

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

██████████ 2023
Signature confirmation

Case: ██████████
Client: ██████████
Request: 211357

NOTICE OF DECISION

PARTY

██████████
██████████
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██████████

PROCEDURAL BACKGROUND

On ██████████ 2023, 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 ██████████ (the “child”), her minor child.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s ██████████, 2023 postmarked hearing request.

On ██████████ 2023, the OLCRAH scheduled an administrative hearing for ██████████, 2023.

On ██████████ 2023, 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
Cindy Ramos, CTDHP Representative
Vincent Fazzino, D.M.D., CTDHP Witness
Zully Rodriguez, ITI Translates, Interpreter
Eva Tar, Hearing Officer

The hearing record closed for evidence on ██████████ 2023 and for comment on ██████████ 2023.

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 the following diagnoses: [REDACTED]. The child also displays "very strong evidence of the presence of a clinically diagnosable [REDACTED]" (Appellant Exhibit A) (CTDHP Exhibit 9)
3. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
4. CTDHP is the Department of Social Services' dental subcontractor. (CTDHP Representative Testimony)
5. CTDHP received a request from [REDACTED] (the "provider") for prior authorization of the child's orthodontic services. (CTDHP Exhibit 1)
6. On [REDACTED] 2023, an employee of the provider scored the severity of the child's malocclusion as 21 points on a *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibit 2)
7. Vincent Fazzino, 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 7)
8. On [REDACTED] 2023 and [REDACTED] 2023, the first dental reviewer and the second dental reviewer scored the severity of the child's malocclusion to equal 18 points and 22 points respectively on the *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibits 3 and 7)
9. The child does not exhibit 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. (CTDHP Exhibits 2, 3, and 7)
10. On [REDACTED] 2023 and [REDACTED], 2023, CTDHP denied the provider's request for prior authorization of the child's orthodontic services. (CTDHP Exhibits 4 and 8)
11. On or around [REDACTED] 2023, the Appellant submitted correspondence from [REDACTED], [REDACTED] describing the child's diagnoses and accommodation at [REDACTED]. The correspondence does not address the child's dental condition and does not state that the child's dental condition adversely impacts the child's mental health. (CTDHP Exhibit 9)

12. On or around [REDACTED], 2023, CTDHP received the child's [REDACTED] neuropsychological evaluation, authored by [REDACTED], Licensed Clinical Psychologist. In the evaluation, the psychologist does not mention the child's dental condition and does not state that the child's dental condition adversely impacts the child's mental health. The psychologist's recommendations for treatment do not state that orthodontic treatment would ameliorate the child's mental or behavioral issues. (Appellant Exhibit A)
13. On [REDACTED] 2023, CTDHP concluded that the child's [REDACTED] neuropsychological evaluation had no correlation to the child's dental discrepancy and emotional or behavioral problems. (CTDHP Exhibit 11)
14. 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] 2023, the OLCRAH received the Appellant's [REDACTED] 2023 postmarked hearing request. The close of the hearing record was extended by 10 days, through [REDACTED] 2023, for the submission of additional evidence from the Appellant and comment to that evidence by CTDHP. This hearing decision would have become due by no later than [REDACTED], 2023. 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 HUSKY Health/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 are limited to recipients under twenty-one (21) years of age." Conn. Agencies Regs. § 17-134d-35 (d).

"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 program's rules as to 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 need for orthodontic services shall be determined on the basis of the magnitude of the malocclusion. Accordingly, the *Preliminary Handicapping Malocclusion Assessment Record*, available from the Department, must be fully completed in accordance with the instruction sections of the form...." Conn. Agencies Regs. § 17-134d-35 (e)(1).

The severity of the child's malocclusion does not meet the criteria provided at Conn. Gen. Stat. § 17b-282e to authorize orthodontic treatment, as demonstrated by the provider, the first dental reviewer, and the second dental reviewer independently scoring the severity of the child's malocclusion as equaling less than 26 points on the *Preliminary Handicapping Malocclusion Assessment Record*.

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. 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 eRegulations System not later than twenty days after the date of implementation.

Conn. Gen. Stat. § 17b-282e.

Section 17-134d-35 (e)(2) of the Regulations of Connecticut State Agencies 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

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

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 child does not have the presence of other severe deviations affecting the child's oral facial structures.

CTDHP correctly determined that the child's [REDACTED] neuropsychological evaluation is not relevant with respect to determining the child's need for prior authorization for orthodontic treatment. The [REDACTED] neuropsychological evaluation does not document 1) how the child's dentofacial deformity is related to the child's mental, emotional, and/or behavioral problems; and 2) that orthodontic treatment is necessary and in the child's case, will significantly ameliorate the child's mental, emotional, and or behavioral problems.

The child does not meet the 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 are not 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 is 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.