



FILED

Mar 16, 2023, 12:59 pm

OFFICE OF FAIR HEARINGS

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

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0023

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 February 14, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Thamoris
Complaints and Grievances,
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of dental services, D8080 for braces, D8220 for non-removable appliance, and D8670 for monthly visit, was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared on behalf of Petitioner.

Michael Thamoris, Complaints and Grievances Specialist for DentalQuest of Florida, Inc. (“DentalQuest”) appeared on behalf of the Respondent. Dr. Linda Johnson, DDS, Dental Consultant for DentaQuest, attended as a witness for Respondent.

Marielisa Amador, a Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer. Laura Gallagher, a Hearing Officer for the Agency, appeared as an observer.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a fifty-one (51)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH0023 Evidence Packet.pdf.” Without objection, the evidence packet was admitted into evidence as Respondent’s Composite Exhibit 1. The evidence packet included the following documents: Exhibit 1 - Hearing Notice, dated January 26, 2023; Exhibit 2, Adverse Determination Information, including a Dental Claim Form, undated, the DentaQuest – Authorization Determination, dated November 29, 2022, the Notice of Adverse Benefit Determination (NABD), dated November 30, 2022, the X-Rays of Petitioner’s teeth, taken [REDACTED], and a Orthodontic Criteria Index Form Florida – Comprehensive D8080, undated; Exhibit 3 – Appeal Information, including Call Tracking regarding Petitioner’s request to appeal, dated December 9, 2022, the DentaQuest Authorization Determination, dated December 12, 2022, and the Notice of Plan Appeal Resolution, dated December 13, 2022; and Exhibit 4 –

Criteria Used in Making Determination, including ADA Current Dental Terminology excerpts, dated December 2, 2022.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. See Respondent’s Composite Exhibit 1 at 10.

2. Petitioner is [REDACTED] ([REDACTED]) years old. *Id.* On November 1, 2022, Petitioner requested an authorization for comprehensive orthodontic treatment (code D8080), non-removeable appliance (code D8220), and monthly visits (code D8670) (hereinafter referred to as “orthodontic services”). *Id.* at 16.

3. Petitioner’s provider, Dr. Winston Morris, submitted an ADA Dental Claim Form requesting pre-treatment authorization for orthodontic services. *Id.* at 10 - 11. Petitioner’s provider also submitted a Medicaid Orthodontic Criteria Index Form (“Orthodontic Criteria Index”). *Id.* at 26. The Orthodontic Criteria Index contains a checkmark under the “yes” column by one condition considered to be automatically-qualifying handicapping malocclusion. *Id.* The condition is [REDACTED] – [REDACTED]

[REDACTED]. *Id.* Dr. Morris provided radio graphs, photos, and an explanation that includes:

“[REDACTED]
[REDACTED]

[REDACTED] Winston Morris, DMD”. *Id.* at 26.



Id.

4. On or around November 29, 2022, DentaQuest’s Staff Dentist, Dr. Linda Johnson, DDS, reviewed Petitioner’s pre-treatment authorization and all available records, which included dental photographs and radiographs. *Id.* at 12 - 15. Dr. Johnson denied the requested Orthodontic services because a handicapping malocclusion was not demonstrated. *Id.* at 12.

5. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated November 30, 2022. *Id.* at 16 - 20. The NABD gave the following reasons for the denial:

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:

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. 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 Comprehensive Orthodontics

- D8220 non-removable appliance

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

Id. at 16 - 17.

6. Petitioner requested a plan appeal on December 9, 2022. *Id.* at 28. On December 12, 2022, DentaQuest's dental consultant, Dr. Manteiga, who did not participate in the initial decision, completed a review of all the available documentation. *Id.* at 30. Dr. Manteiga determined that Petitioner does not meet the Medicaid criteria for a handicapping malocclusion or a harmful habit appliance. *Id.* Dr. Manteiga's comments stated, in pertinent part:

Per Dental Director review, handicapping malocclusion is not demonstrated. 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.

Documentation did not meet the DentaQuest clinical criteria for: comprehensive orthodontic treatment of the adolescent definition.

....

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.

Documentation did not meet the DentaQuest clinical criteria for: fixed appliance therapy (includes appliances for thumb sucking and tongue thrusting).

Id. at 30, 35.

7. On December 13, 2022, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial. *Id.* at 38 - 39. The NPAR upheld the denial of Orthodontic services. *Id.* at 38.

8. Petitioner timely requested a Fair Hearing on January 4, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on January 26, 2023. The order set this matter for hearing on February 14, 2023.

9. [REDACTED] argued that Petitioner’s Orthodontic services are medically necessary because Petitioner’s provider, both [REDACTED] dentist and orthodontist recommended the treatments for the malocclusions. [REDACTED] further argued that this is in no way a cosmetically needed procedure: [REDACTED] is in constant pain due to the [REDACTED]. Petitioner, being a child, is unable to take anything stronger for the pain than [REDACTED] everyday.

10. Dr. Johnson testified that all of the submitted documentation was taken into consideration in this case. Referring to Respondent’s Composite Exhibit 1 at page 43, Dr. Johnson testified that Petitioner does not meet the criteria for an automatically – qualifying handicapping

malocclusion. With regard to the provider's contention that Petitioner has [REDACTED] [REDACTED] or "[REDACTED]", Dr. Johnson examined the photos of Petitioner's mouth and side profile x-ray provided by Dr. Morris. *Id.* at 22 - 23. The photos do not show a [REDACTED] [REDACTED]. *Id.* at 22. Also, there was no evidence provided showing that Petitioner has a harmful habit such as thumb sucking or tongue thrusting.

11. The Orthodontic Criteria Index Form contains the following criteria:

FAS Malocclusions requiring a combination orthodontic craniofacial surgery for correction.

Id. at 27. In the Directions for Using the Orthodontic Criteria Index Form, it is explained that "[m]alocclusions requiring a combination orthodontic and orthognatic surgery for correction— Refers to facial accidents only. Points cannot be awarded for congenital deformity. It does not include traumatic occlusions for crossbites." *Id.* at 46.

CONCLUSIONS OF LAW

12. 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 (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

14. 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.)

15. Petitioner’s request for dental services is governed by the Dental Coverage Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental Coverage Policy provides the following:

1.0 Introduction

Florida Medical Dental services provide 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 Specific Criteria

Florida Medicaid reimburses for the following services in accordance with the American Dental Association 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:

...

4.2.4 Orthodontic Services

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

- Up to 25 units within a 36 month period, including the removal of the appliances and retainers at the end of treatment
- Once replacement retainer(s) per arch, per lifetime

Dental Coverage Policy at pages 1-3.

16. The Dental Coverage Policy also establishes dental services specifically not covered under Florida Medicaid:

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 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 Specific 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 screening
- Individual periapical radiograph(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

Dental Coverage Policy at page 5.

17. Section 4.3 of the Dental Coverage Policy addresses Early and Periodic Screening, Diagnosis, and treatment (“EPSDT”):

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 1396(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.

Dental Coverage Policy at page 4.

18. A state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§440.230(a), (b), (d).

19. Section 409.905(2), Florida Statutes, limits EPSDT services with a medically necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

20. Based on Petitioner's age, both the Dental Policy and the EPSDT requirements necessitate review of Respondent's denial of Petitioner's request for orthodontic services according to "medical necessity." Respondent, through the issuance of the NPAR, determined that orthodontic services are not "medically necessary" for Petitioner. Section 2.83 of the Definitions Policy, which is 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 severe 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.

21. As established on the record, Respondent denied Petitioner's request for comprehensive orthodontic services because the services were not medically necessary. *See supra* ¶ 5, 7. Specifically, DentaQuest determined the services failed the following two medical necessity criteria: "must be needed to protect life, prevent significant illness or disability, or alleviate severe pain;" and "must be individualized, specific, consistent with symptoms or diagnosis or illness or injury and not be in excess of the patient's need." *See supra* ¶ 5, 6.

22. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients with handicapping malocclusions. See supra ¶ 8. In this case, Petitioner's provider submitted a Criteria Index Form indicating that Petitioner has the following handicapping malocclusions that automatically qualify [REDACTED] for orthodontic treatment: [REDACTED]. See supra ¶ 3. As Dr. Johnson testified, she and DentaQuest's dental consultant, Dr. Manteiga, considered the submitted clinical documentation and they agree that the documentation does not support a finding that Petitioner has a automatically qualifying handicapping malocclusion. See supra ¶ 4, 6, 10, 11. As Dr. Johnson further testified, Petitioner's photos do not show a disability or impairment to the Petitioner's physical development. Therefore, Petitioner does not have a handicapping malocclusion requiring an [REDACTED] procedure that would require a combination of orthodontic and orthognathic surgery for correction. Under the Orthodontic Criteria Index Form, is reserved for facial accidents only. See supra ¶ 11.

23. [REDACTED] argued that the requested Orthodontic services should be approved because Petitioner's provider recommended the treatment. See supra ¶ 11. 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 20.

24. [REDACTED] further argued that that [REDACTED], the Petitioner, is a child suffering from constant pain [REDACTED] and that being a child, [REDACTED] was unable to take anything stronger than [REDACTED]. See supra ¶ 11. Based on Petitioner's age, ([REDACTED] of age at the time of the hearing, and turning [REDACTED]), both the Dental Policy and the EPSDT requirements necessitate review of Respondent's denial of Petitioner's request

for orthodontic services according to “medical necessity.” Section 409.905(2), Florida Statutes, limits EPSDT services with a medically necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

See supra ¶ 19. Section 2.83 of the Definitions Policy, which is 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 severe pain

....

See supra ¶ 20. As provided by Section 409.905(2), Florida Statutes, governing EPSDT services, the amelioration of pain for Petitioner is medically necessity if the pain is severe. Although [REDACTED] testified that Petitioner is in constant pain due to [REDACTED], there was no testimony or evidence given to show that Petitioner is in severe pain. See supra ¶ 24.

25. As the Petitioner bears the burden of proof, [REDACTED] must show by a preponderance of the evidence that Respondent’s decision was incorrect. As established on the record, Petitioner did not meet the criteria for a handicapping malocclusion [REDACTED] based on the Petitioner’s provider’s Criteria Index form as well as the radiographs and photos submitted. As such, the greater weight of evidence shows that the requested orthodontic services are not individualized, specific, consistent with symptoms or diagnosis or illness of injury and are in excess of the patient’s need. Therefore, Petitioner did not demonstrate that the requested orthodontic services are medically

necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the requested services are necessary to correct or ameliorate a defect or a physical and mental illness or condition.

26. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of comprehensive orthodontic treatment (D8080) was incorrect.

DECISION

The Respondent's denial of comprehensive orthodontic treatment (code D8080), non-removeable appliance (code D8220), and monthly visits (code D8670) is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 16th day of March, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki

2023-FH0023

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DEBBIE K. WINICKI, 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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