

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

██████████ 2021
Signature Confirmation

Client ID # ██████████
Request # 171515

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2021, BeneCare Dental Plans (“BeneCare”), dental services 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 ██████████ malocclusion did not meet the medical necessity requirement to approve the proposed treatment.

On ██████████ 2021, the Appellant requested an administrative hearing to appeal the denial of prior authorization to complete orthodontic treatment.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021.

On ██████████ 2021, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2021. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On ██████████ 2021, 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 Appellant had no objection to a telephonic hearing.

The following individuals were present at the hearing:

██████████ the Appellant
Kate Nadeau, Grievance and Appeals Representative for BeneCare

Dr. Vincent Fazzino, Clinical Consultant for BeneCare
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization to complete comprehensive orthodontic treatment for █████ based on its determination that the treatment did not meet the medically necessary requirement, 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 13 years old (D.O.B. █████/2007) 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. █████ █████ █████ is the child's treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On █████ 2020, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for the child. (Summary, Ex. 1)
6. On █████ 2020, BeneCare received from the treating orthodontist a completed *Preliminary Handicapping Malocclusion Assessment Record* with a score of 19 points, and dental records that included digital models, photographs, a panoramic x-ray of the child's mouth and a cephalometric x-ray. The treating orthodontist indicated on the assessment that the child had severe deviations affecting her mouth and underlying structures. She commented on the form, "#11 is impacted as per pan" (Ex. 2: *Preliminary Handicapping Malocclusion Assessment Record* completed by the treating orthodontist)
7. On █████ 2020, Vincent Fazzino, D.M.D., a BeneCare orthodontic dental consultant, independently reviewed the child's dental records and scored 23 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Fazzino indicated he observed no presence of severe deviations affecting the child's mouth and underlying structures. He commented on the form, "Please re-evaluate upon dental maturity." 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 [REDACTED] 2021, 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] 2021, the Department received the Appellant's request for an administrative hearing. (Ex. 5: Appeal and Administrative Hearing request form)
10. On [REDACTED] 2021, Robert Gange, D.D.S., another BeneCare orthodontic dental consultant, conducted an independent appeal review of the child's dental records and scored 20 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Gange indicated he observed no presence of severe deviations affecting the child's mouth and underlying structures. Dr. Gange commented on the form, "Pan does not show impacted cuspid. Resubmit once dentition matures." His decision on the application was that the proposed orthodontic treatment was not approved. (Ex. 6: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Gange)
11. On [REDACTED] 2021, 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. Tooth #11 is a cuspid or canine tooth. (Hearing Record)
13. Under BeneCare's scoring rules, an impacted canine tooth is considered a handicapping malocclusion and would qualify a child for approval for treatment. (Dr. Fazzino's testimony)
14. Since the time of the application, the child's tooth #11 has erupted through the gum tissue. The tooth is not erupting into its proper position in the child's mouth and is positioned behind other teeth. (Appellant's testimony)
15. A tooth that has erupted cannot be considered impacted. An impacted tooth is one that has not erupted and is unable to ever erupt. (Dr. Fazzino's testimony)
16. All three orthodontists that evaluated the child's teeth determined that she qualified for a score on the assessment that was less than the 26 points required for coverage. (Ex. 2, Ex. 3, Ex. 6)

17. The Appellant raised no claim that the child had any mental health condition that was 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 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 a score of 26 points or greater on the preliminary assessment.**
8. **When the total point score on the preliminary assessment is less than 26 points the Department must consider whether certain other factors make orthodontic treatment medically necessary. One such factor is the presence of severe deviations affecting the oral facial structures. There was no evidence that the child had the presence of any such severe deviations.**
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. A second factor that had to be considered was whether there was evidence that the child's dentofacial deformity was related to the presence of a severe mental, emotional and or behavior problem. Such problem had to have been diagnosed by a licensed child psychiatrist or psychologist. No claim was made that the child had the presence of any such problem.

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, and was correct when it found that there was no substantial evidence of the presence of other factors or conditions that made orthodontic treatment medically necessary.

12. The Department, through its contractor, BeneCare, was correct when it denied, as not medically necessary, prior authorization to complete comprehensive orthodontic services for the child, in accordance with state statute and regulations.

DISCUSSION

Both of BeneCare's orthodontic dental consultants determined by their evaluations that the child's tooth #11 was not impacted. Although the tooth was unerupted at the time of the child's examination, her dental records indicated there was adequate space for the tooth to erupt later. Both consultants recommended that the child be reevaluated upon dental maturity; if the tooth was still unerupted at dental maturity it would be considered a handicapping malocclusion.

The Appellant's testimony that tooth #11 has since erupted establishes that BeneCare's consultants' opinions that the tooth was not impacted were correct. The consultants' recommendations to reevaluate are now moot since the reevaluations were to track the progress of tooth #11. It would only be appropriate to file a new application for the child if a new evaluation determines that her teeth qualify for a score of 26 points or greater on the assessment.

DECISION

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

James Hinckley
James Hinckley
Hearing Officer

cc: 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, 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 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.