

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



FILED

Mar 06, 2023, 9:49 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 22-FH2076

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a Hearing Officer with the Office of Fair Hearings convened a telephonic Fair Hearing on the instant case on February 2, 2023, at 8:29 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Michael Chemoro
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 (Orthodontic Braces and monthly visits) 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.

Michael Chemoro, a Complaints and Appeals Specialist for DentaQuest of Florida, Inc. (“DentaQuest”), appeared for the Fair Hearing as representative for Respondent. Dr. Michael Sofianos (“Dr. Sofianos”), a Dental Consultant for DentaQuest, appeared for both scheduled Fair Hearings as a witness for Respondent.

The following persons appeared for the Fair Hearing as an observer: Linda Latson, a Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”); and Laura Gallagher, an Attorney for the Agency.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent an 8-page evidence packet, which was admitted into evidence a Petitioner’s Composite Exhibit 1. Petitioner’s Composite Exhibit 1 includes the following documents: an email; a Letter of Medical Necessity from Dr. Shaun Smith (“Dr. Smith”) (dated [REDACTED]); Dental photographs (dated [REDACTED]); Dental radiographs (dated [REDACTED]); Dental records; additional Dental photographs (dated [REDACTED]); and a Dental narrative from Dr. Smith (dated [REDACTED]).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 44-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 January 12, 2023); an ADA Dental Claim Form (Claim/Adjustment Number: [REDACTED]); a Notice of Adverse

Benefit Determination (“NABD”) (dated October 5, 2022); a DentaQuest – Authorization Determination (dated October 5, 2022); Dental photographs (dated [REDACTED]); Dental radiographs (dated [REDACTED]); a Dental narrative from Dr. Smith (dated [REDACTED]); an Orthodontic Criteria Index Form Florida – Comprehensive D8080 (“Orthodontic Form”) (dated October 3, 2022); DentaQuest’s appeal information; a DentaQuest – Authorization Determination (dated October 17, 2022); a Notice of Plan Appeal Resolution (“NPAR”) (dated October 17, 2022); DentaQuest’s internal criteria – 18.11 Clinical Criteria for Orthodontics; a blank Orthodontic Form; the Directions for using the Orthodontic Criteria Index Form; and Exhibit B Benefits Covered for Florida (FL) Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. See Respondent’s Composite Exhibit 1, pages 10, 18-19, 27-29. 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 10, 19; *see also* Petitioner’s Composite Exhibit 1, pages 3-8. Petitioner’s Dental provider is Dr. Smith, an Orthodontist. *Id.* at 10. DentaQuest approved Petitioner to receive a pre-orthodontic treatment examination. *Id.* at 18. In support of the ADA Dental Claim Form, Petitioner submitted Dental photographs, Dental radiographs, Dental records, a Dental Narrative, a Letter of Medical Necessity, and an Orthodontic Form. *Id.* at 20-25; *see also* Petitioner’s Composite Exhibit 1, pages 2-8. Dr. Smith indicated that Petitioner does not meet any of the criteria on the Orthodontic Form. *Id.* at 24-25. Nonetheless, Dr. Smith recommended Orthodontic treatment due to, “severe

when your teeth will not grow in to your mouth without help); over-jet bigger than 9mm or negative over-jet bigger than 3.5mm (this is when your top teeth or bottom teeth are too far forward and do not line up correctly); cleft lip; cleft palate (this is an opening in the roof of your mouth); or issues with your teeth that would need braces and surgery in order to fix them. We have also told your dentist. Please talk to your dentist about your treatment choices.

This denial applies to this service(s):

- D8080 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics
- D8670 monthly visit

We based this decision on:

- DentaQuest Clinical Criteria for Other Orthodontic Services

...

Respondent's Composite Exhibit 1, pages 12-17. (Emphasis added).

4. On October 12, 2022, Petitioner requested a plan appeal due to experiencing difficulty chewing food and Dental pain. *Id.* at 27-28. On October 17, 2022, DentaQuest issued an Authorization Determination (signed by Dr. Manteiga) to Petitioner's Dental provider (Dr. Smith) explaining the denial of Dental services. *Id.* at 29-30. The Authorization Determination states that the requested Orthodontic Treatment was denied because a handicapping malocclusion was not demonstrated. *Id.* at 29-30.

5. On October 17, 2022, DentaQuest issued an NPAR upholding the denial of Dental services. *Id.* at 32-33. The NPAR states the following:

On 10/17/2022 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:

Our dentist looked at the information sent by your dentist. You did not meet the criteria needed to approve braces. The information sent shows a lack of medical necessity or a handicapping malocclusion. The criteria measure how your teeth are different from normal alignment. It also measures how your teeth are different from normal contact between the teeth when you chew or bite down. The criteria reviewed includes: a deep impinging overbite (this is when your upper teeth come too far down over your lower teeth and the lower teeth cause gum damage to the roof of your mouth); open-bite with your front teeth (this is when there is a space between the biting surface of the front teeth when the back teeth bite together); cross-bite with your front teeth (this is when the front teeth don't line up with the bottom teeth); impacted front teeth (this is when your teeth will not grow in to your mouth without help); over-jet bigger than 9mm or negative over-jet bigger than 3.5mm (this is when your top teeth or bottom teeth are too far forward and do not line up correctly); cleft lip; cleft palate (this is an opening in the roof of your mouth); or issues with your teeth that would need braces and surgery in order to fix them.

Respondent's Composite Exhibit 1, pages 32-33. (Emphasis added).

6. On November 4, 2022, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the denial of Dental services. On January 12, 2023, a Hearing Officer with the Office of Fair Hearings issued a Scheduling Order, to all parties of record, scheduling the Fair Hearing to be conducted by telephone on February 2, 2023, at 8:30 a.m. EST. *Id.* at 2-8.

7. According to [REDACTED]'s testimony presented at the Fair Hearing, Petitioner is requesting Orthodontic Braces based on the recommendation of Petitioner's Dental provider. Petitioner argues that Orthodontic Braces and monthly treatment visits would improve [REDACTED] Dental conditions outlined by Dr. Smith. Petitioner uses over-the-counter medication (e.g., Tylenol, Motrin) to alleviate Dental pain and [REDACTED]. [REDACTED] argued that although Petitioner does not meet the Orthodontic Form's criteria, Orthodontic Braces are medically necessary.

8. Dr. Sofianos is a Florida-licensed Dentist and a Dental Consultant for DentaQuest. DentaQuest's decision was based on the information submitted by the Petitioner, *supra* ¶ 2, and the DentaQuest internal criteria for Orthodontics. See *supra* ¶ 9. Specifically, Dr. Smith concluded that Petitioner does not meet any of the criteria for Orthodontic Braces based on the submitted Orthodontic Form, *supra* ¶ 2, and DentaQuest will deny services if the recipient does not meet any of the criteria on the Orthodontic Form. See *supra* ¶ 9. DentaQuest uses the Orthodontic Form to determine whether the request for Orthodontic Braces and treatment is medically necessary.

9. DentaQuest relied upon their internal criteria for Orthodontics in making its medical necessity determination. *Id.* at 12-17. DentaQuest's Clinical Criteria for Orthodontics state the following, in pertinent part:

18.11 Clinical Criteria for Orthodontics

Florida Medicaid requires that for any orthodontic case to be determined as medically necessary the case must demonstrate a "handicapping malocclusion". **The state defines "handicapping malocclusion" as "a condition that results in a disability or impairment to the recipient's physical development."** DentaQuest has set the criteria in the Orthodontic Criteria Index Form included below. **Please note, that if a provider does not check any criteria, DentaQuest will deny the case.** The Pre-orthodontic visit (code D8660) is only covered on denied prior authorization requests for comprehensive orthodontic care. The pre-orthodontic visit includes diagnostic casts, photographs, radiographs (panoramic and cephalometric), a Orthodontic form, a ADA claim form, and a narrative including the diagnosis and treatment plan. These services are not reimbursed separately.

Orthodontic services will not be covered for the following conditions:

- Treatment primarily for cosmetic purposes; or
- Split phase treatment, with exception of cleft palate cases
- **Cases that do not meet one of the auto qualifiers in the orthodontic form.**

Respondent's Composite Exhibit 1, pages 38-39. (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), Florida Statutes (2022). 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. 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 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.

...

1.4.4 Handicapping Malocclusion

A condition that results in a disability or impairment to the recipient’s physical development.

...

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

...

4.2.4 Orthodontic Services

Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions as follows:

- Up to 24 units within a 36 month period, including the removal of the appliances and retainers at the end of treatment

- One replacement retainer(s) per arch, per lifetime

...

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

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), incorporated by reference in Fla.

Admin. Code R. 59G-1.010, 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 orthodontic treatment (Orthodontic Braces and monthly visits). *See supra* ¶ 3. In the NABD, Respondent denied Petitioner’s request for orthodontic treatment. *See*

supra ¶ 3. Respondent's provider, Dr. Richardson, 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.* Respondent further explained that Petitioner did not demonstrate a handicapping malocclusion. *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, orthodontic treatment is approved for recipients with handicapping malocclusions. *See supra* ¶ 13. A handicapping malocclusion is a condition that results in a disability or impairment to the recipient's physical development. *See supra* ¶ 9, 13. Respondent uses its Orthodontic Form for its Dental providers to determine whether a recipient possesses a handicapping malocclusion. *See supra* ¶ 8-9. According to the Orthodontic Form, there are eight (8) Dental conditions for the Dental provider to assess whether or not the recipient needs Orthodontic Braces. *See supra* ¶ 8. Here, Petitioner's Dental provider, Dr. Smith, indicated that the Petitioner does not possess a handicapping malocclusion, but nonetheless recommended the approval of Orthodontic Braces based on other Dental conditions not outlined in the Orthodontic Form. *See supra* ¶ 2. Respondent's Dental professionals, Dr. Richardson, Dr. Manteiga, and Dr. Sofianos, reviewed Petitioner's case and reached the conclusion that the Petitioner does not have a handicapping malocclusions. *See supra* ¶ 3, 5, 8. Thus, it appears that all four (4) Dental professionals (Dr. Smith, Dr. Richardson, Dr. Manteiga, and Dr. Sofianos) in this case have reached the same assessment of Petitioner's

Dental condition with regard to the Orthodontic Form. See supra ¶ 2-3, 5, 8. Furthermore, Dr. Sofianos presented credible testimony at the Fair Hearing that Petitioner does not have a handicapping malocclusion. See supra ¶ 8. Although ██████ asserting that Petitioner's dental condition should qualify for Orthodontic Braces, ██████ is a lay person. As a result, the undersigned Hearing Officer gave less weight to ██████ testimony than to Dr. Sofianos' testimony.

18. The undersigned Hearing Officer must weigh Dr. Smith's proposed treatment recommendation (Orthodontic Braces and Dental Extractions) and assessment (Orthodontic services are medically necessary) against that of the three other Dental professionals (Dr. Richardson, Dr. Manteiga, and Dr. Sofianos) who disagree with the requested treatment plan. It is the Petitioner's burden to show that Dr. Smith's recommendation is correct, and Respondent's assessment is incorrect. Although there is an indication that the Petitioner's teeth may benefit from dental services at some point in the future, *supra* ¶ 2 and 8, there is insufficient evidence that Orthodontic Treatment is the appropriate service for Petitioner at this time. Dr. Sofianos, who is a Florida-licensed Dentist, provided credible and persuasive testimony that the Petitioner does not meet the criteria for Orthodontic Braces based on his review of the submitted documentation. See supra ¶ 8. Thus, the record does not reflect that Petitioner has the required handicapping malocclusion that Orthodontics is intended to correct under Florida Medicaid. As a result, Petitioner did not show that the requested Orthodontic Treatment is "individualized, specific, consistent with symptoms or diagnosis" and not "in excess of the patient's needs."

19. Lastly, the record reflects that Petitioner's Dental provider, Dr. Smith, submitted an Orthodontic Form requesting prior authorization for the subject dental services. See *supra* ¶ 2. However, 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.

20. Upon consideration of the testimony, 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 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 Orthodontic services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent’s denial of Dental services (Orthodontic Braces and monthly visits) is hereby **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is hereby **DENIED**.

DONE AND ORDERED this 6th day of March 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
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LAURA GALLAGHER, Hearing Officer
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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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