

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-9902

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

Client ID # ██████████
Case ID # ██████████
Request # 164064

NOTICE OF DECISION
PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, BeneCare Dental Plans (“BeneCare”) sent ██████████ (the “Appellant”) a notice of action denying a request for prior authorization of orthodontia for her minor child, indicating that the severity of the child’s malocclusion did not meet the criteria set in state regulations to approve the proposed treatment.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the Department’s denial of prior authorization of orthodontia.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2020.

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 telephonically.

The following individuals were present at the hearing:

██████████ Appellant
Kate Nadeau, BeneCare’s Representative
Dr. Greg Johnson, Benecare’s Dental Consultant
Cindy Ramos, BeneCare Representative
Melissa Miyasato, Interpreter, Interpreters and Translators, Inc.
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization through the Medicaid program for the Appellant's child's orthodontic services was in accordance with state regulations.

FINDINGS OF FACT

1. The Appellant is the father of [REDACTED], ("the child"). (Hearing Record)
2. The child (D.O.B. [REDACTED]/[REDACTED]) is a participant in the Medicaid program, as administered by the Department. (Appellant Testimony, Hearing Record)
3. Benecare is the Department's contractor for reviewing dental providers requests for prior authorization of orthodontic treatment. (Hearing Record)
4. [REDACTED] is the child's treating orthodontist ("the treating orthodontist"). (Hearing Summary, Exhibit 1: Orthodontia Services Claim Form)
5. On [REDACTED], 2020, the treating orthodontist requested prior authorization to complete orthodontic services for the child. (Hearing Summary, Ex. 1: Claim form)
6. On [REDACTED] 2020, BeneCare received from the treating orthodontist, a Preliminary Handicapping Malocclusion Assessment Record with a score of 17 points, Dental models and Panorex films of the Appellant's child's mouth. The treating orthodontist commented, "Client has no missing teeth. Continuation of care – 18 months of treatment left. Scored from initial records. Patient had braces placed in NY in [REDACTED] of 2019." (Ex. 2: Malocclusion Assessment Record, [REDACTED]/2020)
7. On [REDACTED], 2020, Dr. Benson Monastersky, DMD, BeneCare's orthodontic dental consultant, independently reviewed the child's models and panoramic radiographs, and arrived at a score of 18 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Monastersky also found no presence of severe deviations affecting the mouth and underlying structures. (Ex. 3: Preliminary Handicapping Malocclusion Assessment Record, [REDACTED]2020)
8. On [REDACTED] 2020, BeneCare denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that the scoring of the child's mouth was less than the 24 points needed for coverage and the child's teeth are not crooked enough to qualify for braces and they currently pose no threat to the jawbone or the attached soft issue. (Ex. 5: Notice of Action for Denied Services or Goods, [REDACTED]/2020)
9. On [REDACTED], 2020, Dr. Vincent Fazzino, DMD, BeneCare's orthodontic dental consultant, reviewed the child's models and panoramic radiographs and arrived at a score of 19 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Fazzino also found no presence of severe deviations

affecting the mouth and underlying structures. (Ex. 6: Preliminary Handicapping Malocclusion Assessment Record, █████/2020)

10. On █████ 2020, BeneCare notified the Appellant that the child's score of 19 points did not meet the criteria for orthodontic treatment. (Ex. 7A: Letter Regarding Orthodontic Services, █████/2020)
11. On █████ 2020, an administrative hearing was conducted.
12. On █████, 2020 after reviewing medical documentation the Department approved continuation of care for orthodontia services for the child. (Ex. 10: Letter of approval, █████/2020)
13. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on █████ 2020. Therefore, this decision is due not later than █████, 2020. However, due to the public health emergency, the governor's executive order 7M, dated █████, 2020 extends the time frame a decision must be reached from 90 days of request for a fair hearing to 120 days. Therefore, this decision is due not later than █████, 2021 and is timely.

CONCLUSIONS OF LAW

1. State statute provides that the Department may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-262]
2. State regulations provide that orthodontic services for services provided for individuals less than 21 years of age will be paid for when provided by a qualified dentist and deemed medically necessary as described in these regulations. [Conn. Agencies Regs. §17-134d-35(a)]

The Department approved orthodontia for the child because it was determined to be medically necessary.

3. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178(1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990).

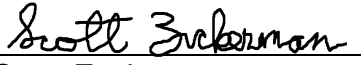
4. "Subject to the conditions described in this chapter, the requester has the right to a Fair Hearing if: (1) the Department denies the assistance unit's application for benefits." Uniform Policy Manual ("UPM") § 1570.05(B)
5. "The Department denies or dismisses a request for a fair hearing if the requester or his or her representative withdraws the request in writing." UPM § 1570.05(C)(2)

The Appellant did not withdraw his request for a hearing decision in writing.

The Appellant's appeal is moot because the Department approved orthodontia for the child, therefore there is no issue on which to rule.

DECISION

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



Scott Zuckerman
Hearing Officer

Pc: 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 Administrative Hearings and Appeals, 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, 165 Capitol Avenue, 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 the Commissioner's 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.