

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 # 177675

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 ██████████’s 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, 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 following individuals were present at the hearing:

██████████ Appellant
██████████, Appellant’s husband
Rosario Monteza, Grievance and Appeals Representative for BeneCare
Dr. Benson Monastersky, Clinical Consultant for BeneCare, via telephone
Cindy Ramos, BeneCare representative, observing
James Hinckley, Hearing Officer

The hearing record was held open for time for BeneCare to review and respond to new information presented at the hearing.

On [REDACTED] 2021, after reviewing the new information, BeneCare approved the requested orthodontic treatment.

STATEMENT OF THE ISSUE

The issue is whether BeneCare's denial of prior authorization to complete comprehensive orthodontic treatment for the Appellant's child, 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, [REDACTED] (the "child"). (Hearing Record)
2. The child is 14 years old (D.O.B. [REDACTED]/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. [REDACTED] is the child's treating orthodontist (the "treating orthodontist"). (Ex. 1: Prior Authorization Claim Form)
5. On [REDACTED] 2021, the treating orthodontist requested prior authorization to complete comprehensive orthodontic treatment for the child. (Summary, Ex. 1)
6. On [REDACTED] 2021, BeneCare received from the treating orthodontist a completed *Preliminary Handicapping Malocclusion Assessment Record* with a score of 26 points, and dental records that included digital models, a cephalometric x-ray, and a panoramic x-ray of the child's mouth. The treating orthodontist did not indicate on the assessment that the child had severe deviations affecting her mouth and underlying structures. No comments were made on the assessment form. (Ex. 2: *Preliminary Handicapping Malocclusion Assessment Record* completed by the treating orthodontist)
7. On [REDACTED] 2021, Vincent Fazzino, D.M.D., a BeneCare orthodontic dental consultant, independently reviewed the child's dental records and scored 24 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. Dr. Fazzino made no comment on the assessment form. 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. Included with the Appellant's [REDACTED] 2021 hearing request form was a [REDACTED] 2021 letter from the treating orthodontist in support of her appeal. The letter stated, in relevant part, "Husky will consider approving treatment for patients with scores lower than 26 on the basis of other deviations. If these deviations are severe enough and left untreated, they would cause irreversible damage to the teeth and underlying structures. ...In my professional opinion, her diagnosis including a partial posterior open bite and full anterior open bite will lead to, if untreated, damage to the posterior contacting dentition." (Ex. 5-C: Appeal letter from treating orthodontist)
11. On [REDACTED] 2021, Geoffrey Drawbridge, D.D.S., another BeneCare orthodontic dental consultant, conducted an independent appeal review of the child's dental records and scored 22 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Drawbridge indicated he observed no presence of severe deviations affecting the child's mouth and underlying structures. His 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. Dr. Drawbridge wrote a response to the letter from the treating orthodontist that was included with the Appellant's appeal. It stated, "This is being sent in response to provider's letter of [REDACTED]/21 stating his concern for potential "damage to the posterior contacting dentition" due to his assessment stated as including a full anterior and partial posterior open bite. The review of the diagnostic information submitted by the provider demonstrates a posterior open bite which includes one premolar and the left canine. Teeth #7 and #8 are not in contact and were scored as "open". There are no indications of any trauma in the posterior or anterior occluding surfaces which might be observed on casts or any

obvious periodontal changes that might be observed on the panorex due to traumatic occlusion. The diagnostic information which was submitted does not support the assessment or subsequent comments of the provider. Open bites, may adversely effect function and deserve the attention of adequate dental care. However, the assessment guidelines provided do not qualify a need for orthodontic treatment in this case.” (Ex. 9-A: Letter of response from Dr. Drawbridge)

13. 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)
14. At the hearing, the Appellant submitted a new letter from the treating orthodontist. In addition to restating concerns mentioned in his [REDACTED] 2021 appeal letter (Ex. 5-C), the treating orthodontist’s new letter added, “In addition, Sierra has a TMJ diagnosis of bilateral anterior disc displacement with reduction with pain and difficulty chewing. Certainly, resolving her malocclusion will assist in normalizing the forces exerted in the TMJ’s and reduce the probability of future untoward clinical outcomes in relation to the TMJ.” (Ex. A: [REDACTED] 2021 letter from treating orthodontist)
15. On [REDACTED] 2021, Robert Gange, D.D.S., another BeneCare orthodontic dental consultant, conducted an independent review of the child’s dental records in consideration of the new information provided by the treating orthodontist and scored 26 points on a completed *Preliminary Handicapping Malocclusion Assessment Record*. Dr. Gange’s decision on the application was that the proposed orthodontic treatment was **approved**. (Ex. 10: *Preliminary Handicapping Malocclusion Assessment Record* completed by Dr. Gange)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
1. “The Department’s Uniform Policy Manual (“UPM”) “is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).
2. UPM § 1570.05(A) provides that “The purpose of the Fair Hearing process is to allow the requester of the Fair Hearing to present his or her case to an impartial hearing officer if the requester claims that the Department has either acted erroneously or has failed to take a necessary action within a reasonable period of time.”

3. 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 criteria in this chapter, to resolve the dispute.”
4. **The Appellant requested the hearing in order to appeal the denial of prior authorization to complete comprehensive orthodontic treatment for her child. On ██████████ 2021, the Department approved the request for prior authorization. Therefore, the issue is no longer in dispute.**
5. “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).
6. **Subsequent to the Department’s approval of the requested services there is no practical relief that can be afforded through an administrative hearing.**

DECISION

The Appellant’s appeal is dismissed as moot.

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.