

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



FILED

Jul 10, 2023, 10:55 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0817

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 May 16, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Mayckol Chimarro
Grievances and Appeals
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 is incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED] (" [REDACTED] "), Petitioner's Authorized Representative and [REDACTED] appeared on behalf of Petitioner.

Mayckol Chimarro, Grievances and Appeals, for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of the Respondent. Dr. Linda Johnson (“Dr. Johnson”), DDS, a Dental Consultant for DentaQuest, attended as a witness for Respondent.

Doris Rivera, a Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not file evidence in support of her 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 forty-four (44)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH0817 SFH Evidence 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 DentaQuest which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. See page 10 of RCE-1.
2. Petitioner is [REDACTED] ([REDACTED] [REDACTED]) old. *Id.*
3. On March 20, 2023, Petitioner requested an authorization for surgical extraction (code D7210), [REDACTED]; extraction of impacted tooth covered by bone (code D7240), [REDACTED]; extraction of impacted tooth covered by bone (code D7240) [REDACTED]; extraction of impacted tooth covered by bone (code D7240), [REDACTED]; extraction of impacted tooth covered by bone (code D7240), [REDACTED]; I.V. Sedation (code D9239) for the first 15 minutes, and I.V. Sedation (code 9239), each 15 minutes, hereinafter referred to as “teeth extraction and sedation”.

4. Petitioner’s provider, [REDACTED], P.A., submitted a Dental Claim Form, with X-rays of Petitioner’s mouth. *Id.* at 10, 21.

5. On or about March 21, 2023, DentaQuest’s Dental Director, Jeffrey S. Wert, DDS, reviewed Petitioner’s pre-treatment authorization and all available records, which included the X-rays. *Id.* at 19 - 21. Dr. Wert determined that the X-rays do not support requested code D7210 for surgical removal of [REDACTED]; removal of the impacted wisdom teeth, Teeth [REDACTED], requested by code D7240 are denied due to [REDACTED]; and anesthetic services requested by codes D9239 and D9243 are only covered when the associated services are approved. *Id.* at 19 - 20.

6. Subsequently, Respondent denied the Petitioner’s request for teeth extraction and sedation services in a Notice of Adverse Benefit Determination (“NABD”) dated March 21, 2023. *Id.* at 12 – 18. 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 your dentist sent. The information sent by your dentist, shows the tooth removal is not as bad as what your dentist says. Your dentist needs to resend the information to show where the tooth is located in the bone. We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D7210 surgical extraction [REDACTED]
We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction

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. We 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
- 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):

- D9239 I.V. Sedation - first 15 minutes
We based this decision on:
 - DentaQuest Clinical Criteria for General Anesthesia and IV Sedation
- D9243 IV Sedation each 15 minutes
We based this decision on:
 - DentaQuest Clinical Criteria for General Anesthesia and IV Sedation

See RCE-1, 12 – 13.

7. Petitioner requested a plan appeal on March 24, 2023. *Id.* at 23. On April 3, 2023, DentaQuest’s staff dentist, Dr. F. Manteiga, DDS, who did not participate in the initial review, completed a review of all the available documentation and rendered an Authorization

10. Dr. Johnson testified that there are two (2) separate services that were denied, surgical extraction of [REDACTED] (D7210) and extraction of impacted teeth covered by bone (D7240). Dr. Johnson referred to the criteria for dental extractions under the State plan, stating that “[s]urgical extractions of erupted teeth are defined as extractions requiring elevation of mucoperiosteal flap and removal of bone and/or section of the tooth and closure in order to remove the tooth. Elevation of mucoperiosteal flap and removal of bone and/or sectioning of the tooth for the **convenience of the provider** is not a surgical extraction.” *Id.* at 36. Dr. Johnson testified that a review of Petitioner’s X-rays show that the condition of [REDACTED], which is a [REDACTED], has [REDACTED] and [REDACTED]. Dr. Johnson explained that [REDACTED] is not in such a condition that require surgery. Dr. Johnson further testified that the other teeth at issue are wisdom teeth [REDACTED]. Dr. Johnson explained that extractions for these teeth were denied based on the fact that [REDACTED]. Dr. Johnson referred to the State plan criteria for dental extractions that requires root development to be more than fifty percent (50%) to qualify for extraction. *Id.* at 37. Dr. Johnson noted that Petitioner’s X-rays show that tooth number [REDACTED] had the most [REDACTED], but it did not have the required [REDACTED]. *Id.* at 21.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.)

14. 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.

...

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 Surgical Procedures and Extractions

Florida Medicaid covers surgical procedures and extraction services for recipients under the age of 21 years.

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 dental services according to "medical necessity." Respondent, through the issuance of the NPAR, determined that surgical extraction for Petitioner's [REDACTED] and extraction services for [REDACTED] wisdom teeth [REDACTED] 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 surgical extraction of [REDACTED] and extraction of [REDACTED] wisdom teeth [REDACTED], with sedation, because the services were not medically necessary. See supra ¶ 6. Specifically, DentaQuest 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;” 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* ¶ 6.

23. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers surgical procedures and extraction services for recipients under the age of 21 years. *See supra* ¶ 13. In this case, Petitioner does not qualify for surgical extraction of [REDACTED] and extraction of wisdom Teeth [REDACTED]. DentaQuest’s reviewing dentists, Drs. Wert and Mantiega, assessed Petitioner’s X-rays, and determined that the condition of [REDACTED] did not require surgical extraction, and that Petitioner’s wisdom teeth did not have [REDACTED] [REDACTED] that would qualify for extraction. *See supra* ¶¶ 5 and 7. Dr. Johnson testified that she also reviewed Petitioner’s X-rays and they do not support a finding that the condition of Petitioner’s teeth meets the criteria for surgical extraction of [REDACTED], and extraction of her wisdom Teeth [REDACTED]. *See supra* ¶ 5, 6, 7, and 10.

24. [REDACTED] argued that the requested surgical extraction of [REDACTED] and the wisdom teeth extraction services should be approved because Petitioner’s provider recommended the treatment. *See supra* ¶ 4, 9. 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] [REDACTED] both the Dental Policy and the EPSDT requirements necessitate review of Respondent’s denial of Petitioner’s request for dental 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. While ██████████ testified that Petitioner needs the surgical extraction of ██████████, and the extraction of ██████████ wisdom teeth, see supra ¶ 9, there was no medical evidence presented that Petitioner's teeth required or qualified for those procedures.

26. As the Petitioner bears the burden of proof, ██████████ 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 surgical extraction of ██████████ and extraction of ██████████ wisdom Teeth, ██████████. As such, the greater weight of evidence shows that the requested dental services are not needed to protect life, prevent significant illness or disability, or alleviate severe pain; or that they are 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 dental 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 dental services was incorrect.

DECISION

The Respondent's denial of Petitioner's request for teeth extraction and sedation is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 10th day of July, 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
for Debbie Winicki
23-FH0817
2023.07.10
07:39:28 -04'00'



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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