

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

██████████ 2024
Signature confirmation

Case: ██████████
Client ██████████
Request: 238134

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2024, 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 ██████████ 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s hearing request.

On ██████████ 2024, the OLCRAH scheduled an administrative hearing for ██████████ 2024.

On ██████████ 2024, 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 by telephone conferencing. The following individuals participated:

██████████, Appellant
Cindy Ramos, CTDHP Representative
Vincent Fazzino, D.M.D., CTDHP Witness
Eva Tar, Hearing Officer

The record closed on ██████████ 2024.

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] 2013. (Appellant Testimony)
2. The child has no psychiatric issues. (Appellant Testimony)
3. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
4. CTDHP is the Department of Social Services' contractor for dental reviews. (CTDHP Representative Testimony)
5. On [REDACTED] 2024, [REDACTED] placed braces, or Stage II orthodontics, on the child. Previously, the child had an expander for Stage I treatment. (Appellant Testimony)
6. [REDACTED] recommended Stage II treatment to expose tooth #11, then pull the tooth down into position with a chain. (Appellant Testimony)
7. On or after [REDACTED] 2024, an unidentified [REDACTED] employee scored the severity of the child's malocclusion as 10 points on a *Preliminary Handicapping and Malocclusion Assessment Record*. The employee noted that as to tooth #11, the orthodontist "may not be able to bring it down." (CTDHP Exhibit 2)
8. On [REDACTED], 2024, CTDHP received a request from [REDACTED] for prior authorization of the child's orthodontic services. (CTDHP Representative Testimony) (CTDHP Exhibit 1)
9. The child's tooth #11 is impacted and horizontal in placement. (CTDHP Witness Testimony)
10. Based on the location and position of tooth #11, torquing the cuspid into position would put severe pressure on multiple roots of other teeth, risking resorption or damage to the roots. The proximity of the tooth to the nasal cavity is also a risk. (CTDHP Witness Testimony)
11. The professional standard of care would be to remove tooth #11 and use either a flipper—a temporary false tooth—or a space maintainer to maintain the space to prevent the movement of other teeth into the space until the child achieves mature dentition. Upon mature dentition, placement of an implant or other treatment should be assessed. (CTDHP Witness Testimony)

12. Robert Gange, D.D.S., (the “first dental reviewer”) and Vincent Fazzino, D.M.D., (the “second dental reviewer”) are CTDHP dental consultants. (CTDHP Witness Testimony) (CTDHP Exhibits 3 and 6)
13. On ██████████ 2024 and ██████████ 2024, the first dental reviewer and the second dental reviewer independently scored the severity of the child’s malocclusion to equal 15 and 17 points respectively on the *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibits 3 and 6)
14. The first dental reviewer and second dental reviewer indicated that tooth #11 may not be able to be brought into position. (CTDHP Witness Testimony) (CTDHP Exhibits 3 and 6)
15. 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 6)
16. On ██████████ 2024 and ██████████ 2024, CTDHP denied ██████████’ request for prior authorization of the child’s orthodontic services. (CTDHP Exhibits 4 and 7)
17. 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 ██████████ 2024, the OLCRAH received the Appellant’s hearing request. This hearing decision would have become due by no later than ██████████ 2024. 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 by State statute to administer the HUSKY Health 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 that program’s rules as to the conditions under which orthodontic services will be 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).

CTDHP correctly concluded that the child’s malocclusion had a severity of less than 26 points on an objectively scored *Preliminary Handicapping Malocclusion Assessment Record*.

The severity of the child’s malocclusion does 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....
Conn. Gen. Stat. § 17b-282e.

Section 17-134d-35 (e)(1) of the Regulations of Connecticut State Agencies provides:
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. The Department deems orthodontic services to be medically necessary when a correctly scored total of [twenty-six (26)] points or greater is calculated from the preliminary

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

assessment. However, 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 other severe deviations affecting the mouth and underlying structures. Other deviations shall be considered to be severe if, left untreated, they would cause irreversible damage to the teeth and underlying structures.

Conn. Agencies Regs. § 17-134d-35 (e)(1).

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....

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

The child did not meet the exception at Conn. Gen. Stat. § 17b-282e and Conn. Agencies Regs. § 17-134d-35 (e)(1) to receive authorization for orthodontic services due to the presence of other severe deviations affecting the oral and facial structures that if untreated would cause irreversible damage to the teeth and underlying structures.

The child did not meet the exception at Conn. Gen. Stat. § 17b-282e and Conn. Agencies Regs. § 17-134d-35 (e)(2) to receive authorization for orthodontic services due to 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.

5. "Prior authorization is required for orthodontic treatment for the initial appliance; first, second, and third year of active treatment; and for replacement of retainers...." Conn. Agencies Regs. § 17-134d-35 (f)(2)(A).

"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 prior to the onset of treatment the recipient would have met the need for services requirements." Conn. Agencies Regs. § 17-134d-35 (e)(3).

The Appellant did not establish that the child met the criteria set in State statute and regulation for approval of orthodontic treatment prior to the [REDACTED] 2024 placement of Stage II orthodontics.

6. 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.