

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: ██████████
██████████
Request: ██████████

NOTICE OF DECISION

PARTY

██████████
████████████████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2019, Connecticut Dental Health Partnership (“CTDHP”) issued ██████████
██████████ (the “Appellant”) a *Notice of Action* denying his dental provider’s request for prior
authorization of orthodontic treatment for ██████████ (the “child”), his minor child.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings
 (“OLCRAH”) received the Appellant’s 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
████████████████████, Appellant’s witness
Kate Nadeau, CTDHP’s representative
Greg Johnson, 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 child was not medically necessary.

FINDINGS OF FACT

1. The Appellant's child's date of birth is [REDACTED] (Appellant's testimony)
2. The Appellant's child has HUSKY Health medical coverage. (CTDHP's Exhibit 4)
3. The child grinds his teeth very loudly in his sleep. (Appellant's testimony)(Appellant's witness' testimony)
4. The child does not have mental health issues; he is not being treated by a child psychiatrist or psychologist. (Appellant's testimony)
5. On or after [REDACTED] 2019, [REDACTED] (the "treating orthodontist") filed a request with CTDHP for prior authorization of child's orthodontic treatment. (CTDHP's Exhibit 1)
6. Vincent Fazzino, D.M.D. (the "first dental reviewer") is a CTDHP orthodontic dental consultant. (CTDHP's Exhibit 3)
7. On [REDACTED] 2019, the first dental reviewer scored the severity of the child's malocclusion as 23 points on the *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP's Exhibit 3)
8. On [REDACTED], 2019, CTDHP denied the treating orthodontist's request for prior authorization for the child's orthodontic treatment. (CTDHP's Exhibit 4)
9. Robert Gange, D.D.S. (the "second dental reviewer") is a CTDHP orthodontic dental consultant. (CTDHP's Exhibit 7)
10. On [REDACTED], 2019, the second dental reviewer scored the severity of the child's malocclusion as 23 points on the *Preliminary Handicapping Malocclusion Assessment Record*. (CTDHP's Exhibit 7)
11. On [REDACTED] 2019, CTDHP again denied the treating orthodontist's request for prior authorization for child's orthodontic treatment. (CTDHP's Exhibit 8)
12. 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. This final decision would have become due by [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.

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. "The Department of Social Services shall cover orthodontic services for a Medicaid recipient under twenty-one years of age when the Salzmänn Handicapping Malocclusion Index indicates a correctly scored assessment for the recipient of twenty-six points or greater, subject to prior authorization requirements...." Conn. Gen. Stat. § 17b-282e.

*"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. Regs., Conn. State Agencies § 17-134d-35 (b)(3).

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

The child did not meet the criteria to receive prior authorization for orthodontic services, as provided in Section 17b-282e of the Connecticut General Statutes.

3. Section 17b-282e of the Connecticut General Statutes provides in part:
If a recipient's score on the Salzmänn 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.

Section 17-134d-35 (e)(2) of the Regulations of Connecticut State Agencies provides in part:

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 [sic] that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems.

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

The child's circumstances do not meet the criteria outlined at Section 17b-282e of the Connecticut General Statutes and at Section 17-134-35 (e)(2) of the Regulations of Connecticut State Agencies for demonstrating a severe mental, emotional, or behavioral problem or disturbance, as defined by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, that affects his daily functioning and requires orthodontic treatment.

4. Section 17b-259b (a) of the Connecticut General Statutes provides in part:
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.

"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).

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

CTDHP correctly determined on [REDACTED], 2019 that orthodontic treatment for the child was not medically necessary.

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.