



FILED

Jul 10, 2023, 10:45 am

OFFICE OF FAIR HEARINGS

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

████████████████████,

PETITIONER,

AHCA Case No.: 23-FH0861

Plan ID No.: ██████████

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 12, 2023, at 1:30 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

████████████████████

Petitioner’s Authorized Representative

For the Respondent:

Myckal Chomorro
Grievance and Appeals 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 dental services, D7230 - extraction of impacted tooth with some bone, ██████████; D7230 - extraction of impacted tooth with some bone, ██████████; D7240 - extraction of impacted tooth covered by bone, ██████████; D7240 - extraction of

impacted tooth, covered by bone, [REDACTED]; D9222 - general anesthetic - first 15 minutes; and D9223 – general anesthesia - each 15 minutes, was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner’s Authorized Representative and [REDACTED] [REDACTED] (“[REDACTED]”), appeared on behalf of the Petitioner.

[REDACTED], Petitioner’s [REDACTED] and [REDACTED], appeared as a witness for Petitioner.

Myckal Chomorro, Grievance and Appeals Specialist, for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of Respondent. Dr. Daniel Dorrego, DDS (“Dr. Dorrego”), Dental Consultant for DentaQuest, attended as a witness for Respondent.

Susanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Joseph Mabry, Hearing Officer for AHCA, appeared as an observer.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent filed with the Office of Fair Hearings and Petitioner a forty-two (42)-page evidence packet. The forty-two (42)-page evidence packet appears in the Office of Fair Hearings document management system as file title “23-FH0861 [REDACTED] Evidence Packet. pdf.” Absent an objection from the Petitioner, the undersigned admitted the forty-two (42)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. See page 10 of Respondent’s Composite Exhibit 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.* On March 16, 2023, Respondent received a request for D7230 - extraction of impacted tooth with some bone, [REDACTED]; D7230 - extraction of impacted tooth with some bone, [REDACTED]; D7240 - extraction of impacted tooth covered by bone, [REDACTED]; D7240 - extraction of impacted tooth, covered by bone, [REDACTED]; D9222 - general anesthetic - first 15 minutes; and D9223 – general anesthesia - each 15 minutes (hereinafter referred to as “dental services”). *Id.* at 13. Petitioner’s request included a front view dental x-ray dated [REDACTED]. *Id.* at 21.

3. Petitioner’s provider, [REDACTED], submitted an ADA Dental Claim Form, Claim/Adjustment Number: [REDACTED], requesting pre-treatment authorization for dental services. *Id.* at 10.

4. Respondent denied Petitioner’s request in a Notice of Adverse Benefit Determination (“NABD”), dated March 16, 2023. 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.

Id. at 12-13.

5. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 5, 2023, upholding the denial. The NPAR explained as follows:

On 04/05/2023 after consideration of the information you provided to DentaQuest in support of your plan appeal, DentaQuest hereby DENIES your plan appeal.

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 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. 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.

Id. at 29.

6. On April 14, 2023, Petitioner requested a Fair Hearing regarding the denial of dental services. On April 28, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for May 12, 2023, at 1:30 p.m. EST.

7. During the hearing, [REDACTED] testified that the Petitioner needs [REDACTED] teeth pulled, is still [REDACTED], and Petitioner has to rate [REDACTED] [REDACTED] instead of stating [REDACTED] [REDACTED] because [REDACTED] is [REDACTED].

8. Dr. Dorrego is a licensed dentist and dental consultant for DentaQuest. Dr. Dorrego asserted that Petitioner did not meet the criteria for dental extractions. Referring to the DentaQuest Criteria for Dental Extractions, Dr. Dorrego quoted the criteria that “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” and “[p]ain 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 to demonstrate need”. *Id.* at 34 – 35.

9. Box 35 of Petitioner’s ADA Dental Claim Form includes the remarks: [REDACTED]
[REDACTED] wisdom teeth# [REDACTED]

[REDACTED] *Id.* at 10. Dr. Dorrego explained that this is a generic statement from Petitioner’s dentist and does not describe in detail, on a per tooth basis, the condition of these teeth, which have no overt pathology present. In addition, Dr. Dorrego testified that the provider did not mention an [REDACTED] diagnosis on the ADA Dental Claim Form or in the history submitted for the claim.

10. Dr. Dorrego relied on the panoramic x-ray of the Petitioner, explaining that the radiograph shows the teeth at issue are in a normal position for eruption. *Id.* at 21. There is no pathology associated with these teeth, no bony pathology, no lesions, no decay, no position prohibiting these teeth from erupting. Dr. Dorrego concluded that based on the radiograph, the narrative from the oral surgeon provider, and the criteria established by the Agency and Plan, that DentaQuest reached the correct determination.

11. According to the Authorization Determination, the sedation component of the dental services, dental codes D9223 and D9222, are only necessary if the extractions are necessary. *Id.* at 26.

12. 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 34 – 35. (Emphasis added).

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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 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.

Dental Policy at page 1 – 4.

17. 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

Dental Policy at page 5.

18. 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.

19. The Florida Medicaid 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.

20. Respondent denied Petitioner's request for dental services. Respondent's denial was made on the basis that the requested dental services are not medically necessary. *See* ¶ 4. Specifically, Respondent determined that Petitioner's request was not "needed to protect life, prevent significant illness or disability, or alleviate severe pain" nor was it "individualized, specific, consistent with symptoms or diagnosis of illness or injury" and was "in excess of the patient's needs." *See supra* ¶ 4.

21. As Petitioner bears the burden of proof, Petitioner must show by a preponderance of the evidence that Respondent's decision was incorrect. *See supra* ¶ 15. Here, Petitioner did not establish that the extractions at issue were not "in excess of the patient's needs." *See supra* ¶ 15. The record shows that Petitioner has not demonstrated infection or pathology in Petitioner's dental x-ray that warrant the extraction of [REDACTED] *See* ¶¶ 4 and 8. Dr. Dorrego testified that Petitioner's teeth are currently in normal alignment. *See* ¶ 10. As Dr. Dorrego

established, the remarks on Petitioner's ADA Dental Claim form were generic statements and do not describe in detail, on a per tooth basis, the condition of the teeth at issue with no overt pathology present. Pursuant to paragraph 4(a)(ii)(2) of DentaQuest's Criteria for Dental Extractions, "[o]n 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." See ¶ 12. [REDACTED] testimony with regards to Petitioner's [REDACTED] was considered, but Petitioner's dental provider has not submitted a tooth specific narrative to substantiate the extent to which Petitioner's [REDACTED] is more than normal eruption pain. Accordingly, Petitioner did not demonstrate that the requested dental services were medically necessary.

22. Further, regarding Petitioner's request for sedation, Petitioner did not provide any testimony or evidence on the record as to why this service would be medically necessary once the underlying dental services are denied as to [REDACTED]. As noted in the Authorization Determination, the sedation component of the dental services, dental code D9223 and D9222, are only necessary if the extractions are necessary. Because Petitioner has not established that the extractions are medically necessary, the sedation component of the dental services are not medically necessary. See ¶ 11.

23. The record reflects that Petitioner's provider submitted an ADA Dental Claim Form, requesting prior authorization for the subject dental services. See supra ¶ 3. However, the submission of the ADA Dental Claim Form, *prima facie*, does not make the requested dental service a covered service. Section 2.83 of the Definitions Policy mandates that "[t]he 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 ¶ 19. Therefore, the ADA Dental Claim Form does not, in itself, make the requested dental services medically necessary.

24. Upon review of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the extraction of [REDACTED] (codes D7230 and D7240), and accompanying sedation (one unit of code D9239 one unit of code D9243), are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested service is necessary to correct or ameliorate a defect or a physical and mental illness or condition.

25. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes 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 10th day of July, 2023, in Tallahassee, Leon County, Florida.



Kameisha Presley
23-FH0861
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KAMEISHA PRESLEY, 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.

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