

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

██████████ 2022
Signature confirmation

Case: ██████████
Client: ██████████
Request: 188206

NOTICE OF DECISION

PARTY

██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2021, 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 services for her niece, ██████████ (the “child”). The Appellant is legal guardian for her niece.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s hearing request, postmarked ██████████ 2022.

On ██████████, 2022, the OLCRAH issued a notice to the Appellant scheduling an administrative hearing for ██████████ 2022.

On ██████████ 2022, 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 participated by telephone conferencing:

██████████, Appellant
Kate Nadeau, CTDHP Representative
Stanley Wolfe, D.D.S., CTDHP Witness
Eva Tar, Hearing Officer

The hearing officer extended the close of the hearing record to allow the Appellant to submit a letter or medical records from her child's psychiatrist to CTDHP by [REDACTED] 2022 and to permit CTDHP the opportunity to review and respond to the same.

As of [REDACTED] 2022, the Appellant had not submitted provided CTDHP with the letter or medical records from her child's psychiatrist and had not requested a further extension to the close of the hearing record for good cause.

The hearing record closed [REDACTED] 2022.

STATEMENT OF ISSUE

The issue is whether CTDHP's denials of prior authorization for the child's orthodontic services was supported by state statute and regulation.

FINDINGS OF FACT

1. The child's date of birth is [REDACTED]. (Appellant Testimony) (CTDHP Exhibits 2, 3, and 8)
2. The child has the following diagnoses: [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] (CTDHP Exhibit 6)
3. The child also has been diagnosed with [REDACTED]. (Appellant Testimony)
4. The child receives treatment from a psychiatrist. (Appellant Testimony)
5. The child participates in art therapy with a board-certified art therapist/licensed professional counselor. (Appellant Testimony) (CTDHP Exhibit 6)
6. The child is concerned with the appearance of her teeth. (Appellant Testimony)
7. The child refuses to smile with an open mouth. (CTDHP Exhibit 6)
8. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
9. CTDHP is the Department of Social Services' subcontractor for reviewing HUSKY Health dental insurance claims. (Hearing Record)
10. CTDHP received a request from [REDACTED] (the "treating orthodontic practice") for prior authorization of the child's orthodontic services. (CTDHP Exhibit 1)

11. On ██████████ 2021, an employee of the treating orthodontic practice scored the severity of the child's malocclusion as 25 points on a *Preliminary Handicapping and Malocclusion Assessment Record*¹ and indicated that there were no severe deviations that if left untreated would cause irreversible damage to the child's teeth and underlying structures. (CTDHP Exhibit 2)
12. Benson Monastersky, D.M.D. (the "first dental reviewer") and Geoffrey Drawbridge, D.D.S. (the "second dental reviewer") are CTDHP dental consultants. (CTDHP Exhibits 3 and 8)
13. The first and the second dental reviewers independently scored the severity of the child's malocclusion as equaling less than 26 points on a *Preliminary Handicapping and Malocclusion Assessment Record*, scoring the severity of the malocclusion at 15 and 21 points, respectively. The first and second reviewers indicated that there were no other severe deviations that if left untreated would cause irreversible damage to the child's teeth and underlying structures. (CTDHP Exhibits 3 and 8)
14. On ██████████ 2021, CTDHP denied the treating orthodontic practice's request for prior authorization of the child's orthodontic services. (CTDHP Exhibit 4)
15. On ██████████ 2022, CTDHP received the written recommendation of the child's board-certified art therapist/licensed professional counselor as to the child's potential orthodontic treatment. (CTDHP Exhibit 6)
16. On ██████████ 2022, CTDHP decided that the ██████████ 2022 correspondence by the child's board-certified art therapist/licensed professional counselor was insufficient to overturn its denial of prior authorization of orthodontic services. (CTDHP Exhibit 8)
17. On ██████████ 2022, CTDHP denied for a second time the treating orthodontic practice's request for prior authorization of the child's orthodontic services. (CTDHP Exhibit 9)
18. As of ██████████ 2022, the Appellant had not submitted a recommendation by the child's psychiatrist stating how the child's dentofacial deformity is related to the child's mental, emotional, and/or behavior problems, and that orthodontic treatment is necessary and will significantly ameliorate those problems. (Hearing record)
19. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."

¹ The *Preliminary Handicapping and Malocclusion Assessment Record* is identified in state statute and regulations as the Salzmann Handicapping Malocclusion Index.

On [REDACTED] 2022, the OLCRAH received the Appellant's [REDACTED] 2022 postmarked hearing request which ordinarily would have required the issuance of this decision by [REDACTED] 2022. However, the Appellant requested a 15-day extension to the close of the hearing record, which further extended the deadline for the issuance of this decision by 15 days. Therefore, this hearing decision would have become due by [REDACTED] 2022. 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.
2. "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...." Conn. Gen. Stat. § 17b-282e.

Section 17-134d-35 of the Regulations of Connecticut State Agencies addresses orthodontic services provided under the early and periodic screening, diagnosis and treatment (EPSDT) program.

"Orthodontic services will be paid 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).

As a Medicaid recipient under the age of 21 years, the child is subject to the provisions of Conn. Gen. Stat. § 17b-282e as to when Medicaid will pay for orthodontic services.

CTDHP correctly determined that the severity of the child's malocclusion did not meet the criteria for prior authorization of orthodontic treatment under the Medicaid program under Conn. Gen. Stat. § 17b-282e, as an employee of the treating orthodontic practice and the two CTDHP dental reviewers scored the severity as 25 points or less on the *Preliminary Handicapping Malocclusion Assessment Record*.

3. Section 17b-282e of the Connecticut General Statutes provides:
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....

Conn. Gen. Stat. § 17b-282e.

CTDHP correctly determined that the Appellant has not established with substantiating diagnostic documentation the existence of severe deviations adversely affecting the child's oral facial structures.

4. Section 17-134d-35(e) of the Regulations of Connecticut State Agencies addresses the need for orthodontic services. Subsection (e)(2) 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 [sic] that orthodontic treatment is necessary and, in this case, will significantly ameliorate the problems.

Conn. Agencies Regs. § 17-134d-35(e)(2). (emphasis added)

CTDHP correctly determined that the recommendations of the child's board-certified art therapist/licensed professional counselor did not meet the requirements of Conn. Agencies Regs. § 17-134d-35(e)(2), as that individual is not a licensed psychiatrist or a licensed psychologist who has accordingly limited her practice to child psychiatry or child psychology.

CTDHP correctly found that the child did not meet either of the two exceptions set by Conn. Gen. Stat. § 17b-282e to permit authorization of orthodontic services for a malocclusion with a severity of less than 26 points on an objectively scored *Preliminary Handicapping Malocclusion Assessment Record*.

5. 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 orthodontic services to treat the child's malocclusion are medically necessary, as the term "medically necessary" is defined at Conn. Gen. Stat. § 17b-259b (a).

CTDHP's denial of prior authorization for the child's orthodontic services was supported by state statute and regulation.

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.