

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



FILED

Apr 10, 2023, 10:18 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 22-FH1914

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, Hearing Officer Jaquetta Johnson convened a telephonic Fair Hearing on the instant case on January 6, 2023, at 9:30 a.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 (Fixed Appliance Therapy) was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED] (“[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. Daniel Dorrego, DDS (“Dr. Dorrego”), a Dental Consultant for DentaQuest, appeared for the Fair Hearing as a witness for Respondent.

Doris Rivera, a Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer.

Interpreter Ruben, a Spanish Interpreter, appeared for the Fair Hearing to provide language translation services on behalf of the Petitioner.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner an 8-page e-mail (Spanish and English), which was admitted into evidence a Petitioner’s Exhibit 1.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 57-page evidence packet, which was admitted into evidence a 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 December 12, 2022) – English & Spanish; an ADA Dental Claim Form (Claim/Adjustment Number: [REDACTED]); a Notice of Adverse Benefit Determination (“NABD”) (dated July 18, 2022) – English and Spanish; a DentaQuest – Authorization Determination (dated July 18, 2022); a Dental narrative; Dental photographs; DentaQuest’s plan appeal information; a DentaQuest – Authorization Determination (dated July 20, 2022); a Notice of Plan Appeal Resolution (“NPAR”) (dated July 20, 2022) – English and Spanish; Exhibit B Benefits Covered for Florida (FL) Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid; DentaQuest’s

internal criteria – 18.11 Clinical Criteria for Orthodontics; a blank Orthodontic Form; and the Directions for using the Orthodontic Criteria Index Form.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. See Respondent’s Composite Exhibit 1, pages 16, 30, 35-36. 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, Petitioner is [REDACTED]. *Id.* at 16. Petitioner’s Dental provider is Dr. Giselda Ramos (“Dr. Ramos”) – [REDACTED] *Id.* at 16. Dr. Ramos submitted an American Dental Association (“ADA”) Claim Form for the following Dental services: D8220 (upper arch, lower arch). *Id.* at 16. D8220 is a fixed appliance used to correct thumb sucking and tongue thrusting. *Id.* at 53. Dr. Ramos also submitted a Dental photograph for review. *Id.* at 33. Petitioner submitted the following Dental narrative:

Fixed appliance therapy Habit breaker: [REDACTED] patient: **During the patient’s oral evaluation it was noted that the child has a [REDACTED]. Based on [REDACTED] age a [REDACTED] appliance is recommended. Frequent or intense habits over a prolonged period of time (which is in this case) can affect the way the child’s teeth bite together, as well as the growth of the jaws and bones that support the teeth. Because persistent habits can and do cause long term problems, intervention (habit appliance) is recommended.** This is a formal request for preauthorization of D8220[.]

CLASS 3, ANT X-BITE, U/L CROWDING,

Respondent’s Composite Exhibit 1, page 32. (Emphasis added).

3. On July 18, 2022, DentaQuest issued a NABD denying Petitioner’s request for Dental services. *Id.* at 18-29. The NABD explained the basis of the denial as follows, in pertinent part:

DentaQuest has reviewed your request for **D8220 – non-removable appliance, Lower Arch; D8220 – non-removable appliance, Upper Arch**, which we received on July 15, 2022. After our review, this service has been: **DENIED** as of 7/18/2022.

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: **This service is only allowed when you have a bad habit that hurts your teeth. A bad habit is thumb sucking or pressing your tongue against your teeth over and over. These habits cause your teeth to move over time. The information sent by your dentist does not tell us that you have a bad habit that hurts your teeth.** We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D8220 non-removable appliance Lower Arch

We based this decision on:

- DentaQuest Clinical Criteria for Harmful Habits
- D8220 non-removable appliance Upper Arch

We based this decision on:

- DentaQuest Clinical Criteria for Harmful Habits

...

Sincerely,

Gavin-Rae Donaldson, DDS [**“Dr. Donaldson”**]

Respondent's Composite Exhibit 1, pages 18-29. (Emphasis added).

4. On July 18, 2022, Petitioner requested a plan appeal. *Id.* at 35-36. On July 20, 2022, DentaQuest issued an Authorization Determination to Petitioner's Dental provider (Dr. Ramos) explaining the denial of Dental services. *Id.* at 28-33. The Authorization Determination states that the following reasoning for upholding the denial:

Determination Reason: Per Dental Director review, **the documentation submitted does not show thumb sucking or pressing the tongue against the teeth over and over. The documentation submitted does not support the need for a harmful habit appliance.** | 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.

...

Signed,
F. Manteiga, DMD [**“Dr. Manteiga”**]

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

5. Also on July 20, 2022, DentaQuest issued an NPAR upholding the denial of Dental services.

Id. at 40-49. The NPAR states the following:

On 07/20/2022 after consideration of the information you provided to DentaQuest in support of your plan appeal, **DentaQuest hereby DENIES your plan appeal.**

We made this decision based on all the information we got during the appeal process. This is a summary of our investigation and our decision about your appeal:

This service is only allowed when you have a bad habit that hurts your teeth. A bad habit is thumb sucking or pressing your tongue against your teeth over and over. These habits cause your teeth to move over time. The information sent by your dentist does not tell us that you have a bad habit that hurts your teeth.

Respondent’s Composite Exhibit 1, pages 40-49. (Emphasis added).

6. On October 17, 2022, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the denial of Dental services. On December 12, 2023, the undersigned Hearing Officer issued a Scheduling Order, to all parties of record, scheduling the Fair Hearing to be conducted by telephone on January 6, 2023, at 9:30 a.m. EST. *Id.* at 2-14.

7. According to [REDACTED]’s testimony presented at the Fair Hearing, [REDACTED] lacks educational/professional knowledge regarding the denial of Dental services and Petitioner’s

Dental condition. [REDACTED] trusts the assessment and recommendation of Petitioner’s Dental provider, Dr. Ramos, to treat Petitioner’s Dental condition.

8. According to Dr. Dorrego’s testimony presented at the Fair Hearing, Dr. Sofianos is a Florida-licensed Dentist and a Dental Consultant for DentaQuest. Dr. Dorrego reviewed Petitioner’s submitted Dental photograph and Dental narrative, and provided the following Dental assessment: “Petitioner *obviously* shows an [REDACTED] . . . Petitioner would *auto qualify* for Orthodontic Treatment (“braces”) – D8080 . . . The submitted photo *clearly* shows no evidence of thumb sucking or tongue thrusting . . . If this was the case, the photograph would show all the front teeth open and a space for the tongue or thumb to appear.” Petitioner does not qualify for a harmful habit fixed appliance, but would qualify for Orthodontic services to treat their Dental condition. Petitioner has a Handicapping Malocclusion, not a thumb sucking/tongue thrusting habit.

CONCLUSIONS OF LAW

9. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statutes (“Fla. Stat.”) § 409.285(2) (2022). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

11. 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.).

12. 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 Florida Medicaid Dental Policy provides the following:

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

...

4.3 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.

...

5.1 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

13. 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.

14. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy defines “Medically Necessary” or “Medical Necessity” as follows:

2.83 Medically Necessary or Medical Necessity

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).

16. Petitioner requested Dental services (fixed appliance therapy for thumb sucking and tongue thrusting habits). *See supra* ¶ 2. In the NABD, Respondent's Dental Consultant, Dr. Donaldson, denied Petitioner's request for due to, "[t]he information sent by your dentist does not tell us that you have a bad habit that hurts your teeth." *See supra* ¶ 3. Dr. Donaldson determined 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.* Dr. Donaldson further explained that the requested services are only allowed when you have a bad habit that hurts your teeth. *Id.* Respondent's Dental Consultant, Dr. Manteiga, reviewed Petitioner's plan appeal and reached the same conclusion. *See supra* ¶ 4.

17. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect. As provided in the Florida Medicaid Dental Policy, Dental services are approved

for recipients that establish medical necessity. *See supra* ¶ 12. Here, to establish medical necessity, the recipient must have a thumb sucking habit and/or a tongue thrusting habit as the requested fixed appliance is intended to ameliorate. *See supra* ¶ 4-5, 8. Respondent's Dental professionals, Dr. Donaldson, Dr. Manteiga, and Dr. Dorrego, reviewed Petitioner's case and reached the conclusion that the Petitioner does not possess the thumb sucking habit and/or a tongue thrusting habit, at issue. *See supra* ¶ 4-5, 8. Petitioner's Dental provider, Dr. Ramos, declared in the submitted Dental narrative, that the Petitioner does not possess the thumb sucking habit and/or a tongue thrusting habit, at issue. *See supra* ¶ 2. Thus, it appears that Respondent's three Dental professionals in this case have a differing assessment than Petitioner's Dental provider. *See supra* ¶ 2-5, 8. As established on the record, evidence of whether a recipient possesses a thumb sucking habit and/or a tongue thrusting habit is seen in a Dental photograph. *See supra* ¶ 8. Dr. Dorrego provided credible testimony at the Fair Hearing reviewing Petitioner's Dental photograph and explaining how there is no evidence of a tongue thrusting habit and no evidence of a thumb sucking habit. *See supra* ¶ 8. In addition, Dr. Dorrego thoroughly explained that Petitioner has a Handicapping Malocclusion, and would automatically qualify for Orthodontic Braces, which would treat Petitioner's Dental condition rather than the request fixed appliance therapy. *See supra* ¶ 8. Petitioner's Dental provider did not appear at the Fair Hearing to explain how they reached the conclusion that Petitioner qualifies for the requested Dental services based on the submitted Dental photograph. This testimony along with testimony why Dr. Ramos did not consider Dr. Dorrego's recommended treatment (Orthodontic Braces) as the proposed treatment for the Petitioner would have been valuable. [REDACTED] admittedly is not a Dental professional and is not qualified to speak to the appropriate Dental services for

Petitioner's Dental condition. Thus, although [REDACTED] has concerns regarding Petitioner's Dental condition, Petitioner has not shown that the requested Dental services (fixed appliance therapy) would treat and alleviate Petitioner's Dental condition. Petitioner is not without recourse, as they "auto qualify" for Orthodontic Braces and could have their Dental provider, Dr. Ramos, submit a prior authorization form for Orthodontic Brace instead of Fixed Appliance Therapy.

18. The undersigned Hearing Officer must weigh Dr. Ramos' proposed treatment recommendation and assessment against that of the three other Dental professionals (Dr. Donaldson, Dr. Manteiga, and Dr. Dorrego) who disagree with the requested treatment plan. It is the Petitioner's burden to show that Dr. Ramos' recommendation is correct, and Respondent's assessment is incorrect. Although there is an indication that the Petitioner's teeth may benefit from Dental services, *supra* ¶ 2, there is insufficient evidence that Fixed Appliance Therapy is the appropriate Dental service for Petitioner at this time. Again, Dr. Dorrego, who is a Dental Consultant and a licensed dentist, provided credible testimony that the Petitioner does not meet the criteria for Fixed Appliance Therapy, but does meet the criteria for Orthodontic Braces based on [REDACTED] review of the submitted Dental photograph. *See supra* ¶ 8. [REDACTED] asserted Dr. Ramos' ADA Claim Form and Dental narrative as a form of recommendation, requesting prior authorization for the subject dental services. *See supra* ¶ 2. However, the a Dental provider's recommendation, *prima facie*, does not make the requested Dental services medically necessary, under Florida law. *See supra* ¶ 15. In other words, just because a person's Dentist recommends a service does not mean that the recommendation is correct or that the service will be approved. Section 2.83 of the Definitions Policy mandates that "[t]he 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.” See ¶ 15. Therefore, Dr. Ramos’s recommendation does not, in itself, make the requested Dental services medically necessary. Respondent’s Dental Consultants must corroborate the assessment of Petitioner’s Dentist or Petitioner must show the assessment of Petitioner’s Dentist is more credible than the assessment of Respondent’s Dental Consultants (e.g., Dr. Donaldson, Dr. Dorrego, Dr. Morales, Dr. Manteiga).

19. Moreover, Petitioner has not shown that they are suffering from a disability or any impairment to ■■■ development, that Fixed Appliance Therapy is appropriate to treat. Thus, although Petitioner may benefit from Dental services in the future, they do not have a thumb sucking habit or a tongue thrusting habit that the requested Fixed Appliance Therapy is intended to correct under Florida Medicaid. As a result, Petitioner did not show that the requested Fixed Appliance Therapy is “individualized, specific, consistent with symptoms or diagnosis” and not “in excess of the patient’s needs.” Petitioner has not established that the requested Dental services are medically necessary under the Florida Medicaid Dental Policy and the Florida Medicaid Definitions Policy.

20. Upon consideration of the testimony provided at the Fair Hearing, the evidence admitted into the record, and applicable policies, the undersigned Hearing Officer concludes that Petitioner *did not* prove by a preponderance of the evidence that the requested Dental 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 Hearing Officer finds that Petitioner *has not* proved by a preponderance of the evidence that Respondent's denial of the requested Dental services (Fixed Appliance Therapy) was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of Dental services (Fixed Appliance Therapy) is hereby **AFFIRMED**.

Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE AND ORDERED this 10th day of April, 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher

22-FH1914

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LAURA GALLAGHER, Hearing Officer

Agency for Health Care Administration

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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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