

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

██████████ 2021
Signature confirmation

Case: ██████████
Client: ██████████
Request: 167231

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2020, the Connecticut Dental Health Partnership (“CTDHP”), the Department of Social Services’ dental subcontractor, issued ██████████ (the “Appellant”) a *Notice of Action* denying prior authorization of orthodontic treatment for ██████████ (the “child”), her minor child.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s hearing request, postmarked ██████████ 2020.

On ██████████ 2020, the OLCRAH issued a notice to the Appellant scheduling an administrative hearing for ██████████, 2020. The OLCRAH granted the Appellant a postponement of the hearing date.

On ██████████ 2021, 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 individuals attended by telephone-conferencing:

██████████, Appellant
Cindy Ramos, CTDHP’s Representative
Stanley Wolfe, D.D.S., CTDHP’s Witness
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2021.

STATEMENT OF ISSUE

The issue is whether CTDHP correctly determined that orthodontic treatment for the Appellant's child was not medically necessary, as "medically necessary" is defined in state statute.

FINDINGS OF FACT

1. The child is ■ years old. (Appellant testimony)
2. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
3. The child is self-conscious about her teeth; the child told the Appellant that she is happy to wear a mask in school as it covers her mouth. (Appellant Testimony)
4. The child has learning delays for which she has an IEP [Individualized Education Program] with her school. (Appellant Testimony)
5. The Appellant has not made an appointment for the child to be assessed by a psychologist or a psychiatrist. (Appellant Testimony)
6. CTDHP received a request from Braces On Me for prior authorization for the child's comprehensive orthodontic treatment. (CTDHP Exhibit 1)
7. On ■ 2020, ■ D.M.D. (the "treating orthodontist") completed a *Preliminary Handicapping and Malocclusion Assessment Record* scoring the severity of the malocclusion of the child's teeth as 29 points. (CTDHP Exhibit 2)
8. On the ■ 2020 *Preliminary Handicapping and Malocclusion Assessment Record* the treating orthodontist left unanswered the following: "The Department shall consider additional information of a substantial nature about the presence of other severe deviations affecting the mouth and underlying structures. Other deviations shall be considered severe if, left untreated they would cause irreversible damage to the teethe and underlying structures. Is there presence of other severe deviations affecting the mouth and the underlying structures?" (CTDHP Exhibit 2)
9. Benson Monastersky, D.M.D. (the "first dental reviewer") and Vincent Fazzino, D.M.D. (the "second dental reviewer") are CTDHP dental consultants. (CTDHP Exhibits 3 and 7)
10. The first and second dental reviewers scored the severity of the child's malocclusion to equal 17 points and 18 points, respectively, and marked "N" in answer to the question: "Is there presence of other severe deviations affecting the mouth and the underlying structures?" (CTDHP Exhibits 3 and 7)
11. The Appellant did not submit documentation of the presence of other severe deviations affecting the child's oral facial structures to CTDHP. (Hearing record)

12. On [REDACTED] 2020 and [REDACTED], 2020, CTDHP denied the treating orthodontist's request for prior authorization of the child's orthodontic treatment. (CTDHP Exhibits 4 and 9)
13. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides the deadline for the rendering of a hearing decision and accordingly extends that deadline when a hearing is postponed.

Executive Order 7M, Section 3, dated March 25, 2020, extends the period for rendering a hearing decision. Executive Order 7DDD, Section 2, dated June 29, 2020 in part authorizes a further extension to the time frames provided by Executive Order 7M, Section 3, dated March 25, 2020 that would have lapsed on June 28, 2020.

ORDER, (Commissioner Deidre S. Gifford, 4/13/2020) provides in part: "Section 17b-61(a)'s timeframe for the commissioner or commissioner's designated hearing officer to render a final decision is extended from 90 to 'not later than 120 days' after the date the commissioner receives a request for a fair hearing pursuant to Section 17b-60...."

On [REDACTED] 2020, the OLCRAH received the Appellant's [REDACTED] 2020 postmarked hearing request. The OLCRAH granted the Appellant a 31-day postponement of her [REDACTED] 2020 hearing date. This hearing decision would have become due with the extended deadlines on [REDACTED] 2021. This final decision is timely.

CONCLUSIONS OF LAW

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

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

2. "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...." Conn. Gen. Stat. § 17b-282e.

The Appellant did not establish that the severity of her child's malocclusion met or exceeded a score of 26 points or more on an objectively scored *Preliminary Handicapping Malocclusion Assessment Record*.

3. "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...." Conn. Gen. Stat. §17b-282e.

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

If the total score is less than [twenty-six (26)] points the 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.

Regs., Conn. State Agencies § 17-134d-35 (e)(2).

The child does not meet the criteria at Conn. Gen. Stat. § 17b-282e to permit authorization of orthodontic treatment with a total score of less than 26 points on an objectively scored *Preliminary Handicapping Malocclusion Assessment Record*, as the Appellant has not established with substantive documentation that the child has severe deviations affecting her oral facial structures.

The child does not meet the criteria at Conn. Gen. Stat. § 17b-282e and Conn. Agencies Regs. § 17-134d-35 (e)(2) to permit authorization of orthodontic treatment as she has a total score of less than 26 points on an objectively scored *Preliminary Handicapping Malocclusion Assessment Record* and did not submit a diagnostic evaluation—performed by a licensed psychiatrist or a licensed psychologist who has accordingly limited his or her practice to child psychiatry or child psychology—that clearly and substantially documents how the child’s dentofacial deformity is related to the child's mental, emotional, and/or behavior problems and provides the opinion that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems.

4. “Orthodontic services will be pair for when (1) provided by a qualified dentist; and (2) deemed medically necessary as described in these regulations.” Conn. Agencies Regs. §17-134d-35 (a).

Section 17b-259b (a) of the Connecticut General Statutes provides:

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).

The Appellant did not demonstrate that the child's malocclusion requires orthodontic intervention in order to attain or maintain the child's achievable health and independent functioning, as the criteria is described at Conn. Gen. Stat. § 17b-259b (a).

CTDHP correctly determined that orthodontic treatment for the Appellant's child was not medically necessary, as "medically necessary" is defined in state statute.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Cc: Magdalena Carter, 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 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.