

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: 242838

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████, 2024, the Connecticut Dental Health Partnership (“CTDHP”), the Department of Social Services’ dental review contractor, 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 online request for an administrative hearing.

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  
Rosario Montessa, 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 is ■ years old and just started high school. (Appellant Testimony)
2. The child has ■.<sup>1</sup> (Appellant Testimony)
3. The child has been bullied in his prior middle school for his facial appearance. (Appellant Testimony)
4. The child has gotten into fights at his prior middle school. (Appellant Testimony)
5. The child has a 504 plan with his current high school. (Appellant Testimony)
6. The child's 504 plan allows the child extra time with testing; allows him to leave the classroom to use the bathroom; has seated him towards the front of the classroom; permits him to speak with school counselors; and allows him to have "stand up time." (Appellant Testimony)
7. The Appellant is considering enrolling the child in therapy. (Appellant Testimony)
8. The child has dental coverage through HUSKY Health. (CTDHP Exhibit 4)
9. CTDHP reviews dental records as a contractor for the Department of Social Services. (CTDHP Representative Testimony)
10. On or after ■ 2024, CTDHP received a request from ■ (the "treating orthodontist") for prior authorization of the child's orthodontic services. (CTDHP Exhibit 1)
11. On ■, 2024, the treating orthodontist scored the severity of the child's malocclusion as 32 points on a *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibit 2)
12. The treating orthodontist's score of 32 includes a score of 16 points for four teeth—Teeth #7, #8, #9, and #10—as being in overjet and in overbite. (CTDHP Exhibit 2)
13. For a tooth to be correctly scored on the *Preliminary Handicapping and Malocclusion Assessment Record* as in overjet, the tooth must be out of alignment by at least three millimeters. (CTDHP Witness Testimony)
14. For a tooth to be correctly scored on the *Preliminary Handicapping and Malocclusion Assessment Record* as in overbite, the tooth must be in contact with the gingival tissue on the palate. (CTDHP Witness Testimony)

---

<sup>1</sup> The DSM-5-TR, the most current edition of the Diagnostic Statistical Manual of the American Psychiatric Association, identifies ■ as a ■.

15. The child's teeth—Teeth #7, #8, #9, and #10—do not meet the criteria to be correctly scored as in overjet and in overbite on the *Preliminary Handicapping and Malocclusion Assessment Record*. Tooth #7 is in crossbite. (CTDHP Witness Testimony) (CTDHP Exhibits 3 and 6)
16. After adjusting the treating orthodontist's score to reflect that Teeth #7, #8, #9, and #10 are not in overjet and are not in overbite, and that Tooth #7 is in crossbite, the treating orthodontist's score would equal 18 points on the *Preliminary Handicapping and Malocclusion Assessment Record*. [32 points - 16 points + 2 points = 18 points]
17. Robert Gange, D.D.S., (the "dental reviewer") and the CTDHP Witness are CTDHP dental consultants. (CTDHP Exhibits 3 and 6)
18. On [REDACTED] 2024 and [REDACTED] 2024, the dental reviewer and the CTDHP Witness reviewed the child's submitted dental records and independently scored the severity of the child's malocclusion to equal 21 and 20 points respectively on the *Preliminary Handicapping and Malocclusion Assessment Record*. (CTDHP Exhibits 3 and 6)
19. On [REDACTED] 2024, CTDHP issued a *Notice of Action* to the Appellant denying the treating orthodontist's request for prior authorization of the child's orthodontic services. (CTDHP Exhibits 4)
20. On the [REDACTED] 2024 *Notice of Action*, CTDHP advised the Appellant that based on a correct scoring on the *Preliminary Handicapping Malocclusion Assessment Record* braces would only be considered medically necessary if: 1) there is difficulty chewing or swallowing food; 2) if there was a severe problem affecting the mouth, which, if left untreated, would cause irreversible damage; or 3) if a licensed child psychologist or licensed child psychiatrist had completed an evaluation and concluded that the child has specifically defined severe emotional and/or behavior problems that are the result of the condition of the teeth, and those problems would greatly improve if the child gets braces. (CTDHP Exhibit 4)
21. The child does not have the presence of severe deviations, that, if left untreated, would cause irreversible damage to the teeth and underlying structures. (CTDHP Exhibits 2, 3, and 6)
22. There is no indication on the *Preliminary Handicapping and Malocclusion Assessment Record* that the child has difficulty chewing or swallowing food. (CTDHP Exhibits 2, 3, and 6)
23. There is no indication on the *Preliminary Handicapping and Malocclusion Assessment Record* that the child suffers from TMJ [Temporomandibular joint] issues with his jaw. (CTDHP Exhibits 2, 3, and 6) (CTDHP Witness Testimony)
24. The Appellant did not provide a diagnostic evaluation from a licensed child psychiatrist (or licensed child psychologist) that recommended orthodontic treatment as necessary for the child which stated that the orthodontic treatment would significantly ameliorate the child's mental, emotional, and/or behavior problems. (Hearing record)
25. 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], 2024, the OLCRAH received the Appellant’s hearing request. This hearing decision would have become due by no later than [REDACTED] 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 circumstances 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 Index<sup>2</sup> 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 severity of the child’s malocclusion did not meet the criteria of Conn. Gen. Stat. § 17b-282e and Conn. Agencies Regs. § 17-134d-35 (e)(1), as the dental reviewer and the CTDHP Witness independently reviewed the child’s dental records as submitted by the treating orthodontist and independently scored the severity of the malocclusion as less than 26 points on the *Preliminary Handicapping Malocclusion Assessment Record*.**

---

<sup>2</sup> The *Salzmann Handicapping Malocclusion Index* is another name for the *Preliminary Handicapping and 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....

Conn. Gen. Stat. § 17b-282e.

“[I]f 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).

**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.**

5. 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 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)

**Although the child has a diagnosis (ADHD) that is listed in the DSM-5-TR, the child does 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 as the Appellant did not provide a diagnostic evaluation performed by a licensed child psychiatrist (or a licensed child psychologist) that documented how the child's dentofacial deformity was related to the child's mental, emotional, and/or behavioral problems and that orthodontic treatment was necessary and would significantly ameliorate those problems.**

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.