannot rely on its accompanying *Preliminary Handicapping Malocclusion Assessment Record* to be accurate and correctly scored.

The Appellant has not established that the severity of his malocclusion equals or exceeds 26 points on a correctly scored *Preliminary Handicapping Malocclusion Assessment Record*. The Appellant also has not established, in the alternative, that he meets the criteria set in Section 17-134d-35 of the Regulations of Connecticut State Agencies.

Orthodontic treatment is not medically necessary for this [REDACTED]-year-old individual.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

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

² The hearing record is silent as to the exact number of wisdom teeth that were removed in [REDACTED] 2018. Based on the wording of the Appellant's hearing request, more than one wisdom tooth was removed.

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.