



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

FILED

May 17, 2023, 11:06 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0304

Plan ID No.: [REDACTED]

vs.

LIBERTY DENTAL PLAN OF FLORIDA,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on March 15, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Meagan Peake

Manager of Grievances and Appeals

Liberty Dental Plan of Florida

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of dental services, code D8080 for braces, code D8670 for monthly visits, code D8220 for non-removable appliance, and code D8680 for orthodontic retention, was incorrect.

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.

Meagan Peake, Manager of Complaints and Grievances Specialist for Liberty Dental Plan of Florida ("Liberty") appeared on behalf of the Respondent. Dr. Tamara K. Tibby ("Dr. Tibby"), DDS, a Dental Consultant for Liberty, attended as a witness for Respondent. Dr. Kelly Klair, a Dental Quality Specialist for Liberty, appeared as an observer. Monica Aguilar, Grievances and Appeals Analyst for Liberty, appeared as an observer.

Linda Latson, a Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer. Carolyn Calvin, Fair Hearing Analyst for AHCA, appeared as an observer.

Petitioner did not file evidence in support of [REDACTED] case with the Office of Fair Hearings, prior to the hearing.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a fifty-two (52)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "FL046915139_23-FH0304_[REDACTED] Fair Hearing Packet.pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Liberty which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. See page 2 of RCE-1.

2. Petitioner is [REDACTED]. *Id.* at 2.
3. On [REDACTED], Petitioner requested an authorization for comprehensive orthodontic treatment (code D8080), 24 periodic orthodontic treatment visits (code D8670), fixed appliance therapy (code D8220, and orthodontic retention (code 8680) (hereinafter referred to as “orthodontic services”). *Id.* at 2.
4. Petitioner’s provider, [REDACTED], DDS, Florida Orthodontic Associates, provided radiographs and photos of Petitioner. *Id.* at 7 - 10. [REDACTED] also provided a Florida Medicaid Orthodontic Initial Assessment Handicapping Labio-Lingual Deviations Index Score Sheet (“IAF”). *Id.* at 11. In the IAF, Florida Orthodontic Associates assessed the conditions of Petitioner’s malocclusion to see if it met the required score to qualify for braces, resulting in a total score of [REDACTED] *Id.* at 8 – 10.
5. On or about January 12, 2023, Liberty’s Staff Dentist, Dr. Matthew MacLean, DDS, reviewed Petitioner’s pre-treatment authorization and all available records, which included dental photographs and radiographs, and the IAF. *Id.* at 13. Dr. MacLean assessed a total qualifying score of 22 for Petitioner’s occlusion requiring braces. *Id.* Another Liberty Staff Dentist, Dr. Thomas White, reviewed Petitioner’s pre-authorization dental records, assessing a total qualifying IAF score of 23 for Petitioner’s occlusion requiring braces. *Id.* at 14.
6. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated January 12, 2023. *Id.* at 15 – 19. 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.

...

Must be able to be 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.

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

...

The facts that we used to make our decision are:

2, 3, 5 MMFLOrtho.1MMFLOrtho.1 Our dentist looked at your records to see if you have problems with your top and bottom teeth when you chew, bite, talk or breathe. We also looked to see if you might have those problems later. Based on your records you do not have these issues. Since your records show that you do not have those problems our dentist looked at your records to see if there was a medical need that would allow you to have braces. There is no medical need based on the records that your dentist sent in. Braces are only covered for members under 21 years of age with a handicapping malocclusion per ACHA Dental Services Policy 4.2.4 Orthodontic Services.

Dental Services Policy 4.2.4 Orthodontic Services.

#4 MMMNONMMNON: This service is denied. For this service to be approved the treatment that was sent in with this service must be approved. The treatment that was sent in with this service was denied for not meeting the criteria. Your dentist x-rays/notes do not show that there is a medical need for you to have this service by itself. This decision was based on LIBERTY Dental Plan Clinical Criteria.

See RCE-1, 15 – 16.

7. Petitioner requested a plan appeal on January 18, 2023. *Id.* at 22. On February 1, 2023, Liberty's staff dentist, Dr. Thomas White, DDS, who did not participate in the initial decision, completed a review of all the available documentation, and as a result, issued an NPAR upholding the denial. *Id.* at 22 – 24. The NPAR states as follows:

The Agency for Health Care Administration's (AHCA's) Florida Medicaid Dental Services Coverage Policy says: "Florida Medicaid covers braces for persons under the age of 21 years with "handicapping malocclusion." AHCA defines "handicapping malocclusion" as: "A condition that results in a disability or impairment of the person's physical development".

Both of LIBERTY's Staff Dentists, who specialize in braces, reviewed the dental records and decided that [Petitioner], does not have "handicapping malocclusion" as defined above. Therefore, the requested braces are not medically necessary to treat a condition that is causing a disability or impairment of physical development.

LIBERTY's Staff Dentists also used the Handicapping Labio-Lingual Deviation (HLD) Index form, which the treating dentist was required to score and submit in support the need for braces. The HLD score was re-calculated by LIBERTY's Staff Dentists. The HLD score did not support that [Petitioner], has any other conditions that when combined would meet the benefits of "handicapping malocclusion" under the Florida Medicaid Program.

Medicaid Dental Plans, like LIBERTY, must cover "other necessary health care, diagnostic services, treatment, and other services to correct or ameliorate defects and physical or mental conditions discovered by the screening services, whether or not the services are Medicaid benefits." This is called Early and Periodic Screen, Diagnosis and Treatment (EPSDT).

In this case, LIBERTY did not receive any documentation from the treating dentist stating that [Petitioner] requires medically necessary treatment beyond that needed to treat "handicapping malocclusion". LIBERTY's NABD denial, and this plan appeal denial, were not based on EPSDT.

Please note that just because your dentist recommended braces for [Petitioner] does not mean that the braces are medically necessary or a covered benefit.

Id. at 22 - 23.

8. Petitioner timely requested a Fair Hearing on February 13, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on February 24, 2023. The order set this matter for hearing on March 15, 2023, at 9:00 a.m. EST.

9. [REDACTED] argued that Petitioner's Orthodontic services are medically necessary because Petitioner's provider orthodontist recommended the treatments for the malocclusions. [REDACTED] [REDACTED] referred to the medical records from Petitioner's pediatrician endocrinologist and

psychologist office visits on or around [REDACTED]. *Id.* at 7 – 11. [REDACTED] contends that that Petitioner, [REDACTED].

10. Dr. Tibby testified that all the submitted documentation was taken into consideration in this case. Dr. Tibby testified that Petitioner does not meet the Florida Medicaid criteria for a handicapping malocclusion and has no medically compromising conditions based on the available documentation. The radiographs and photographs provided do not show a handicapping malocclusion and medical necessity is not seen. *Id.* at 8 – 10.

11. Dr. Tibby testified that when assessing the medical necessity for handicapping malocclusions, dentists and orthodontists use a score sheet and give points for any malocclusion conditions. Petitioner’s provider submitted a Medicaid Orthodontic Initial Assessment Form (IAF) for Petitioner, with a total score [REDACTED], for Petitioner’s malocclusion conditions. The threshold score that would make braces for the Petitioner a medical necessity is 26. *Id.* at 11 – 12.

12. Dr. Tibby compared the provider’s score sheet to the two (2) scoresheets for Petitioner’s malocclusion conditions that were prepared independently by Liberty’s staff dentists, who specialize in braces, Dr. Matthew MacClean and Dr. Thomas White, after they reviewed the submitted documentation. *Id.* at 13 – 14. The score sheets used by those orthodontists is the IAF. The total score for Petitioner’s malocclusion conditions were [REDACTED] on each of the HLD’s, respectively. *Id.* Again, Dr. Tibby explained, those scores also fell below the 26-point threshold for the medical necessity for a handicapping malocclusion requiring braces. Additionally, the Dental Director at Liberty, Dr. Eric Davis, who is also a licensed Orthodontic Specialist, reviewed all the documentation and concurred with Drs. MacLean and White that

Petitioner’s conditions were not handicapping malocclusions requiring braces a medical necessity. *Id.* at 3.

CONCLUSIONS OF LAW

13. 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).

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

15. 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.)

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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 that is 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.

22. As established on the record, Respondent denied Petitioner's request for comprehensive orthodontic services because the services were not medically necessary. *See supra* ¶ 6. Specifically, Liberty determined the services do not meet the following medical necessity criteria: "[services] must be needed to protect life, prevent significant illness or disability, or alleviate severe pain;" "must be individualized, specific, consistent with symptoms or diagnosis or illness or injury and not be in excess of the patient's need;" "must be able to be 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;" and must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider." *See supra* ¶ 6, 8.

23. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions. *See supra* ¶ 16. In this case, Petitioner does not qualify for braces under the The Dental Coverage Policy because he does not have a handicapping malocclusion condition. Petitioner's

provider assessed Petitioner's malocclusion and submitted an IAF with a total score [REDACTED], which is well below the malocclusion handicap qualifying score of 26. See supra ¶ 4. LIBERTY's reviewing dentists, Drs. MacLean and White, assessed Petitioner's malocclusion and submitted IAFs with scores of [REDACTED], respectively, which are also below the malocclusion handicap qualifying score of 26. See supra ¶ 5. Additionally, as Dr. Tibby testified, [REDACTED] and Liberty's dental staff, including Drs. MacLean and White, and its Dental Director, Dr. Davis, considered all the submitted clinical documentation and they agree that the documentation does not support a finding that Petitioner has a qualifying handicapping malocclusion. See supra ¶ 5, 6, 8, 12.

24. [REDACTED] argued that the requested Orthodontic services should be approved because Petitioner's provider recommended the treatment. See supra ¶ 4, 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 ¶ 21.

25. Based on Petitioner's age, [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 ¶ 20. [REDACTED] testified that Petitioner needs braces because [REDACTED], i.e., malocclusion. See supra ¶ 9. However, there was no medical evidence presented that Petitioner's malocclusion was handicapping.

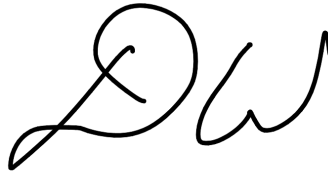
26. As the Petitioner bears the burden of proof, [REDACTED] must show by a preponderance of the evidence that Respondent's decision was incorrect. As established on the record, Petitioner did not meet the criteria for a handicapping malocclusion based on the Petitioner's provider's IAF as well as the 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.

27. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of comprehensive orthodontic treatment for codes D8080, D8670, D8220, and D8680 was incorrect.

DECISION

The Respondent's denial of Petitioner's request for comprehensive orthodontic treatment, code D8080 for braces, code D8670 for monthly visits, code D8220 for non-removable appliance, and code D8680 for orthodontic retention is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 17th day of May, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0304
2023.05.17
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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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