

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



FILED

Mar 28, 2023, 1:31 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0142

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 24, 2023, at 11:02 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Mayckol Chamorro
Grievance and Appeals
DentaQuest of Florida, 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 was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED],

[REDACTED] (“[REDACTED]”), appeared on behalf of the Petitioner.

Mayckol Chamorro, Grievance and Appeals for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of Respondent. Dr. Daniel Dorrego (“Dr. Dorrego”), Sr Clinical Dental Consultant for DentaQuest, attended as a witness for Respondent.

The following attended as observers: Suzanne Chillari, Medical Program Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), and Laura Gallagher, Hearing Officer for the Agency.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-three (43)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as “23-FH0142 Evidence Packet - Plan.pdf”. Absent an objection from the Petitioner, the undersigned admitted the forty-three (43)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

At the Fair Hearing, the Petitioner requested that the record be held open to allow Respondent to submit documents. On February 24, 2023, Respondent timely submitted ten (10) pages of documents. The documents appear in the Office of Fair Hearings’ document management system as file title “08-21-2022 First denial [Petitioner Name].pdf”. Absent an objection from the Petitioner, the undersigned hereby admits the ten (10)-page document as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. See page 10 of RCE 1. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] ([REDACTED])-[REDACTED] old. *Id.*

3. Petitioner requested the following services: code D7240 for [REDACTED]; and codes D9222 and three (3) units of D9223. *Id.* at 10. [REDACTED] are commonly referred to as wisdom teeth. Petitioner's provider completed an ADA Dental Claim form requesting the services, and noted that "[Patient] has been [REDACTED] for, several weeks. [REDACTED]" *Id.*

4. In a Notice of Adverse Benefit Determination ("NABD"), dated December 5, 2022, Respondent denied Petitioner's request. *Id.* at 12. The NABD explained the basis of the denial 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.

...

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 [REDACTED]

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone [REDACTED]

To approve this service you must have severe pain in your tooth, the tooth must be in a position that will not let it break through the gum by itself, and your gums or bone around the tooth are diseased. Our dentist looked at the x-ray and the information from your dentist. It does not appear that this tooth follows our rules to be pulled out. [W]e have let your dentist know. Please talk with your dentist if you have questions about this.

This denial applies to this service(s):

- D7240 extraction of impacted tooth covered by bone [REDACTED]

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction

- D7240 extraction of impacted tooth covered by bone [REDACTED]

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):

- D9223 general anesthesia - each 15 minutes

We based this decision on:

- DentaQuest Clinical Criteria for General Anesthesia and IV Sedation
- D9222 general anesthetic – first 15 minutes

We based this decision on:

DentaQuest Clinical Criteria for General Anesthesia and IV Sedation

...

5. Petitioner requested a plan appeal and received an NPAR dated January 11, 2023, upholding the denial. The NPAR explained as follows:

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:

The information your dentist sent for the denial of D7240 extraction of impacted tooth covered by bone [REDACTED], and D7240 extraction of impacted tooth covered by bone [REDACTED] shows your teeth do not need to be removed. Your teeth have 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 teeth are breaking through the gums. To approve this service you must have severe pain in your tooth, the tooth must be in a position that will not let it break through the gum by itself, and your gums or bone around the tooth are diseased. Our dentist looked at the x-ray and the information from your dentist for D7240 extraction of impacted tooth covered by bone [REDACTED] and D7240 extraction of impacted tooth covered by bone [REDACTED]. It does not appear that these teeth follow our rules to be pulled out. We have let your dentist know. Your dentist has asked for anesthesia D9223 general anesthesia - each 15 minutes, and D9222 general anesthetic – first 15 minutes (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.

6. On January 24, 2023, Petitioner requested a Fair Hearing regarding the denial of dental services. On February 9, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for February 24, 2023, at 11:00 a.m. EST.

7. [REDACTED] testified to the following:

a. In the summer of [REDACTED], during a visit to the dentist, the Petitioner was non-symptomatic, so the dentist was not pushing for surgery. Petitioner made [REDACTED] first request for extraction of wisdom teeth with DentaQuest to cover the services. DentaQuest stated there was a lack of x-rays and no pain, and therefore, denied the request. *See* RCE 2.

b. A few months later, Petitioner began experiencing [REDACTED] [REDACTED]. The pain affected the way [REDACTED] was [REDACTED]. [REDACTED] also [REDACTED]. Petitioner contacted DentaQuest for guidance on next steps since these symptoms were absent at the time the first denial of services was issued. Petitioner was advised to communicate with his dentist.

c. Petitioner made a subsequent visit to [REDACTED] dentist where the dentist suggested surgery as it was necessary before any problems began, especially for the Petitioner's [REDACTED], and notated the pain in the ADA Dental Claim form. The use of [REDACTED] do not cure [REDACTED] [REDACTED]. No alternatives to surgery were provided. Petitioner made another

request with DentaQuest for extractions. DentaQuest denied the request and upheld it on appeal. See RCE 1.

8. Dr. Dorrego is a Dental Consultant for DentaQuest. Dr. Dorrego testified to the following:

a. According to the ADA Dental Claim form, the narrative written by the provider

stated “[patient] and [REDACTED] returned to the office. [Patient] has been in [REDACTED] [REDACTED] for several weeks. [REDACTED]

[REDACTED] but there is no statement of pathology in this narrative. The [REDACTED]

[REDACTED]. In the eruption process, it is normal for the gums to swell.

The denial letter states the “tooth does not need to be removed” indicating that the pain must be more than what normally occurs as a tooth is breaking through the gums. Based on the oral surgeon’s panoramic x-ray of the teeth in question –

[REDACTED] – these have [REDACTED]. [REDACTED]

[REDACTED]. See RCE 1.

b. Under the Criteria for Dental Extractions section titled “documentation of medical necessity for oral surgery” evidence of demonstrable need requires a narrative describing need and supporting documentation. The remarks made by the dentist indicate a lack of narrative. In the general approval vs. denial guidelines section, under demonstrable need, on a per tooth basis, the 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. See RCE 1.

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 necessary 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 35-36.

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 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 requests for dental services are 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:

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.

...

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.

14. The Dental 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 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

15. 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.

16. 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.

17. Petitioner requested the extraction of [REDACTED] and related anesthesia. In a NABD, dated December 5, 2022, Respondent denied the services. *See* ¶ 4. Respondent cited to the medical necessity criteria as the basis for their decision, specifically the prongs “be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain”; and “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”. *Id.*

18. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. Here, the Petitioner did not establish that the extractions of the Petitioner’s [REDACTED] were not in excess of the patient’s needs. The record

does not show any evidence of pathology or sign of infection that warrants the extraction of these teeth. Here, [REDACTED] testified, *supra* ¶ 8, that Petitioner is experiencing [REDACTED], however, there is no evidence that Petitioner is experiencing symptoms beyond normal eruption pain. As such, Petitioner did not meet his burden. See ¶ 9.

19. As Petitioner did not show that the extraction services were warranted, accordingly, the anesthesia requested is not medically necessary.


20. Upon consideration of the testimony provided, 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 is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE and ORDERED this 28th day of March, 2023, in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH0142
2023.03.28
13:24:27 -04'00'



Kimberly Roche, 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:



DentaQuest of Florida, Inc.
CGATeam3@dentaquest.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com