



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

**FILED**

Jun 12, 2023, 11:28 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0557

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 June 5, 2023, at 12:58 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Shonda Rushing  
Complaints and Grievance Specialist  
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 (braces) was incorrect.

**PRELIMINARY STATEMENT**

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

[REDACTED] (" [REDACTED] ") appeared on behalf of the Petitioner.

Shonda Rushing, Complaints and Grievance Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of Respondent. Dr. Linda Johnson (“Dr. Johnson”), Dental Consultant for DentaQuest, attended as a witness for Respondent.

Stephanie Lang, Program Operations Administrator for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

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-seven (47)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as “23-FH0557-[Petitioner] SFH Evidence Packet.pdf”. Absent an objection from the Petitioner, the undersigned admitted the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

#### **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 orthodontic treatment services (braces): code D8660; code D8080; code D8670; and code D8220. *Id.* Petitioner’s provider completed an ADA Dental Claim Form requesting the services, accompanied by pictures of the Petitioner and an Orthodontic Criteria Index Form (“Index Form”). *Id.* at 10 and 21 – 25. On the Index Form, Petitioner’s provider selected “Yes” for the criteria listed as [REDACTED]  
[REDACTED]” *Id.* at 21.

4. In a Notice of Adverse Benefit Determination (“NABD”), dated February 22, 2023, Respondent denied Petitioner’s request. *Id.* at 12 – 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

We need your dentist to send us the name or type of appliance requested. We need this to decide [i]f this is covered under the code that was sent for the appliance requested. We have also told your dentist.

This denial applies to this service(s):

- D8220 non-removable appliance

We based this decision on:

- DentaQuest Clinical Criteria for Harmful Habits

...

*Id.* at 12 – 13.

5. Petitioner requested a plan appeal and received Notice of Plan Appeal (“NPAR”) dated March 7, 2023, upholding the denial. *Id.* at 31 – 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. The denial is upheld. The documentation from your dentist did not show any medical need for braces.

...

*Id.* at 31.

6. On March 14, 2023, Petitioner requested a Fair Hearing regarding the denial of dental services. On April 6, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for May 1, 2023, at 1:00 p.m. EST. On May 10, 2023, the undersigned issued a Second Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for June 5, 2023, at 1:00 p.m. EST.

7. [REDACTED] testified to the following:

- a. [REDACTED] contends that Petitioner’s specific dental issue meets the approval criteria to cover an [REDACTED]. *Id.* at 13. Petitioner’s dentist pointed out to [REDACTED] a [REDACTED]

[REDACTED]. *Id.* at 25 (top center)

photo). Petitioner's dentist noted both conditions and described his evaluation on the Index Form. *Id.* at 21 – 22.

8. Dr. Johnson testified to the following:

- a. The [REDACTED] is covered under the plan. The discrepancy in this case is what the [REDACTED]. At the Fair Hearing, using the submitted side radiograph of Petitioner's teeth, Dr. Johnson stated the measurement from the front of the upper tooth to front of the lower tooth is about [REDACTED].
- b. The approval criteria also requiring a showing of [REDACTED] is not shown in the submitted photos. *Id.* at 25. [REDACTED] shows whether there is difficulty with Petitioner's lips closing around [REDACTED] teeth such as muscle strain, or a wrinkled chin. *Id.*

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:

5. Overjet in excess of 9 mm with incompetent lips ---this is recorded with the patient's teeth in centric occlusion and is measured from the labial surface of a lower incisor to the labial surface of an upper central incisor. Measure parallel to the occlusal plane. Do not use the upper lateral incisors or cuspids. The measurement may apply to only one tooth if it is severely protrusive.

...  
*Id.* at 42.

#### **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.

...

**2.0 Eligible Recipient**

...

**2.2 Who Can Receive**

Florida Medicaid recipients requiring medically necessary dental services. Some services may be subject to additional coverage criteria as specified in section 4.0. If a service is limited to recipients under the age of 21 years, it is specified in section 4.0. Otherwise, the service is covered for recipients of all ages.

...

**1.4.4 Handicapping Malocclusion**

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

...

**4.0 Coverage Information**

**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 ■■■ 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 requested braces and orthodontic treatment visits. *See* ¶ 3. In a NABD, dated February 22, 2023, Respondent denied the services. *See supra*. 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 Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions. *See* ¶ 13. 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 cover services to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services. *See* ¶ 15. According to [REDACTED] testimony, Petitioner’s orthodontist selected the criteria for [REDACTED] and notated Petitioner’s condition in his evaluation. *See* ¶¶ 3, 7. In Dr. Johnson’s testimony, three separate dentists reviewed the supporting documentation and all concluded Petitioner’s condition was less than the approval requirement of greater than 9 mm. *See* ¶¶ 4 – 5, 8. According to Dr. Johnson’s testimony, the review of the side radiograph of Petitioner’s teeth produced a

measurement of Petitioner's [REDACTED] of about [REDACTED]. See ¶ 8. In addition, Dr. Johnson testified that the [REDACTED] requirement is not clearly shown in the submitted photographs. See ¶ 8. The record is not clear what the exact measurement of Petitioner's [REDACTED] measured out by Petitioner's dentist, either in the Index Form or within the handwritten supporting description. Likewise, although Dr. Johnson provided testimony during Fair Hearing that the [REDACTED] appears to measure [REDACTED], there is no written documentation from Respondent to indicate what each reviewing dentist found as their measurements to support their determination. 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] presented testimony that Petitioner's dentist pointed out [REDACTED] as an indication of [REDACTED]. See ¶ 7. Although Petitioner's dentist documented his evaluation of Petitioner's conditions, according to Dr. Johnson's testimony, DentaQuest denied the services due to the lack of evidence for both conditions of the criteria. See ¶¶ 8, 9. While the undersigned views the submitted photographs as useful evidence to find the presence of [REDACTED] [REDACTED], the supporting factual basis by any of the dentists in this matter is clearly missing from the record. This effective means Petitioner's request for braces is in excess of [REDACTED] needs. Therefore, Petitioner's dental needs do not meet the requirement to approve the orthodontic services or are otherwise demonstrated as medically necessary. See ¶ 13 – 15. As such, Petitioner did not meet [REDACTED] burden.


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 correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds by a very slight margin 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 of orthodontic treatment (braces) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE AND ORDERED** this 12th day of June, 2023 in Tallahassee, Leon County, Florida.

  
Kimberly Roche  
23-FH0557  
2023.06.12  
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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:**



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