

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: 199090

NOTICE OF DECISION

PARTY

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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.

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
Rosario Monteza, CTDHP Representative
Vincent Fazzino, D.M.D., CTDHP Witness
Eva Tar, Hearing Officer

The hearing record closed ██████████ 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]. (CTDHP Exhibits 1 and 2)
2. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
3. CTDHP is the Department of Social Services' dental subcontractor. (CTDHP Representative Testimony)
4. The Appellant gives the child ibuprofen three or four times per day when the child complains about pain in his teeth. (Appellant Testimony)
5. The child has diagnoses of [REDACTED] and [REDACTED]. (Appellant Testimony)
6. The child has not seen his psychiatrist for about a year. (Appellant Testimony)
7. The child refuses to go to therapy or take medication. (Appellant Testimony)
8. CTDHP received a request from [REDACTED] (the "treating practice") for prior authorization of the child's orthodontic services. (CTDHP Exhibit 1)
9. On [REDACTED] 2022, an employee of the treating practice scored the severity of the child's malocclusion as 14 points on a *Preliminary Handicapping and Malocclusion Assessment Record*. The employee left unanswered or blank the sections of the *Preliminary Handicapping and Malocclusion Assessment Record* that inquired about the presence of other severe deviations that if left untreated would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibit 2)
10. Dr. Geoffrey Drawbridge, D.D.S. (the "first dental reviewer") and Vincent Fazzino, D.M.D. (the "second dental reviewer") are CTDHP dental consultants. (CTDHP Exhibits 3 and 7)
11. CTDHP dental consultants do blind reviews; they do not communicate with the other consultants in any way but independently evaluate the models, photos, and any other medical records or diagnostic items submitted by the orthodontic practice for review. (CTDHP Witness Testimony)
12. On [REDACTED] 2022 and [REDACTED] 2022, the first dental reviewer and second dental reviewer scored the severity of the child's malocclusion to equal 9 and 11 points respectively on the *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibits 3 and 6)
13. The first dental reviewer and the second dental reviewer marked "N" for "No" the sections of the *Preliminary Handicapping and Malocclusion Assessment Record* that inquired about the presence of other severe deviations that if left untreated would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibits 3 and 6)
14. On [REDACTED], 2022 and [REDACTED], 2022, CTDHP denied the treating practice's request for prior authorization of the child's orthodontic services. (CTDHP Exhibits 4 and 8)

15. 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,”

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] 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 Index¹ indicates a correctly scored assessment for the recipient of twenty-six points or greater, subject to prior authorization requirements....” Conn. Gen. Stat. § 17b-282e.

The severity of the child's malocclusion did not meet the criteria provided at Conn. Gen. Stat. § 17b-282e to authorize orthodontic treatment.

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....

¹ The *Salzmann Handicapping Malocclusion Index* is another name for the *Preliminary Handicapping and Malocclusion Assessment Record*.

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.

The Appellant failed to establish that a licensed child psychiatrist or a licensed child psychologist had 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 and that the orthodontic treatment was necessary and would significantly ameliorate those problems.

The child did not meet either of the two permitted exceptions at Conn. Gen. Stat. § 17b-282e and Conn. Agencies Regs. § 17-134d-35(e)(2) 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 were 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 signatorus
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.