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

2021
Signature Confirmation

Client ID
Case ID
Request # 178248

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2021, Connecticut Dental Health Partnership ("CTDHP") sent ("minor child") a notice of action denying a request for prior authorization of orthodontia treatment indicating that the proposed orthodontia treatment is not medically necessary.

On 2021, - ("Appellant") requested an administrative hearing to contest CTDHP's denial of prior authorization of orthodontia for the minor child.

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 called in for the hearing on 2021:

-
Cindy Ramos, CTDHP Representative
Dr. Benson Monastersky, DMD, CTDHP Dental Consultant
Lisa Nyren, Fair Hearing Officer

The record remained open for the submission of additional evidence. On 2021, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether CTDHP's denial of prior authorization through the Medicaid program for the minor child's orthodontic services as not medically necessary was in accordance with state statutes and state regulations.

FINDINGS OF FACT

1. ("Appellant") is the grandmother and legal guardian of the minor child, ("minor child"). (Hearing Record)

2. The minor child is years old born on . (Exhibit 1: Prior Authorization Claim Form, Exhibit 2: Preliminary Malocclusion Assessment Record, and Exhibit 5: Hearing Request)

3. The minor child is a participant in the Medicaid program, as administered by the Department of Social Services (the "Department"). (Hearing Record)

4. CTDHP is the Department's contractor for reviewing dental providers' requests for prior authorization of orthodontic treatment. (Hearing Record)

5. , (the "treating orthodontist") is the minor child's treating orthodontist. (Hearing Summary, Exhibit 1: Prior Authorization Claim Form and Exhibit 2: Preliminary Malocclusion Assessment Record)

6. On 2021, CTDHP received a prior authorization request from the treating orthodontist to complete orthodontic services for the minor child. (Hearing Summary and Exhibit 1: Prior Authorization Claim Form)

7. On 2021, CTDHP received from the treating orthodontist, a Preliminary Handicapping Malocclusion Assessment Record with a score listed as 24 points, models, x-rays and photographs. The treating orthodontist did not find the presence of other severe deviations affecting the mouth and underlying structures. (Hearing Summary and Exhibit 2: Preliminary Malocclusion Assessment Record)

8. On 2021, Dr. Benson Monastersky, DMD, CTDHP's orthodontic dental consultant, independently reviewed the child's models, x-rays, and photographs and arrived at a score of 23 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Monastersky did not find evidence of severe irregular placement of the teeth within the dental

arches and no irregular growth or development of the jawbones. Dr. Monastersky found no evidence presented stating the presence of emotional issues directly related to the child's dental situation and determined that orthodontia services were not medically necessary. (Hearing Summary, Exhibit 3: Preliminary Handicapping Malocclusion Assessment Record)

9. On [redacted] 2021, CTDHP notified the child that the request for orthodontic services was denied. CTDHP denied the treating orthodontist's request for prior authorization for orthodontic services for the reason that orthodontia treatment is not medically necessary under the factors set forth in state statutes and state regulations. Specifically, the scoring of the minor child's mouth was less than the 26 points needed for coverage, there was no additional evidence of the presence of severe deviations affecting the mouth or underlying structures, which, if left untreated, would cause irreversible damage. In addition, there was no evidence that a diagnostic evaluation has been done by a licensed child psychologist or a licensed child psychiatrist indicating the child has the presence of a severe mental, emotional, or behavior problem as defined in the current edition of the Diagnostic Statistical Manual which orthodontic treatment will significantly improve such problems, disturbances or dysfunctions. (Exhibit 4: Notice of Action for Denied Services or Goods)

10. On [redacted] 2021, the Department received a request for an administrative hearing from the Appellant. Included with the request was a letter from [redacted] (the "APRN"), [redacted], a treating orthodontist patient treatment card, and a letter from the Appellant. (Exhibit 5: Hearing Request and Supporting Medical Documents)

11. The APRN writes, "[The minor child] is followed by [redacted] for chronic headaches and migraines. She also suffers from long standing jaw pain and misalignment, both of which contribute to worsening headaches and migraines. As recommended by her orthodontist, [the minor child] would benefit from proper orthodontic treatment. Please take this into consideration." (Exhibit 5: Hearing Request and Supporting Medical Documents)

12. The treating orthodontist treatment card states in pertinent part, "PT complains of jaw pain. Discussed importance of RB wear to correct Brody crossbite and class II. Informed pt and grandmother that if we do not have good growth, we may not be able to correct class II and jaw surgery would be the next option. They may be interested in exploring that option as they are concerned about facial appearance (pt has [redacted]). Also discussed monitoring TMJ issues and will refer to TMD specialist as needed." (Exhibit 5: Hearing Request and Supporting Medical Documents)

13. A Brody cross bite occurs when the upper teeth are wider than the lower teeth which includes molars and bicuspids. The minor child's score includes the first and second premolars or bicuspids, but not the first molars, therefore this is not a true Brody cross bite. (Dental Consultant's Testimony)

14. TMJ refers to temporomandibular joint. TMJ refers to clicking in the jaw and jaw pain which can lead to a degenerative change. The presence of TMJ is not a criterion on the Preliminary Handicapping Malocclusion Assessment Record for orthodontic treatment. (Dental Consultant's Testimony)

15. TMD refers to temporomandibular joint disfunction. (Dental Consultant's Testimony)

16. A class II malocclusion occurs when the upper posterior teeth protrude over the lower teeth. (Dental Consultant's Testimony)

17. In the letter from the Appellant included with the hearing request, the Appellant writes in pertinent part, "[The minor child] was born with ... [The minor child] has been suffering with chronic headaches and/or migraines, facial pain along with jaw pain. She has difficulty biting and chewing, hurts opening and closing her mouth. And at times also complains of ringing in her ears. ..." (Exhibit 5: Hearing Request and Supporting Medical Documents and Exhibit A: Lead Child and Adolescent Psychiatrist)

18. is a genetic disorder caused by missing chromosomes resulting in poor development and medical complications. The minor child was born with a heart defect which resulted in heart surgery at six months of age. The minor child was born with a hole in her spine and six fingers on each hand. The minor child is small in stature. The minor child experiences facial and neck pain and rarely chews her food without pain. (Appellant's Testimony)

19. On , 2021, Dr. Vincent Fazzino, DMD, a CTDHP dental consultant, independently reviewed the child's models, x-rays, and hearing request with supporting documents and arrived at a score of 25 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Fazzino did not find evidence of severe irregular placement of the child's teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Fazzino determined that orthodontia services were not medically necessary. (Hearing Summary and Exhibit 6: Preliminary Handicapping Malocclusion Assessment Record)

20. On 2021, CTDHP notified the Appellant that the request for orthodontic services was denied for the following reasons: the minor child's

score of 25 points was less than the 26 points needed for coverage, a lack of evidence of the presence of severe deviations affecting the mouth or underlying structures, and there was no evidence presented of any treatment by a licensed psychiatrist or psychologist related to the condition of the minor child's teeth. (Exhibit 9: Determination Letter)

21. On ████ 2021, CTDHP notified the request for an administrative hearing which included a letter from the APRN and a letter from the Appellant did not alter the Preliminary handicapping Malocclusion Assessment Record. (Exhibit 8: Appeal Response Letter)

22. The minor child has been diagnosed with anxiety and post-traumatic stress disorder ("PTSD") six years ago and is treated by a child psychiatrist. The child received weekly counseling at ████ but has moved to a new practice for outpatient counseling. The minor child has had suicidal thoughts but has not acted on them. The minor child is bullied in school. The minor child is on medication to manage her anxiety and PTSD. (Appellant's Testimony and Exhibit A: Lead Child and Adolescent Psychiatrist Letter)

23. On ████ 2021, the minor child was evaluated by ████ ████, the child's Lead Child and Adolescent Psychiatrist. The minor child's diagnosis includes: F43-10 Posttraumatic Stress Disorder, F43.1 Persistent Depressive Disorder and ████ ████. The Lead Child and Adolescent Psychiatrist writes in pertinent part, "Since beginning treatment, [the child] has disclosed insecurities related to her physical appearance and its ongoing impact on her current level of functioning. Some of these impacts include, but are not limited to, increased sadness as a result of being teased by others, low self-image, and a decrease in overall confidence. These impacts have led to [the child] being more self-conscious and making decisions to hide her teeth – by wearing a mask while taking pictures for her annual picture day at school. [The child] has also expressed feeling physical pain in her neck and jaw – which she reports is due to her teeth." (Exhibit A: Lead Child and Adolescent Psychiatrist Letter)

24. The minor child suffers from headaches daily and is followed by a pediatric neurologist at ████ for over two years. Headaches can last hours with throbbing. Triggers are not known at this time. (Appellant's Testimony and Exhibit 5: Hearing Request and Supporting Medical Documents)

25. The Appellant adjusts the minor child's diet which consists of soft foods to reduce the pain incurred when chewing and encourage nourishment. Meats and hard foods must be cut up into small pieces because the child experiences pain when chewing hard foods. (Appellant's Testimony)

26. The Appellant seeks orthodontic treatment for the minor child to adjust the minor child's jaw to reduce the frequency of jaw pain due to misalignment, to align teeth to reduce the minor child's pain when chewing her food, reduce the number of headaches which may be attributed to her malocclusion and spare her granddaughter a lifetime of chronic pain. (Appellant's Testimony)

27. On [REDACTED] 2021, Dr. Robert Gange, DDS, a CTDHP dental consultant, independently reviewed the child's models, x-rays, and Lead Child and Adolescent Psychiatrist's letter and arrived at a score of 24 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Gange did not find evidence of severe irregular placement of the child's teeth within the dental arches and no irregular growth or development of the jawbones. Dr. Gange commented, "[The child's] teeth are not crooked enough to qualify for braces. She has to have been under psychiatric care six month to qualify for braces if recommended by a psychiatrist." Dr. Gange did not approve the request for orthodontia. (Exhibit 10: Preliminary Handicapping Malocclusion Assessment Record)

28. 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 [REDACTED] 2021. However, the close of the hearing record, which had been anticipated to close on [REDACTED], 2021, did not close until [REDACTED] 2021 to allow an opportunity for the Appellant to submit additional evidence and CTDHP to review such evidence. Because this [REDACTED] day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED] 2021, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes states that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. State statute provides in part that "the Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program." Conn. Gen. Stat. §17b-262

3. Regulations of the Connecticut State Agencies ("Regs., Conn. State Agencies") § 17-134d-35(a) provide as follows:

Orthodontic services will be paid for when (1) provided by a qualified dentist and (2) deemed medically necessary as described in these regulations.

4. State statute 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.

   Conn. Gen. Stat.§ 17b-259b

5. "'Preliminary Handicapping Malocclusion Assessment Record' means the method of determining the degree of malocclusion and eligibility for orthodontic services. Such assessment is completed prior to performing the comprehensive diagnostic assessment." Regs., Conn. State Agencies § 17-134d-35(b)(3)

6. "Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity." Conn. Gen. Stat. § 17b-259b(b)

7. State statute provides as follows:

   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. 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. The commissioner may implement policies and procedures necessary to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the commissioner publishes notice of intent to adopt regulations on the e-Regulations System not later than twenty days after the date of implementation.

Conn. Gen. Stats. § 17b-282e

8. State regulation provides as follows:

   If the total score is less than [twenty-six] 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)

9. State regulation provides as follows:

   Prior authorization is required for the comprehensive diagnostic assessment.

   The qualified dentist shall submit:
   A. the authorization request form;

B. the completed Preliminary Handicapping Malocclusion Assessment Record;
C. Preliminary assessment study models of the patient's dentition;
D. Additional supportive information about the presence of other severe deviations described in Section (e) (if necessary).

The study models must clearly show the occlusal deviations and support the total point score of the preliminary assessment. If the qualified dentist receives authorization from the Department, he may proceed with the diagnostic assessment.

Regs., Conn. State Agencies §17-134d-35(f)(1)

10. State statute provides as follows:

Upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

Conn. Gen. Stats. § 17b-259b(c)

11. CTDHP correctly determined that the child's malocclusion did not meet the criteria for severity, or 26 points as established in state statute and that there was no presence of severe deviations affecting the mouth and underlying structures since the treating orthodontist and the three CTDHP dental consultants scored less than 26 points on the Preliminary Handicapping Malocclusion Assessment Record and failed to find the presence of other severe deviations affecting the mouth and underlying structures.

12. CTDHP was incorrect to find that the child's malocclusion did not meet the criteria for medically necessary as established in state regulations. The letter of diagnosis from the Lead Child and Adolescent Psychiatrist documents the child's mental and emotional diagnosis as defined by the Diagnostic Statistical Manual of the American Psychiatric Association as they relate to the child's physical appearance and her mental and emotional health. Connecticut regulation specifically states the Department will 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 Lead Child and Adolescent Psychiatrist performed

the diagnostic evaluation meeting the criteria under state regulation requiring a diagnostic evaluation performed by a licensed psychiatrist limiting his/her practice to child psychiatry. The evaluation must document how the dentofacial deformity is directly related to the child's mental, emotional, and/or behavior problems and that orthodontic treatment is necessary. State statute and state regulation do not impose a minimum time limit for psychiatric care as indicated by Dr. Gange's comments on the Preliminary Handicapping Malocclusion Assessment Record. The Lead Child and Adolescent Psychiatrist's diagnosis letter meets this criterion since the Lead Child and Adolescent Psychiatrist confirms the minor child's diagnosis and how the diagnosis related to the child's malocclusion. It is noted, the hearing record confirms the minor child's initial diagnosis six years ago when she entered weekly treatment with ████████████████████ and recently transferred this treatment to outpatient services.

13. **CTDHP was incorrect to deny prior authorization because the child does not meet the medical necessity criteria for orthodontic services, in accordance with state statutes and regulations.**

14. **On ██████ 2021, CTDHP incorrectly issued the Appellant a notice of action denying the Appellant's request for orthodontia treatment for the child.**

DECISION

The Appellant's appeal is granted.

ORDER

1. CTDHP must rescind the treating orthodontist's prior authorization request for orthodontic treatment for the minor child.

2. CTDHP must approve the treating orthodontist's prior authorization request for orthodontia treatment for the child as the child has met the medical necessity criteria which authorizes orthodontia treatment under State Statue and State Regulations.

3. Compliance is due 14 days from the date of this decision.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

PC: Diane D'Ambrosio, CTDHP, P.O. Box 486 Farmington, CT 06032
Rita LaRosa, CTDHP, P.O. Box 486 Farmington, CT 06032

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.