

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2023
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 213119

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

On ██████████ 2023, Connecticut Dental Health Partnership (“CTDHP/BeneCare”), dental contractor for the Department of Social Services (the “Department”), sent ██████████ (the “Appellant”) a notice of action denying a request for prior authorization of orthodontia for her minor child (the “child”) indicating that the severity of the child’s malocclusion did not meet the medically necessary requirements in state law to approve the proposed treatment.

On ██████████ 2023, the Appellant requested an administrative hearing to contest the Department’s action.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, OLCRAH, issued a notice rescheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, under sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephonic conferencing.

The following individuals participated in the hearing:

██████████ Appellant
██████████ ITI Translator
Rosario Monteza, CTDHP Representative
Dr. Robert Gange, CTDHP Dental Consultant
Christopher Turner, Hearing Officer

The hearing record was left open for the submission and review of additional information. On [REDACTED] 2023, the record closed after receipt of Dr. Gange's assessment.

STATEMENT OF THE ISSUE

The issue is whether CTDHP's denial of the prior authorization request for orthodontia coverage for the Appellant's child followed state statutes and regulations.

FINDINGS OF FACT

1. The Appellant is the child's mother. (Hearing record; Appellant's testimony)
2. The child is a participant in the Medicaid program as administered by the Department. (Hearing record; Appellant's testimony)
3. On [REDACTED] 2023, CTDHP received from the treating provider, [REDACTED] a Preliminary Handicapping Malocclusion Assessment Record with a score of 27 points. Models and X-rays of the child's mouth were used for the evaluation. (Exhibit 2A: Malocclusion Assessment dated [REDACTED] 2022)
4. On [REDACTED] Dr. Robert Gange, DDS., an orthodontic dental consultant for CTDHP, independently reviewed the child's X-rays, and models of the child's teeth, and arrived at a score of 18 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Gange found no evidence of severe irregular placement of the child's teeth within the dental arches and found no irregular growth or development of the child's jaw. (Exhibit 3A: Preliminary Handicapping Malocclusion Assessment Record)
5. On [REDACTED] 2023, CTDHP denied the treating provider's request for prior authorization for orthodontic services as the scoring of the child's mouth of 18 points was less than the 26 points needed for coverage, the child's teeth are not crooked enough to qualify for braces, and they currently pose no threat to the jawbone or the attached soft tissue. Also, there was no evidence that a diagnostic evaluation has been done by a licensed child psychologist or a licensed child psychiatrist indicating that the child's dental condition is related to the presence of severe mental or emotional, and/or behavioral problems, disturbances, or dysfunctions, as defined in the current edition of the Diagnostic Statistical Manual and orthodontic treatment will significantly improve such problems, disturbances, or dysfunctions. (Exhibit 4A: Notice of Action for Denied Services or Goods)
6. On [REDACTED] 2023, the Appellant requested an administrative hearing to contest the Department's decision to deny orthodontia services for her child. (Exhibit 5A: Administrative Hearing Request)

7. On [REDACTED] 2023, Dr. Geoffrey Drawbridge, DDS., CTDHP's orthodontic dental consultant, independently reviewed the child's X-rays, and models of the child's teeth, and reached a score of 24 points on a completed Preliminary Handicapping Malocclusion Assessment Record. Dr. Drawbridge found no evidence of severe irregular placement of the child's teeth within the dental arches and found no irregular growth or development of the child's jaw. (Exhibit 6A: Malocclusion Assessment Record)
8. On [REDACTED] 2023, CTDHP notified the Appellant that her child's score of 22 points did not meet the requirements for orthodontic treatment and that such treatment was not medically necessary. (Exhibit 7A: Letter regarding Orthodontic Services)
9. On [REDACTED] 2023, an administrative hearing was held. (Hearing record)
10. On [REDACTED] 2023, BeneCare approved the Appellant's orthodontia request for her minor child. BeneCare's decision to approve orthodontia coverage for the Appellant's minor child means the previous prior authorization denial has been overturned and as a result the Appellant's claim is now approved. In view of this, there has been no "action" taken to deny orthodontia services covered under the HUSKY program. (Record)
11. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), ("Conn. Gen. Stat.") 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] 2023, with this decision due no later than [REDACTED] 2023 since [REDACTED] 2023 is a holiday. However, the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension. In this case, the Appellant was afforded a 21-day postponement with this decision due [REDACTED] 2023. (Hearing Record)

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.

Regulations of Connecticut State Agencies ("Regs., Conn. State Agencies") 17-134d-35(a) provides that orthodontic services provided for individuals less than 21 years of age will be paid for when (1) provided by a qualified dentist; and (2) deemed medically necessary as described in these regulations.

The Department has the authority to administer the Medicaid program in Connecticut, and through the CTDHP, evaluate eligibility for orthodontic services.

2. Conn. Gen. Stat. §17b-259b provides (a) 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-282e provides that the Department of Social Services shall cover orthodontic services for a Medicaid recipient less than 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.

Regs., Conn. State Agencies §17-134d-35(e) provides when an eligible recipient is determined to have a malocclusion, the attending dentist should refer the recipient to a qualified dentist for the preliminary examination of the degree of malocclusion. (2) 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 be clear 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. (3) A recipient

who becomes Medicaid eligible and is already receiving orthodontic treatment must demonstrate that the need for service requirements specified in subsections (e) (1) and (2) of these regulations were met before orthodontic treatment commenced, meaning that before the onset of treatment, the recipient would have met the need for services requirements.

Regs., Conn. State Agencies §17-134d-35(f) provides that the study models submitted for prior authorization must clearly show the occlusal deviations and support the total point score of the preliminary assessment.

3. The department's Uniform Policy Manual ("UPM") is the equivalent of state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
4. UPM § 1570.25 (C)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve the dispute.

UPM § 1570.25(F) (2) provides that decisions by the Department regarding:

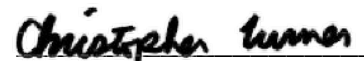
- a. eligibility for benefits in both initial and subsequent determinations.

The Department has approved the Appellant's orthodontia request for her child. As a result, the Appellant's appeal issue has been resolved.

The Appellant's hearing issue has been resolved, therefore, there is no issue on which to rule. "When the actions of the parties themselves cause a settling of their differences, a case becomes moot." *McDonnell v. Maher*, 3 Conn. App. 336 (Conn. App. 1985), citing *Heitmuller v. Stokes*, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921). The service that the Appellant had originally requested has been approved; there is no practical relief that can be afforded through an administrative hearing

DECISION

The Appellant's appeal is dismissed as moot.



Christopher Turner
Hearing Officer

Cc: Magdalena Carter, CTDHP
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, law, and 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 requested 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 the Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to the 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 if 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 06105-3725. A copy of the petition must also be served to 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 following §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.