

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: 197058

**NOTICE OF DECISION**

**PARTY**

██████████  
██  
██  
██

**PROCEDURAL BACKGROUND**

On ██████████ 2022, the Connecticut Dental Health Partnership (“CTDHP”), the Department of Social Services’ dental contractor, issued ██████████ (the “Appellant”) a *Notice of Action* denying prior authorization of orthodontic services for ██████████ (the “child”), her minor child.

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

On ██████████, 2022, the OLCRAH issued the Appellant a notice scheduling an administrative hearing for ██████████ 2022. The OLCRAH granted the Appellant’s request for a postponement.

On ██████████, 2022, the OLCRAH scheduled the 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  
██████████, LMFT, Appellant Witness  
Kate Nadeau, CTDHP Representative

Stanley Wolfe, D.D.S., CTDHP Witness  
Eva Tar, Hearing Officer

The hearing record closed [REDACTED], 2022.

### **STATEMENT OF ISSUE**

The issue is whether CTDHP's denial of prior authorization for the child's orthodontic services for lack of medical necessity is supported by State statute and regulation.

### **FINDINGS OF FACT**

1. The child's date of birth is [REDACTED]. (Appellant Testimony)
2. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
3. The child has not been evaluated by a child psychiatrist or a child psychologist. (Appellant Testimony)
4. [REDACTED], LMFT, (the "therapist") has been providing the child with family therapy since 2016 and with private therapy since 2019. (Appellant Witness Testimony) (CTDHP Exhibit 8)
5. The therapist diagnosed the child with [REDACTED]. (Appellant Witness Testimony) (CTDHP Exhibit 8)
6. The child's [REDACTED] symptoms are triggered when the child receives attention and when people were yelling or mean to her. (CTDHP Exhibit 8)
7. The child is self-conscious about her appearance. (CTDHP Exhibit 8)
8. The child speaks "childishly" or in a childish way; her speech is deliberate and hesitant. The child shuts down when it is brought to her attention. (Appellant Witness Testimony)
9. CTDHP is the Department of Social Services' dental contractor. (CTDHP Representative Testimony)
10. CTDHP received a request from [REDACTED] (the "treating orthodontist") for prior authorization of the child's orthodontic services. (CTDHP Exhibit 1)
11. On [REDACTED] 2022, the treating orthodontist scored the severity of the child's malocclusion as 26 points on a *Preliminary Handicapping and Malocclusion Assessment Record*.<sup>1</sup> The treating orthodontist left unanswered or blank the sections

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<sup>1</sup> The *Preliminary Handicapping and Malocclusion Assessment Record* is identified in State statutes as the Salzmann Handicapping Malocclusion Index.

of the *Preliminary Handicapping and Malocclusion Assessment Record* that inquired about the presence of other severe deviations affecting the mouth and underlying structures, that if left untreated would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibit 2)

12. Vincent Fazzino, D.M.D. (the “first dental reviewer”) and Dr. Geoffrey Drawbridge, D.D.S. (the “second dental reviewer”) are CTDHP dental consultants. (CTDHP Exhibits 3 and 7)
13. CTDHP dental consultants do blind reviews; they do not refer to other dentists’ reviews. (CTDHP Witness Testimony)
14. On ██████ 2022, the first dental reviewer scored the severity of the child’s malocclusion as 22 points upon a review of the child’s submitted dental records. (CTDHP Exhibit 3)
15. The first dental reviewer marked “N” for “No” the sections of the ██████ 2022 *Preliminary Handicapping and Malocclusion Assessment Record* that inquired about the presence of other severe deviations affecting the mouth and underlying structures, that if left untreated would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibit 3)
16. On ██████ 2022, CTDHP denied the treating practice’s request for prior authorization of the child’s orthodontic services. (CTDHP Exhibit 4)
17. On or around ██████ 2022, the Appellant submitted the written recommendation of the child’s therapist to CTDHP. (CTDHP Exhibit 8)
18. On ██████ 2022, the second dental reviewer scored the severity of the child’s malocclusion as 19 points upon a review of the child’s submitted dental records. The second dental reviewer left unanswered or blank the sections of the *Preliminary Handicapping and Malocclusion Assessment Record* that inquired about the presence of other severe deviations affecting the mouth and underlying structures, that if left untreated would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibit 7)
19. On ██████, 2022, CTDHP again denied the treating practice’s request for prior authorization of the child’s orthodontic services. (CTDHP Exhibit 9)
20. 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....”

On [REDACTED] 2022, the OLCRAH received the Appellant's [REDACTED] 2022 postmarked hearing request; this hearing decision initially would have become due by no later than [REDACTED] [REDACTED] 2022, but for the OLCRAH granting the Appellant a 24-day postponement, which extended the deadline for the issuance of this Decision by 24 days to [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.

**The Department has the authority under State statute to administer the Medicaid program in Connecticut.**

2. 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 HUSKY Health participant under the age of 21 years, the child is subject to the Medicaid program's rules regarding when orthodontic services are authorized.**

3. "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...." Conn. Gen. Stat. § 17b-282e.

**It is reasonable to conclude that the severity of the child's malocclusion is less than 26 points on a correctly scored *Preliminary Handicapping and Malocclusion Assessment Record* as demonstrated by the scoring in the [REDACTED] [REDACTED] 2022 and [REDACTED] [REDACTED] 2022 blind reviews completed by the CTDHP dental consultants.**

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

Conn. Gen. Stat. § 17b-282e.

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).

**The Appellant has not established by substantive information the existence of severe deviations adversely affecting the child's oral facial structures that if untreated would lead to irreversible damage to the child's teeth and underlying structures.**

**CTDHP correctly determined that a licensed child psychiatrist or a licensed child psychologist has not performed a diagnostic evaluation of the child that substantially documents how the child's dentofacial deformity is related to the child's mental, emotional, and/or behavioral problems.**

**The child did not meet either of the two permitted exceptions at 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).

**Orthodontic services to treat the child's malocclusion was not medically necessary, as the term "medically necessary" was 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.