

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

██████████ 2019
Signature Confirmation

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

NOTICE OF DECISION

PARTY

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██████████
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PROCEDURAL BACKGROUND

On ██████████, 2019, 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 ██████████, 2019, the Appellant requested an administrative hearing to contest the Department of Social Services’ (the “Department”) denial of prior authorization to complete orthodontic treatment.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the 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, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

The Appellant

██████████, Appellant’s husband and father of the minor child
Rosario Monteza, BeneCare’s representative
Dr. Vincent Fazzino, BeneCare’s Dental Consultant, via telephone
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

Whether the Department's denial of prior authorization to complete comprehensive orthodontic treatment for ██████, because the treatment was 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 █ 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. ██████ is the child's treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On ██████ 2019, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for the child. (Summary, Ex. 1)
6. On ██████ █, 2019, BeneCare received from the treating orthodontist a *Preliminary Handicapping Malocclusion Assessment Record* with a score of 27 points, models and a panoramic x-ray film of the child's mouth. The treating orthodontist did not indicate on the assessment that the child had any severe deviations affecting her mouth and underlying structures, and wrote no comment on the assessment. (Ex. 2: *Preliminary Handicapping Malocclusion Assessment Record* completed by the treating orthodontist)
7. On ██████, 2019, Vincent Fazzino, D.M.D., a BeneCare orthodontic dental consultant, independently reviewed the child's models and panoramic x-ray film and scored 24 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Fazzino indicated that the dental records did not show the presence of severe deviations affecting the child's mouth and underlying structures. His decision on the application was that the proposed orthodontic treatment was not approved. (Ex. 3: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Fazzino)
8. On ██████, 2019, 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 was 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)

9. On [REDACTED], 2019, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)
10. On [REDACTED], 2019, Geoffrey Drawbridge, D.D.S., another BeneCare orthodontic dental consultant, conducted an appeal review of the child's models and panoramic x-ray film and scored 24 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Drawbridge indicated there was no presence of severe deviations affecting the child's mouth and underlying structures. His decision on the application was that the proposed orthodontic treatment was not approved. (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record completed by Dr. Drawbridge)
11. On [REDACTED] 2019, BeneCare notified the Appellant that it had conducted an appeal review, and that the outcome of the review was that BeneCare's original decision, that orthodontic treatment was not medically necessary for the child, was upheld. (Ex. 7: Appeal Review Decision Letter)
12. The assessment has scoring rules that set criteria for each category of malocclusion, based on objective measurements used to measure the level of severity, for when a tooth qualifies to be scored as maloccluded. For example, for a tooth to be scored as rotated, it must be rotated by a certain number of degrees or more. For other malocclusions, different criteria are used, such as how many millimeters a tooth deviates from its ideal position. (Dr. Fazzino's testimony)
13. In the section of the assessment that evaluates how the upper and lower back teeth align with each other when they bite together (Inter-arch Deviation, Posterior Segments, Relate Mandibular to Maxillary Teeth), the treating orthodontist scored 7 points for 4 lower (mandibular) teeth on the right side and 3 on the left side that he determined were misaligned with their opposing upper teeth. (Ex. 2)
14. For a back tooth to qualify to be scored due to a bad bite relationship, the severity has to be such that the cusp of the lower tooth extends past the cusp of its opposing upper tooth when the teeth meet in a normal bite. (Dr. Fazzino's testimony)

15. Dr. Fazzino and Dr. Drawbridge, in assessments completed independently of each other, each determined that the treating orthodontist erroneously scored 3 points in the section of the assessment titled "Inter-arch Deviation, Posterior Segments" for the child's mandibular canine, 1st premolar and first molar on the left side each being distally misaligned in relation to its opposing maxillary tooth, because the teeth did not meet the criteria to be scored. (Ex. 2, Ex. 3, Ex. 6)
16. The treating orthodontist's assessment was not correctly scored, because 3 points were erroneously scored. (Hearing Record)
17. Without the 3 points erroneously scored by the treating orthodontist, the child does not achieve a score of 26 points or greater. (Ex. 2)
18. None of the three orthodontists who evaluated the child's teeth, including her own treating orthodontist, found evidence of any severe deviations affecting her mouth and underlying structures. (Ex. 2, Ex. 3, Ex. 6)
19. The child has not been diagnosed by a psychologist or psychiatrist with any emotional or mental health condition related to the condition of her teeth. (Appellant's testimony)

CONCLUSIONS OF LAW

1. "The Commissioner of Social Services shall provide Early and Periodic Screening, Diagnostic and Treatment program services, as required and defined as of December 31, 2005, by 42 USC 1396a (a)(43), 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal regulations, to all persons who are under the age of twenty-one and otherwise eligible for medical assistance under this section." Section §17b-261(j) of the Connecticut General Statutes (Conn. Gen. Stat.)
2. "The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. §17b-262
3. "Orthodontic services provided under the early and periodic screening, diagnosis and treatment (EPSDT) program (a) Orthodontic services will be paid for when (1) provided by a qualified dentist; and (2) deemed medically necessary as described in these regulations." Section 17-134d-35(a) of the Regulations of Connecticut State Agencies (Regs., Conn. State Agencies)
4. Conn. Gen. Stat. §17b-259b(a) provides as follows:

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.

5. Conn. Gen. Stat. § 17b-282e provides, in pertinent part, as follows :

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. "The study models submitted for prior authorization must clearly show the occlusal deviations and support the total point score of the preliminary assessment...." Regs., Conn. State Agencies §17-134d-35(f)
7. **Under the scoring standards established for the Salzmann assessment, the child's study models submitted for prior authorization did not show the occlusal deviations necessary to support the required 26 point score on the preliminary assessment.**

8. **There was no substantive information regarding the presence of severe deviations affecting the child's oral facial structures that needed to be considered in determining whether orthodontic treatment was medically necessary for her.**

9. Regs., Conn. State Agencies §17-134d-35(e)(2) provides, in pertinent part, as follows:

(T)he Department shall consider additional information of a substantial nature about the presence of severe mental, emotional, and/or behavioral problems, disturbances or dysfunctions, 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 that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems.

10. **There was no substantive information that the child had the presence of any severe mental, emotional or behavioral problems or disturbances directly related to the malocclusion of her teeth that needed to be considered in determining whether orthodontic treatment was medically necessary for her.**

11. **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.**

12. **The Department 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.**

DECISION

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

James Hinckley

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.