



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

**FILED**

May 25, 2023, 8:58 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0486

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 May 18, 2023, at 1:00 p.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 orthodontic treatment was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner’s Authorized Representative and

[REDACTED] appeared on behalf of the Petitioner.



4. In a Notice of Adverse Benefit Determination (“NABD”), dated January 1, 2023, Respondent denied Petitioner’s request. *Id.* at 13 – 16. 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:

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 Other Orthodontic Services

...

*Id.* at 13 – 14.

5. Petitioner requested a plan appeal and received Notice of Plan Appeal (“NPAR”) dated February 7, 2023, upholding the denial. *Id.* at 32 – 33. 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:

Our Dentist looked at your request for braces (D8080 - braces; D8670 - monthly visit). The denial is upheld. The documentation from your dentist did not show any medical need for braces.

...

*Id.* at 32.

6. On March 8, 2023, Petitioner requested a Fair Hearing regarding the denial of dental services. On April 27, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for May 18, 2023, at 1:00 p.m. EST.

7. [REDACTED] testified to the following:

- a. [REDACTED]

8. Dr. Manteiga testified to the following:

- a. DentaQuest is third-party administrator for the member’s plan with Medicaid. Approved services are typically for severe malocclusion cases. The issue in this case is not that orthodontic care is not needed, but based on the dental guidelines and criteria, this case does not qualify for orthodontic service.
- b. To approve these orthodontic services, an Index Form outlining eight (8) line items of clinical characteristics must be completed. *Id.* at 39. Of the multiple dental consultants who have reviewed this case, all agree that none of the line items

apply. Petitioner appears to have a [REDACTED], but the criteria for approval specifically require tissue destruction on the palette. *Id.* The photographs provided clearly show no tissue destruction on the palette. *Id.* at 20. In the provider's submitted Index Form, the provider did not check any line items. *Id.* at 21.

9. The Directions for Using the Orthodontic Criteria Index Form that DentaQuest used to make its decision appears succeeding the Index Form, which provides, in pertinent part, as follows:

1. Deep impinging overbite that shows palatal impingement of the majority of lower incisors---tissue destruction of the palate must be clearly visible in mouth. On study models, the lower teeth must be clearly touching the palate and there must be clear evidence of damage visible on the submitted models or photographs; touching or slight indentations do not qualify.

...

*Id.* at 39 – 40.

#### **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 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.

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 to [REDACTED] request for services. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following:

### (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. In the instant case, Petitioner is under 21 years of age Petitioner requested braces and corresponding monthly visits. *See* ¶ 3. In a NABD, dated January 1, 2023, Respondent denied the services. *See* ¶ 4. Respondent cited to the medical necessity criteria as the basis for their decision, *supra*, 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”. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 12.

18. The Dental Policy establishes that a handicapping malocclusion is a condition that results in a disability or impairment to the recipient's physical development. See ¶ 13. The requirements of the EPSDT in regard to dental services shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health. See ¶ 15. According to [REDACTED] testimony, Petitioner has a [REDACTED]. See ¶ 7. There is no evidence to suggest that Petitioner is experiencing significant illness or disability or pain due to the [REDACTED]. See *supra*. In Dr. Manteiga's testimony, [REDACTED] agreed that Petitioner appears to have a [REDACTED], but the approval criteria for the requested services specifically require demonstration of tissue destruction on the palette. See ¶¶ 8, 9. Based on the photographs submitted by Petitioner's provider, tissue destruction on the palette is not clearly shown. See *supra*. As such, no handicapping malocclusion is evidenced in the record to demonstrate that the braces are necessary.

19. Moreover, Petitioner did not establish that the orthodontic services requested were not in excess of Petitioner's needs. [REDACTED] testified that Petitioner needs braces to correct a [REDACTED]. See *supra* ¶ 7. Dr. Manteiga testified that DentaQuest's Index Form outlines eight (8) line items of clinical characteristics which must be completed to approve these orthodontic services. See ¶ 8. In the provider's submitted Index Form, *supra*, the provider did not check off any line items. The record, therefore, is not clear that Petitioner's dental needs meet the requirement to approve the orthodontic services or are otherwise medically necessary. See *supra*. As such, Petitioner did not meet [REDACTED] burden. See *supra* ¶ 7.

20. As Petitioner did not show that the orthodontic services were warranted, accordingly, the corresponding monthly visits requested are not medically necessary.

21. 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 not in excess of Petitioner's needs. 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 treatment 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 25th day of May, 2023 in Tallahassee, Leon County, Florida.



Kimberly Roche  
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**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:**

[REDACTED]  
[REDACTED]  
[REDACTED]

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