

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

Case ID # ██████████
Client ID # ██████████
Request # 176221

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

On ██████████ 2021, BeneCare Dental Plans (“BeneCare”) administered by the Connecticut Dental Health Partnership (“CTDHP”), sent ██████████ (the “Appellant”), in care of ██████████, a notice of action denying a request for prior authorization of orthodontia for the Appellant indicating that the severity of the Appellant’s malocclusion did not meet the requirements in state law to approve the proposed treatment and that orthodontia was not medically necessary.

On ██████████ 2021, ██████████ requested an administrative hearing to contest the Department’s action.

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

On ██████████ 2021, OLCRAH, at ██████████ request, issued a notice rescheduling the administrative hearing for ██████████ 2021.

On ██████████ 2021, under sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephonic conferencing.

The following individuals participated in the hearing:

██████████ Appellant’s Maternal Aunt
██████████ Appellant’s Maternal Grandmother
Cindy Ramos, BeneCare Representative
Dr. Greg Johnson, BeneCare Dental Consultant
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny orthodontia for the Appellant was correct under state statutes and regulations.

FINDINGS OF FACT

1. The maternal aunt shares custody of the Appellant with her brother [REDACTED]. (Hearing record; Appellant's testimony)
2. The Appellant is a participant in the Medicaid program, as administered by the Department of Social Services (the "Department"). (Hearing record; Testimony)
3. BeneCare/CTDHP is the Department's contractor for reviewing the dental provider's requests for prior authorization of orthodontic treatment. (Hearing record)
4. On [REDACTED] 2021, BeneCare received from the treating provider, [REDACTED], a Preliminary Handicapping Malocclusion Assessment Record with a score of 26 points. Models and x-rays of the Appellant's mouth were used for the evaluation. (Exhibit 2A: Malocclusion Assessment Record)
5. On [REDACTED] 2021, Dr. Benson Monastersky, DMD., BeneCare's orthodontic dental consultant, independently reviewed the Appellant's X-rays, and models of the Appellant's teeth, and arrived at a score of 18 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Monastersky found no evidence of severe irregular placement of the Appellant's teeth within the dental arches and found no irregular growth or development of the Appellant's jaw. (Exhibit 3A: Preliminary Handicapping Malocclusion Assessment Record)
6. On [REDACTED] 2021, BeneCare denied the treating provider's request for prior authorization for orthodontic services as the scoring of the Appellant's mouth was less than the 26 points needed for coverage, the Appellant's teeth are not crooked enough to qualify for braces, and they currently pose no threat to the jawbone or the attached soft tissue. Also, there was no evidence that a diagnostic evaluation has been done by a licensed child psychologist or a licensed child psychiatrist indicating that the Appellant's dental condition is related to the presence of severe mental or emotional, and/or behavioral problems, disturbances, or dysfunctions, as defined in the current edition of the Diagnostic Statistical Manual and orthodontic treatment will significantly improve such problems, disturbances, or dysfunctions. (Exhibit 4A: Notice of Action for Denied Services or Goods)
7. On [REDACTED] 2021, [REDACTED] the Appellant's maternal uncle requested an administrative hearing to contest the Department's decision to deny orthodontia services for his nephew the Appellant. (Exhibit 5A: Administrative Hearing Request)

8. On [REDACTED] 2021, Dr. Geoffrey Drawbridge, DDS., BeneCare's orthodontic dental consultant, independently reviewed the Appellant's X-rays, and models of the Appellant's teeth, and reached a score of 17 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Drawbridge found no evidence of severe irregular placement of the Appellant's teeth within the dental arches and found no irregular growth or development of the Appellant's jaw. (Exhibit 7A: Preliminary Handicapping Malocclusion Assessment Record)
9. On [REDACTED] 2021, BeneCare notified the Appellant's uncle that his Appellant's score of 17 points did not meet the requirements for orthodontic treatment and that such treatment was not medically necessary. (Exhibit 8A: Letter regarding Orthodontic Services)
10. On [REDACTED] 2021, an administrative hearing was held. (Hearing record)
11. On [REDACTED] 2021, CTDHP approved the orthodontia request for her nephew. CTDHP's decision to approve orthodontia coverage for the Appellant's nephew means the previous prior authorization denial has been overturned and as a result, the Appellant's claim is now approved. Because of this, there has been no "action" taken to deny orthodontia services covered under the HUSKY program. (Exhibit 9: Determination letter)
12. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat") § 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 [REDACTED] 2021, with the decision due no later than [REDACTED] 2021. However, a 23-day extension was granted due to a reschedule request, this decision is expected no later than [REDACTED] 2021. (Hearing Record)

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Regulations of Connecticut State Agencies §17-134d-35(e) provides when an eligible recipient is determined to have a malocclusion, the attending dentist should refer the recipient to a qualified dentist for the preliminary examination of the degree of malocclusion. (2) 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 be clear and substantially document how the dentofacial deformity is related to the Appellant's mental, emotional, and/or behavior problems and that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems. (3) A recipient who becomes Medicaid eligible and is already receiving orthodontic treatment must demonstrate that the need for service requirements specified in subsections (e) (1) and (2) of these regulations were met before orthodontic treatment commenced, meaning that before the onset of treatment the recipient would have met the need for services requirements.

3. "The Department's Uniform Policy Manual ("UPM") is the equivalent of 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)).

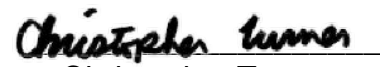
UPM § 1570.25 (c)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the Department's policies and regulations, to resolve the dispute.

"When the actions of the parties themselves cause a settling of their differences, a case becomes moot." *McDonnell v. Maher*, 3 Conn. App. 336 (Conn. App. 1985), citing, *Heitmuller v. Stokes*, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921).

The Department has approved the orthodontia request for her nephew. Accordingly, the Appellant's appeal issue has been resolved, therefore there is no issue on which to rule.

DECISION

The Appellant's appeal is dismissed as moot.


Christopher Turner
Hearing Officer

Cc: Rita LaRosa, Connecticut Dental Health Partnership,
P.O. Box 486 Farmington, CT 06032
Magdalena Carter, Connecticut Dental Health Partnership
Cindy Ramos, 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, law, and 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 requested 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 the Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to the 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 if 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 06105-3725. A copy of the petition must also be served to 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 under §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.