



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Jan 13, 2023, 9:35 am

[REDACTED]
PETITIONER,

OFFICE OF FAIR HEARINGS
AHCA Case No.: 22-FH1622
Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on December 5, 2022, at 3:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]
Authorized Representative

For the Respondent:

Katie Sikes
Complaints and Appeals Specialist
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of dental services (the extraction of four (4) wisdom teeth along accompanying sedation) was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. [REDACTED] Petitioner's Authorized Representative and [REDACTED] appeared for the Fair Hearing to provide testimony on behalf of Petitioner and did not call any witnesses.

Katie Sikes, a Complaints and Appeals Specialist for DentaQuest of Florida, Inc. ("DentaQuest") appeared for the Fair Hearing as representative for Respondent. Dr. Linda Johnson ("Dr. Johnson"), a Dental Consultant for DentaQuest, appeared for the Fair Hearing as a witness for Respondent.

Leann Williams, a Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as an observer.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a 10-page evidence packet, which was admitted into evidence as Petitioner's Composite Exhibit 1. Petitioner's Composite Exhibit 1 includes the following documents: an email; a DentaQuest Claim/Pre-Authorization Status Detail; and a Notice of Adverse Benefit Determination ("NABD") (dated August 12, 2022).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 46-page evidence packet, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following documents: an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions ("Scheduling Order") (dated September 30, 2022); an ADA Dental Claim Form (Claim/Adjustment Number: [REDACTED]); a Notice of Adverse Benefit Determination ("NABD") (dated July 20, 2022); a DentaQuest – Authorization Determination (dated July 20, 2022); an Oral Surgery Referral Form; Patient Progress Notes; a dental radiograph; DentaQuest's appeal information; a DentaQuest – Authorization

Determination (dated July 25, 2022); a Notice of Plan Appeal Resolution (“NPAR”) (dated July 25, 2022); Exhibit B Benefits Covered for Florida (“FL”) Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid; DentaQuest internal criteria – 18.01 Criteria for Dental Extractions; DentaQuest internal criteria – 18.02 Criteria for Cast Crowns; DentaQuest internal criteria – 18.09 Criteria for General Anesthesia and Intravenous (IV) Sedation; and DentaQuest internal criteria – 18.10 Criteria for Periodontal Treatment.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. *See* Respondent’s Composite Exhibit 1, pages 10, 25; *see also* Petitioner’s Composite Exhibit 1, pages 2-4. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, [REDACTED]. *Id.* at 10; *see also* Petitioner’s Composite Exhibit 1, pages 2-4. Petitioner’s dental provider is Dr. Mark Kogan (“Dr. Kogan”). *Id.*; *see also* Petitioner’s Composite Exhibit 1, pages 2-4. Dr. Kogan submitted an ADA Dental Claim Form requesting the following dental services: D7240 (teeth #1, #16, #17, #32), D9239, and D9243. *Id.* Teeth #1, #16, #17, and #32 are Petitioner’s wisdom teeth. *Id.* at 22. [REDACTED]

[REDACTED] recommended the extraction of Petitioner’s wisdom teeth due to “acute symptoms, pain, and/or swelling.” *Id.* at 21. The referral is not signed or dated. *Id.* Petitioner experiences dental pain. *Id.* at 22. Dr. Kogan submitted a dental radiograph. *Id.* at 23. Dr. Kogan’s dental narrative states the following:

PRIOR AUTH#202219238572800 DENIED Please, reconsider patient, parent called complaining that [REDACTED], is in extreme pain taking pain meds every day. Please, see attached panoramic for your review and reconsider. Thank You, 202220051557300_1.jpg, 202220051557300_2.JPG, 202220051557300_3.JPG

Respondent's Composite Exhibit 1, page 10.

3. On [REDACTED] DentaQuest issued an NABD denying Petitioner's request for dental services, *supra* ¶ 2, based on medical necessity. *Id.* at 12-16. The NABD explained the basis of the denial of dental services as follows, in pertinent part:

DentaQuest has reviewed your request for D7240 - extraction of impacted tooth covered by bone, Tooth 1; D7240 - extraction of impacted tooth covered by bone, Tooth 16; D7240 - extraction of impacted tooth covered by bone, Tooth 17; D7240 - extraction of impacted tooth covered by bone, Tooth 32; D9239 - I.V. Sedation - first 15 minutes; D9243 - IV Sedation each 15 minutes, which we received on July 19, 2022. After our review, this service has been: **DENIED** as of 7/20/2022.

We made our decision because:
(Check all boxes that apply)

We determined that your requested services are not medically necessary because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)

...

- Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
- Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

...

The facts that we used to make our decision are: The information your dentist sent shows your tooth does not need to be removed. Your tooth has no sign of infection and your dentist has not told us that you are in pain. The pain must be more than you may have normally as your tooth is breaking through the gums. Please follow up with your dentist.

This denial applies to this service(s):

- D7240 extraction of impacted tooth covered by bone Tooth 1

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone Tooth 16

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone Tooth 17

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone Tooth 32

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction

Your dentist has asked for anesthesia (a medicine to make you sleep) for a service that has been denied. The request to make you sleep is also denied. We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D9239 I.V. Sedation - first 15 minutes

We based this decision on:

- DentaQuest Clinical Criteria for General Anesthesia and IV Sedation
- D9243 IV Sedation each 15 minutes

We based this decision on:

- DentaQuest Clinical Criteria for General Anesthesia and IV Sedation

...

Sincerely,

Daniel Dorrego, DDS ["Dr. Dorrego"]

Respondent's Composite Exhibit 1, pages 12-16. (Emphasis added).

4. On July 20, 2022, Petitioner requested a plan appeal. *Id.* at 25-26. On July 25, 2022, DentaQuest issued an NPAR upholding the denial of dental services. *Id.* at 31-32.

5. Also on July 25, 2022, DentaQuest issued an Authorization Determination to Petitioner's dental provider (Dr. Kogan) explaining the denial of the requested Dental services. *Id.* at 27-29.

The Authorization Determination states the following, in pertinent part:

Procedure: D7240 – removal of impacted tooth-completely bony;

Status: Denied

Determination Type: Clinical | Advisory

Determination Reason: Per Dental Director review, service is denied. **There is no sign of infection or other medical reason for tooth removal.** | Our Dental Consultant has reviewed the appeal and the initial decision is upheld. The service

requested is denied. Additional documentation was received, but it does not support the need for this service.

...

Procedure: D9239 – intravenous moderate (Conscious) sedation/analgesia-first 15 minutes; D9243 – intravenous moderate (Conscious) sedation/analgesia-each subsequent 15 minute increment

Status: Denied

Determination Type: Admin

Determination Reason: Our Dental Consultant has reviewed the appeal and the initial decision is upheld. The service requested is denied. Additional documentation was received, but it does not support the need for this service. |

Anesthetic services are only covered when the associated services are approved.

...

Signed,

F. Manteiga, DMD [“Dr. Manteiga”]

Respondent’s Composite Exhibit 1, pages 27 - 28. (Emphasis added).

6. On August 29, 2022, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the denial of dental services. On November 14, 2022, the Hearing Officer issued a Scheduling Order to all parties of record scheduling the Fair Hearing to be conducted by telephone on December 5, 2022, at 3:00 p.m. EST.

7. According to [REDACTED] testimony presented at the Fair Hearing, [REDACTED] asserted that Petitioner’s request should be approved to alleviate Petitioner’s dental pain and Petitioner’s need to manage the dental pain with medication.

8. According to Dr. Johnson’s testimony presented at the Fair Hearing, Dr. Johnson is a Florida-licensed Dentist and a Dental Consultant for DentaQuest. The internal criteria, *supra* ¶ 9, used to make a medical necessity determination in this case was approved by the Florida Medicaid program. Dr. Johnson reviewed the submitted dental radiograph and determined that Petitioner’s case does not meet any of the six dental conditions that constitute pathology. *Id.* at 36-38. As a result, DentaQuest’s internal criteria has very specific criteria for the approval of

dental extractions. *Id.* Dr. Johnson provided the following assessment of Petitioner’s wisdom teeth: No evidence of incorrect position; all of Petitioner’s wisdom teeth are erupting in a correct position; Petitioner’s wisdom teeth do not have more than 50% root development; no signs of decay or cysts; and no signs of over eruption of the wisdom teeth. DentaQuest’s internal criteria requires that, in cases where the recipient exhibits pain with no pathology, the dental provider must furnish a narrative that describes pain that is more than normal eruption pain for each specific tooth. *Id.* at 37. DentaQuest will not approve all four (4) wisdom teeth to be extracted if only one tooth is causing pain, so it is important for Petitioner’s dentist to furnish a dental narrative individualized to each of the four (4) wisdom teeth, separately. Dr. Johnson reviewed the submitted dental narrative and determined that it was insufficient because the dental provider grouped all four wisdom teeth together and did not explain why each tooth needed to be extracted, there was no explanation of Petitioner’s pain as it relates to each tooth. *Id.* at 10, 21-22.

9. The internal criteria that DentaQuest used to make its decision appears in Section 18.01 of the DentaQuest Criteria for Dental Extractions, which provides as follows, in pertinent part:

18.01 Criteria for Dental Extractions

Criteria

The prophylactic removal of asymptomatic teeth (i.e. third molars) or teeth exhibiting no overt clinical pathology (except for orthodontics) is not a covered service. DentaQuest will not reimburse for any surgical extraction of third molars which are asymptomatic or do not exhibit any evidence of pathology or which were extracted for prophylactic reasons only.

...

3. Documentation of medical necessity for oral surgery – evidence of diagnosed pathology or demonstrable need (including ortho), rather than anticipated future pathology.

a. Pathology

i. Provider must submit narrative and x-rays or photos describing pathology

- ii. Each tooth must show pathology
 - iii. Symptomology or impactions without pathology may not be enough
 - b. Demonstrable need
 - i. Narrative describing need
 - ii. Supporting documentation (e.g. x-rays, photos, hospital admissions, etc.)
 - c. Extractions in conjunction with approved orthodontic treatment
 - i. Provider must submit request for extractions from orthodontist
 - ii. Needs to be approved orthodontic case
 - iii. To expedite process, provider may also want to submit orthodontic approval
- 4. General approval v. Denial Guidelines
 - a. Probable Approval
 - i. **Pathology =**
 1. **Non-restorable Decay**
 2. **Tooth erupting on an angle and impinging on 2nd molars**
 3. **Recurrent Pericoronitis**
 4. **Dentigerous Cyst or other growth**
 5. **Internal or External Root Resorption**
 6. **3rd molar has over-erupted due to lack of opposing tooth contact**
 - ii. **Demonstrable Need =**
 1. In conjunction with approved orthodontics where orthodontist request the 3rd molars be removed to guarantee the success of the orthodontic case (provide referral from ortho and prior auth approval of ortho if possible)
 2. **Pain with no pathology – On a per tooth basis, provider must furnish a narrative that describes pain that is more than normal eruption pain – for example: a description of duration, intensity, medications, or other factors that are more than normal eruption pain – the description of such factors is necessity demonstrate need**
 - b. Probable Denial
 - Impaction or Symptomology =
 1. Impaction with no other pathology
 2. **Pain or discomfort with unknown pathology**

- **Other 3rd molars have pathology (if one, two, or three teeth show pathology, DQ will not automatically approve the extraction of the remaining non-pathologic teeth)**

Respondent’s Composite Exhibit 1, page 36-38. (Emphasis added).

CONCLUSIONS OF LAW

10. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

11. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b).

12. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

13. Petitioner’s request for dental services is governed by the Florida Medicaid Dental Coverage Policy (August 2018) (“Dental Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental Policy provides the following, in pertinent part:

1.0 Introduction

Florida Medicaid provides dental services for the study, screening, assessment, diagnosis, prevention, and treatment of diseases, disorders, and conditions of the oral cavity.

...

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined to be medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.9 Surgical Procedures and Extractions

Florida Medicaid covers surgical procedures and extraction services for recipients under the age of 21 years.

Florida Medicaid covers emergency dental services for recipients under age 21 years and older to alleviate pain, infection, or both, and procedures essential to prepare the mouth for dentures.

...

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's Authorization Requirements Policy.

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider's service

5.2 Specified Non-Covered Criteria

Florida Medicaid does not cover the following as part of this service benefit:

- **Anesthesia for restorative services, when billed separately**
- Dental screening and assessment performed by an RDH on the same date of service as an evaluation performed by a dentist
- Fixed partial dentures for recipients 21 years and older
- Full mouth scaling performed on the same date of service as root planning or periodontal scaling
- Individual periapical radiographs(s) on the same date of service when the reimbursement amount exceeds that of a complete series
- Intraoral-completes series and a panoramic film on the same date of service

(Emphasis added).

14. Because Petitioner is under the age of 21 years, the requirements of Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) apply. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

(3) Dental Services

(A) which are provided –

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

Further, according to 42 U.S.C. § 1396d(r)(5), EPSDT include, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

15. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- **Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain**
- **Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs**
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

(Emphasis added).

19. Petitioner requested the extraction of [REDACTED] four (4) wisdom teeth (tooth #1, #16, #17, #32), as well as sedation that accompanies the surgical procedure. *See supra* ¶ 2. In an NABD, dated July 20, 2022, Respondent denied Petitioner's request based on the submitted documentation and their internal Criteria for Dental Extractions. *See supra* ¶ 3. Respondent explained that Petitioner's request was not medically necessary, as Petitioner's request was not "needed to protect life, prevent significant illness or disability, or alleviate severe pain" nor was it "individualized, specific, consistent with symptoms or diagnosis of illness or injury" and was "in excess of the patient's needs." *Id.* Respondent determined that the criteria for wisdom teeth were not met because Petitioner's wisdom teeth did not show signs of infection and Petitioner is not experiencing more pain than normal eruption. *See supra* ¶ 8. Based on this assessment, Petitioner's dental provider did not show Petitioner's wisdom teeth need to be removed. *See supra* ¶ 3, 5.

20. As Petitioner bears the burden of proof, Petitioner must show by a preponderance of the evidence that Respondent's decision was incorrect. Here, Petitioner did not establish that the extraction of Petitioner's wisdom teeth (tooth #1, #16, #17, #32) was not "in excess of the patient's needs." As shown by the record, there is no sign of infection or pathology, *supra* ¶ 9, that warrants extractions of these teeth. *See supra* ¶ 3-5, 8. Moreover, Petitioner's teeth at issue are erupting in a normal eruption pattern with some discomfort to be expected and do not

present any pathology. *See supra* ¶ 7. Petitioner submitted two dental narratives. *See supra* ¶ 2. However, both dental narratives were not specific and individualized to each wisdom tooth (tooth #1, #16, #17, #32) in describing how each tooth is causing pain beyond normal discomfort, nor that there is pathology and/or infection in each tooth. *See supra* ¶ 2, 8-9. Further, one dental narrative was not signed or dated leading to minimal weight being applied to the recommendation. Thus, Petitioner failed to submit a sufficient dental narrative fully attributing Petitioner's dental pain to each wisdom tooth and describing in the dental narrative pain that is more than normal expected eruption. *See supra* ¶ 8. The Hearing Officer considered the dental narratives to be a recommendation and took it into consideration. However, the fact that a provider has recommended services does not, in itself, make such services medically necessary. *See supra* ¶ 18. In other words, just because the dentist requested and stated that the Petitioner needs their wisdom teeth extracted does not mean that said services are automatically approved on their word alone. Thus, the Hearing Officer must weigh the professional assessment of Petitioner's dental provider (Dr. Kogan) against the professional assessment of Respondent's three (3) dental consultants (Dr. Johnson, Dr. Johnson, and Dr. Manteiga). It is the Petitioner's burden to show that their Dentist made the correct assessment and Respondent's three (3) dental consultants' (Dr. Johnson, Dr. Johnson, and Dr. Manteiga) that Petitioner's teeth do not need to be removed, is incorrect. However, here, the Hearing Officer found Dr. Johnson's testimony, *supra* ¶ 8, regarding Petitioner's dental condition and needs to be credible and reliable.

21. Dr. Johnson's credible testimony at the Fair Hearing established that [REDACTED] is qualified in making medical necessity determinations regarding the extractions of wisdom teeth. *See supra*


¶ 8. Dr. Johnson's professional assessment is that the Petitioner's wisdom teeth do not need to be extracted at this time because [REDACTED] teeth present the following condition: "No evidence of incorrect position; all of Petitioner's wisdom teeth are erupting in a correct position; Petitioner's wisdom teeth do not have more than 50% root development; no signs of decay or cysts; and no signs of over eruption of the wisdom teeth." See supra ¶ 8. The records indicate that Petitioner's request for dental services is based on them experiencing dental pain, *supra* ¶ 7, but as of right now, Petitioner is not experiencing more pain to be expected when new teeth are growing in. As such, Petitioner did not show that his request was "individualized, specific, [and] consistent with the symptoms or diagnosis of illness or injury" and not "in excess of the patient's needs." Further, regarding Petitioner's request for sedation, Petitioner did not provide any testimony or evidence on the record as to why this service would be medically necessary once the underlying services are denied. As such, Petitioner did not demonstrate that the requested dental services were medically necessary.

22. Upon consideration of the testimony provider, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are necessary to provide "relief of pain and infections, restoration of teeth, and maintenance of dental health" or to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of dental services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of dental services (the extraction of four (4) wisdom teeth along accompanying sedation) is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial of dental services is hereby **DENIED**.

DONE and ORDERED this 13th day of January, 2023, in Tallahassee, Leon County, Florida.

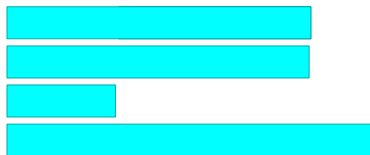
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



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