

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



FILED

Feb 20, 2023, 8:58 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 22-FH1954

Plan ID No.: [REDACTED]

vs.

MANAGED CARE OF NORTH AMERICA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 18, 2022, at 12:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joanie Cooke

Manager of Grievance & Appeals

Managed Care of North America, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for dental services (dental codes D7310 and D2266) was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], represented and provided testimony on behalf of Petitioner.

Joanie Cooke, Managed of Grievances & Appeals for Managed Care of North America, Inc. (“MCNA”), appeared on behalf of Respondent. Kimberly Hayden, a Supervisor with MCNA, appeared as a witness. Dr. Ronald Ruth (“Dr. Ruth”), Chief Dental Officer for MCNA, provided testimony on behalf of Respondent.

Chrissie Simmons and Sandra Durden, Medical Health Care Program Analysts for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as observers.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a 10-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “22-FH1954 Evidence for Hearing.pdf.” With no objection from the Respondent, the undersigned admitted the packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 71-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “Summary Packet – [Petitioner] 22-FH1954.pdf.” With no objection from the Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of MCNA. See Respondent’s Composite Exhibit 1 at page 24.
24. MCNA is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair hearing, Petitioner is [REDACTED]. *Id.*

3. In preauthorization number [REDACTED], Petitioner requested the following dental services: code D7310 – Alveoloplasty in conjunction with extractions – four of more tooth spaces, per quadrant (tooth 30), and code D4266 Guided Tissue Regeneration – resorbable barrier, per site (tooth 1). *Id.* at 1.

4. In a Notice of Adverse Benefit Determination (“NABD”) dated June 21, 2022, Respondent denied Petitioner’s request for code D7310 Alveoloplasty. *Id.* at 4-7. The NABD explained as follows:

We made our decision because:

...

Other Authority

Administrative reasons

The facts that we used to make our decision are:

The dental service(s) that you or your dentist asked for are not approved because the Florida Medicaid Dental Services Coverage and Limitations Handbook says you can have your bone filed down when you have at least four teeth pulled in a row.

Id. at 4-5.

5. In an NABD dated June 21, 2022, Respondent denied Petitioner’s request for code D4266 Guided Tissue Regeneration. *Id.* at 8-12. The NABD explained as follows:

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.

Must meet accepted medical standards and not be experimental or investigational.

...

Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

...

The facts that we used to make our decision are:

The dental service(s) that you or your dentist asked for are not approved because the Clinical Reviewer has determined that the requested service(s) will not correct or improve your condition.

Your condition does not meet MCNA's Tissue Graft criteria as stated in MCNA's Utilization Review Criteria and Guidelines. The information we received from your requesting provider does not show that:

- You have less than 2 mm of gingival tissue remaining.
- You need this treatment for reasons other than cosmetic such as mucogingival problems.
- You need treatment that includes bed preparation and getting donor tissue, including the use of allograft material such as mesh.
- Your tooth/teeth qualify for bone surgery and show top to bottom wall defects.
- You need a certain amount of donor tissue next to the defect.
- The procedure is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the members' needs.

Id. at 8-9.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated August 4, 2022, upholding the denial of codes D7310 and D4266. *Id.* at 55-57.

The NPAR states as follows:

On July 28, 2022, we received your timely plan appeal request regarding MCNA Dental's Notice of Adverse Benefit Determination dated June 21, 2022, NABD Number [REDACTED], denying the D7310 Alveoloplasty In Conjunction With Extractions – Four Or More Teeth Or Tooth Spaces, Per Quadrant (tooth 30) and D4266 Guided Tissue Regeneration – Resorbable Barrier, Per Site (tooth 1) provided to Josue.

On August 3, 2022, after consideration of the information you provided to MCNA Dental in support of your plan appeal, MCNA Dental hereby denies your plan

appeal. MCNA has denied your appeal due to the Clinical Reviewer, who is a licensed General Dentist, determined that after the review of the x-rays, narrative and memos submitted by Dr. Shoer, D7310 denied because the alveoplasty for tooth 30 is only covered when performed in conjunction with four (4) or more extractions in a single quadrant. In addition, D4266 denied because this treatment is in excess of [Petitioner's] needs and it is not covered under [REDACTED] plan.

Based on the information reviewed with the appeal, our Clinical Reviewer determined your condition did not meet MCNA's Clinical Criteria for Oral and Maxillofacial Surgery and Periodontics as stated in MCNA's Utilization Review and Criteria Guidelines. Dental services must meet the definition of medical necessity as defined in 59G-1.010 of the Florida Administrative Code.

Id. at 55.

7. On October 19, 2022, Petitioner requested a Medicaid Fair Hearing based on MCNA's denial of Petitioner's request for dental services. The undersigned scheduled a telephonic Fair Hearing for January 18, 2023, at 12:00 p.m. EST, and all parties were duly notified.

8. At the hearing, [REDACTED] testified that the requested dental services were required by Petitioner's dentist in conjunction with Petitioner's wisdom teeth extractions and are medically necessary. [REDACTED] testified that [REDACTED] paid for the services at issue to be performed at the time of Petitioner's extractions.

9. At the hearing, Dr. Ruth testified that MCNA authorized the extraction of Petitioner's wisdom teeth. However, Dr. Ruth established that the requested dental code D7310, by definition, only applies when there are 4 affected teeth *in the same quadrant*. In this case, the preauthorization request for code D7310 was made for only one tooth (tooth 30). Dr. Ruth further established that dental code D4266 was denied as in excess of Petitioner's need and is almost never approved for cases involving a single tooth. In this case, the documentation did not show that Petitioner meets the criteria for code D4266 including: having less than 2mm of

gingival tissue remaining, needing treatment that includes bed preparation and getting donor tissue, and qualifying for bone surgery and showing top to bottom wall defects.

CONCLUSION 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), Florida Statutes. This order is the final administrative decision of AHCA under section 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. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

13. Because Petitioner is requesting new services, 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.).

14. Petitioner's request for dental services is governed by the Florida Medicaid Dental Coverage Policy (August 2018) ("Dental Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental Policy provides as follows:

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.

1.1 Florida Medicaid Policies

This policy is intended for use by providers that render dental services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid's general policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.

...

1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the service coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent service coverage limits than specified in Florida Medicaid policies.

...

1.4.6 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary dental services. Some services may be subject to additional coverage criteria as specified in section 4.0. If a service is limited to recipients under the age of 21 years, it is specified in section 4.0. Otherwise, the service is covered for recipients of all ages.

...

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

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

...

4.2 Specific Criteria

Florida Medicaid covers dental services in accordance with the American Dental Association's Current Dental Terminology Manual, the American Academy of Pediatrics' Periodicity Schedule, and the applicable Florida Medicaid fee schedule(s), or 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 age 21 years and older to alleviate pain, infection, or both, and procedures essential to prepare the mouth for dentures.

...

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

Dental Policy at pages 3-7.

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. . . .

Definitions Policy at page 8.

16. MCNA's Criteria for Periodontics Services and Criteria for Oral and Maxillofacial Surgery

provide, in pertinent part:

D4266 guided tissue regeneration – resorbable barrier, per site

Criteria/Guidelines:

1. A minimum amount of attached gingival remains, i.e. <2mm
2. Procedure required for reasons other than cosmetic such as mucogingival defect
3. Procedure includes both recipient bed preparation and obtaining donor tissue, including use of allograft material such as Alloderm
4. Tooth/teeth must qualify for osseous surgery and exhibit vertical wall defects
5. Adequate donor tissue adjacent to the defect

D7310 Alveoloplasty

Criteria/Guidelines: "in conjunction with four or more extractions in the same quadrant. Extractions."

Respondent's Composite Exhibit at pages 29, 37.

17. In the instant case, Petitioner requested dental codes D7310 (alveoloplasty in conjunction with the extraction of tooth 30) and D4266 (guided tissue regeneration for tooth 1). *See supra* ¶13-5. Dr. Ruth provided credible and persuasive testimony that code D7310 is only a covered benefit when the request is made in conjunction with the extraction of four or more teeth in the same quadrant. Here MCNA authorized the extraction of Petitioner's wisdom teeth. However, the preauthorization request for code D7310 was made for only one tooth (tooth 30). With regard to code D4266, Dr. Ruth established that the procedure is in excess of Petitioner's needs because the documentation did not show that Petitioner meets such criteria as: having less than 2mm of gingival tissue remaining, needing treatment that includes bed preparation and getting donor tissue, and qualifying for bone surgery and showing top to bottom wall defects. *See supra* ¶19.

18. Petitioner relied upon the recommendation from [REDACTED] provider to demonstrate that the requested services are medically necessary. See supra ¶8. However, 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. See supra ¶ 15.

19. As the Petitioner bears the burden of proof, [REDACTED] must show by a preponderance of the evidence that Respondent's decision was incorrect. Petitioner did not establish that the request for dental service code D7310 meets coverage criteria because the request involved less than four teeth per quadrant. Petitioner also did not establish that code D4266 is "not in excess of" Petitioner's needs because [REDACTED] did not meet the qualifying criteria. Therefore, Petitioner did not demonstrate by a preponderance of the evidence that the requested dental services are medically necessary.

20. Looking at all of the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the requested dental services are "necessary to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services." Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of the dental services at issue in this case was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of Petitioner's request for dental services (dental codes D7310 and D2266) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 20th day of February 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher

22-FH1954



2023.02.20

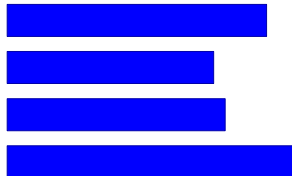
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LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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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gaflmfh@mcna.net

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com