

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

██████████ 2020
Signature Confirmation

Client ID # ██████████
Request # 156646

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, BeneCare Dental Plans (“BeneCare”), a medical contractor for the Department of Social Services (the “Department”), 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 ██████████, 2020, the Appellant requested an administrative hearing to appeal the denial of prior authorization to complete orthodontic treatment. The hearing request was timely in accordance with our Governor’s Executive Order 7M, issued on March 25, 2020, which extended the timeframe for requesting a hearing to within 90 days of when the adverse decision was issued.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020. Due to precautions related to the COVID-19 pandemic the hearing was scheduled to be held telephonically.

On ██████████, 2020, 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.

None of the parties objected to the hearing being conducted telephonically.

The following individuals were present at the hearing:

██████████, the Appellant, via telephone

Magdalena Carter, Appeals Representative for BeneCare, via telephone
Dr. Vincent Fazzino, Clinical Consultant for BeneCare, via telephone
James Hinckley, Hearing Officer

The hearing record was held open for time for the Appellant to provide additional information. On [REDACTED], 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization to complete comprehensive orthodontic treatment for [REDACTED], 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, [REDACTED] (the "child"). (Hearing Record)
2. The child is [REDACTED] years old (D.O.B. [REDACTED]) and is a participant in the Medicaid program, as administered by 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. Dr. [REDACTED] is the child's treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On [REDACTED] 2020, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for the child. (Summary, Ex. 1)
6. The treating orthodontist remarked, in relevant part, on the Dental Claim Form, "Class I malocclusion upper spacing lower mild space deficiency oj (overjet) ob (overbite)." (Ex. 1)
7. On [REDACTED] 2020, BeneCare received from the treating orthodontist a completed *Preliminary Handicapping Malocclusion Assessment Record* with a score of 28 points, supplemented with dental records that included digital models, photographs 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, but commented, "11 oj/job Deep Bite." (Ex. 2: *Preliminary Handicapping Malocclusion Assessment Record* completed by the treating orthodontist)
8. On [REDACTED] 2020, Robert Gange, D.D.S., a BeneCare orthodontic dental consultant, independently reviewed the child's digital models, photographs and panoramic x-ray film and scored 20 points on a completed *Preliminary*

Handicapping Malocclusion Assessment Record. Dr. Gange indicated on the assessment that he observed no presence of severe deviations affecting the child's mouth and underlying structures. He left no written comment on the assessment. His decision on the application was that the proposed orthodontic treatment was not approved. (Ex. 3: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Gange)

9. On [REDACTED], 2020, 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)
10. On [REDACTED] 2020, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)
11. On [REDACTED] 2020, Geoffrey Drawbridge, D.D.S., another BeneCare orthodontic dental consultant, conducted an independent appeal review of the child's digital models, photographs and panoramic x-ray film and scored 21 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Drawbridge indicated he did not observe any presence of severe deviations affecting the child's mouth and underlying structures. He commented, "Provider's assessment of overbite and overjet is not supported by records submitted (Lower incisor edge must impinge upon palatal tissue.)" Dr. Drawbridge's decision on the application was that the proposed orthodontic treatment was not approved. (Ex. 6: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Drawbridge)
12. On [REDACTED] 2020, 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. 8: Appeal Review Decision Letter)
13. Neither of BeneCare's orthodontic consultants determined that the child qualified for a score of 26 points or greater on the preliminary assessment. (Ex. 3, Ex. 6)
14. If not for the points erroneously scored by the treating orthodontist for overjet and overbite for teeth that did not meet the scoring criteria, his score for the child on the preliminary assessment would not have been 26 points or greater. (Hearing Record)

15. Neither the treating orthodontist nor the two BeneCare orthodontic consultants determined that the child had any presence of severe deviations affecting her mouth and underlying structures that, if left untreated, would cause irreversible damage. (Ex. 2, Ex. 3, Ex. 6)
16. The Appellant included with her appeal a letter from the child's pediatrician recommending orthodontic treatment. The letter indicated that the child "became depressed and anxious in the last few months due to feeling embarrassed by her appearance due to her misaligned teeth." The letter also stated that "other children started making fun of her because of her teeth" and that she "has been seen by the school psychologist for her emotional problems." (Ex. 5-B: Letter from pediatrician)
17. On [REDACTED] 2020, Dr. Geoffrey Drawbridge wrote the following in response to the letter from the child's pediatrician:

The Guidelines for Scoring of Orthodontic Cases specifically states for scores under 26 points that approval of orthodontic treatment may be appropriate if a letter from a licensed child psychologist or psychiatrist is submitted stating that an ongoing emotional problem is caused by the patient's dental esthetics. The evaluation must clearly and substantially document how the dentofacial deformity is related to the child's emotional and/or behavioral problems and that orthodontic treatment will significantly ameliorate those problems.

The submitted narrative does not meet these criteria and orthodontic treatment is not approved at this time.

(Ex. 8A: Response from Dr. Drawbridge)

18. The child has an epileptic seizure disorder. (Appellant's testimony)
19. The child was recently referred to see a licensed clinical psychologist. As of the date of the hearing, the child was still in the process of being evaluated by the psychologist. (Appellant's testimony)
20. Post-hearing, during the time the record was held open, the Appellant submitted a letter from a clinical psychologist. The psychologist noted in the letter that she evaluated the child over a period of three visits. Her evaluation concluded that the child suffered mocking from her peers due to her misaligned teeth which "has caused her considerable emotional distress" and "has made her avoidant of school and social situations." The psychologist commented, although noting she was not a medical doctor, that "it is well known that stress increases the risk for seizures in someone with seizure disorder, such as (the child)." She went on to recommend that the child be approved for orthodontic services "to correct her

teeth in order to reduce her anxiety, thereby protecting her mental health, self-esteem, physical health and future.” (EX. A: Letter from [REDACTED], PhD)

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 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....

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 Salzman 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 a correctly scored preliminary assessment.**
8. **There was no evidence that the child had the presence of severe deviations affecting her oral facial structures.**
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. **BeneCare was correct when it initially determined that the child did not meet the criteria for approval of orthodontic treatment. 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 severe deviations affecting her oral facial structures. While the Appellant claimed her child had emotional issues that required orthodontic treatment, the letter she provided to BeneCare in support of her appeal was from a pediatrician, not a psychiatrist or psychologist as required under state regulation.**
11. **In light of a recent evaluation performed by a licensed clinical psychologist, orthodontic treatment is medically necessary for the child. When the score on the preliminary assessment is less than 26 points the Department considers the evaluation of a licensed psychologist in determining the need for orthodontic services. In the professional opinion of the psychologist that evaluated the child, she has severe emotional issues related to her teeth that would be significantly ameliorated by orthodontic treatment.**
12. **The Department, through its contractor, BeneCare, was incorrect when it denied, as not medically necessary, prior authorization to complete comprehensive orthodontic services for the child.**

DISCUSSION

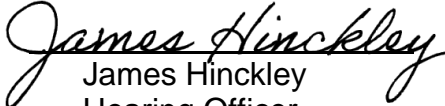
BeneCare did not have, at the time it made its initial determination, the benefit of the psychologist's evaluation of the child, which had not yet been performed. In light of the psychologist's evaluation performed since that time, BeneCare's denial must be overturned.

DECISION

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

ORDER

1. BeneCare must overturn its denial of approval of prior authorization to complete orthodontic treatment on the child.
2. Proof that BeneCare has overturned its denial must be sent to the undersigned fair hearing officer, as compliance with this decision, by no later than [REDACTED] 2020.


James Hinckley
Hearing Officer

cc: Diane D'Ambrosio, Connecticut Dental Health Partnership
Magdalena Carter, 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.