



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

FILED

Jul 19, 2023, 2:05 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0879

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 June 6, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Shondra Rushing
Complaints and Grievances Specialist
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner 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]), Petitioner's Authorized Representative and [REDACTED] appeared on behalf of Petitioner.

Shondra Rushing, Complaint and Grievances Specialist, for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of the Respondent. Dr. Michael Sofianos (“Dr. Sofianos”), DDS, a Dental Consultant for DentaQuest, attended as a witness for Respondent.

Sandra Durden, 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 [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 forty-five (45)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “[PETITIONER]-[REDACTED] Packet.pdf.” Without objection, the evidence packet was admitted into evidence as Respondent’s Composite Exhibit 1 (“RCE 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] at the time of the present hearing. *Id.*
3. On [REDACTED], Petitioner underwent a consultation regarding the extraction of Teeth [REDACTED], which are commonly referred to as wisdom teeth. *Id.* at 21. The Encounter Report from the consultation provided as follows:

[REDACTED]

[REDACTED]
[REDACTED]

...

Page 21 of RCE 1.

4. On April 4, 2023, Petitioner requested an authorization for extraction of impacted tooth with some bone (code D7230), [REDACTED]; extraction of impacted tooth with some bone (code D7230), [REDACTED]; extraction of impacted tooth covered by bone (code D7240), [REDACTED]; extraction of impacted tooth covered by bone (code D7240), [REDACTED]; I.V. general anesthesia – each fifteen (15) minutes (code D9222) for the first 15 minutes; and general anesthesia – every fifteen (15) minutes (code 9223), hereinafter referred to as “teeth extraction for numbers [REDACTED] and general anesthesia.” *Id.* at 12.

5. On April 4, 2023, an initial Authorization Determination was issued by Dr. Reniko Lindquist, DDS, denying the teeth extraction for numbers [REDACTED], for the reason that “[p]er Dental Director review, a panorex or full mouth series of radiographs, labeled with the member’s full name, date film(s) taken (mm/dd/yyyy), and identify the patients left and right side, is needed in order to review this request.” *Id.* at 19 – 20. The general anesthesia request was denied for the reason that “[a]nesthetic services are only covered when the associated services are approved.” *Id.* at 20.

6. Subsequently, Respondent denied the Petitioner’s request for teeth extraction for numbers [REDACTED], and general anesthesia services in a Notice of Adverse Benefit Determination (“NABD”) dated April 4, 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)

X Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

X 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:

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

Your dentist sent a request for treatment. We did not receive the x-rays. X-rays are needed to make a determination of medical necessity. We need your dentist to send us a full set of small x-rays that show your entire mouth. Or your dentist can send a special x-ray photo of your teeth that shows your whole mouth in one photo. Your dentist can resubmit for the service along with these x-rays. We have told your dentist. Please talk to your dentist.

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
- D7230 extraction of impacted tooth with some bone [REDACTED]
We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction
- D7230 extraction of impacted tooth with some bone [REDACTED]
We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction
- D7230 extraction of impacted tooth with some bone [REDACTED]
We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction

....

See RCE-1, 12 – 13.

7. Petitioner requested a plan appeal on April 11, 2023. *Id.* at 29. On April 12, 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 Determination. *Id.* at 34 – 36. Dr. Manteiga concluded that “[p]er Dental Director review, service is denied. There is no sign of infection or other medical reason for tooth removal. Our Dental Consultant has reviewed the appeal and the initial decision is upheld. The service requested is denied. Additional documentation was received, but it does not support this service...[a]nesthetic services care only covered when the associated services are approved.” *Id.* at 34 – 36.

8. As a result, on April 16, 2023, Respondent issued an NPAR upholding the denial. *Id.* at 29 – 33. The NPAR states, in pertinent part, 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:

Your dentist sent a request for treatment. We did not receive the x-rays. X-rays are needed to make a determination of medical necessity. We need your dentist to send us a full set of small x- rays that show your entire mouth. Or your dentist can send a special x-ray photo of your teeth that shows your whole mouth in one photo. Your dentist can resubmit for the service along with these x-rays. We have told your dentist. Please talk to your dentist. 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.

....

Id. at 29.

9. Petitioner timely requested a Fair Hearing on April 18, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on May 15, 2023. The order set this matter for hearing on June 6, 2023, at 9:00 a.m. EST. *Id.* at 2 – 8.

10. [REDACTED] testified that Petitioner is in [REDACTED] because of [REDACTED] wisdom teeth erupting, that [REDACTED] has [REDACTED] and, as a result, [REDACTED] has been [REDACTED]. [REDACTED] testified that [REDACTED] graduated this year and [REDACTED] is enrolled in college that is scheduled to start August 1, 2023, but it will be a major problem for [REDACTED] if [REDACTED] is still [REDACTED]. [REDACTED] testified that Petitioner needs to take [REDACTED] for the pain. [REDACTED] explained that [REDACTED] does not take the [REDACTED] every day, sometimes [REDACTED] pushes [REDACTED], but other days [REDACTED] will need to take up to [REDACTED]. [REDACTED] testified that sometimes [REDACTED] has to pick up [REDACTED] up from school because of the [REDACTED]. [REDACTED] testified that [REDACTED] has not been prescribed [REDACTED] by a provider. [REDACTED] testified that DentaQuest may have gotten the analysis wrong, for instance, DentaQuest stated that they did not have the correct X-rays to evaluate [REDACTED] condition, but they did in fact have them. [REDACTED] contends that [REDACTED] knows [REDACTED] knows that [REDACTED] is in pain.

11. Dr. Sofianos testified that information the provider dentist sent for authorization did not meet the criteria necessary for the teeth extraction for numbers [REDACTED], and general anesthesia. Dr. Sofianos testified that a review of the records, including the X-rays, reveal that there is no sign of infection or other sign of pathology for the teeth to be removed as a medical necessity, and consequently, no general anesthesia is needed. Dr. Sofianos referred to the criteria for dental extractions under the State plan which states that “[t]he 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.” *Id.* at 38. Dr. Sofianos explained the criteria further that and that documentation of medical necessity for oral surgery must include evidence of diagnosed pathology or demonstrable need rather than anticipated future pathology. The provider must submit narrative and x-rays or photos describing the pathology, and each tooth must show pathology; symptomology or impactions without pathology may not be enough. *Id.* at 39. Dr. Sofianos testified that Petitioner’s provider sent the clinical findings in an Encounter Report, dated [REDACTED]. *Id.* at 23 – 23. The provider states that Petitioner’s [REDACTED] he also indicates that there is [REDACTED], and that there is [REDACTED] noted. *Id.* at 22. Dr. Sofianos explained that a member’s records are reviewed for a service, they look for a tooth erupting in an abnormal pattern (wrong direction) or other pathology, like symptoms of a cyst developing, but in this case, there is none. Dr. Sofianos stated that if Petitioner’s teeth begin to erupt in abnormal pattern, [REDACTED] should go back to dental provider.

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:

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
 - Provider must submit narrative and x-rays or photos describing pathology
 - Each tooth must show pathology
 - Symptomology or impactions without pathology may not be enough

- b. Demonstrable need
 - Narrative describing need
 - Supporting documentation (e.g. x-rays, photos, hospital admissions, etc.)

- c. Extractions in conjunction with approved orthodontic treatment
 - Provider must submit request for extractions from orthodontist
 - Needs to be an approved orthodontic case
 - To expedite process, provider may also want to submit orthodontic approval

- 4. General Approval vs. Denial Guidelines
 - a. Probable Approval
 - 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
 - Demonstrable need =
 1. In conjunction with approved orthodontics where orthodontist requests 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 to 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)

...
Id. at 38 – 39 of RCE 1.

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.

...

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 extraction services for 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 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* ¶ 16. In this case, Petitioner does not qualify for extraction of [REDACTED] wisdom teeth [REDACTED]. DentaQuest's reviewing dentist, Dr. Manteiga, assessed Petitioner's X-rays, and determined that although additional documentation was received and reviewed, there is no sign of infection or other medical reason for tooth removal and the associated general anesthesia services requested. *See supra* ¶ 7. Dr. Sofianos upheld that determination based on [REDACTED] review of Petitioner's dental records and the criteria for dental extractions under the State plan, that "[t]he prophylactic removal of asymptomatic teeth (i.e. third molars) or teeth exhibiting no overt clinical pathology (except for orthodontics) is not a covered service." *See supra* ¶¶ 11 -

12. In this case, there was no sign of overt clinical pathology (i.e., [REDACTED], [REDACTED] [REDACTED]). See supra ¶ 11.

24. [REDACTED] argued that the requested the wisdom teeth extraction services should be approved because Petitioner’s provider recommended the treatment. See supra ¶ 3, 10. 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 [REDACTED] testified that Petitioner needs the extraction of [REDACTED] wisdom teeth, see supra ¶ 9, there was no medical evidence presented that Petitioner is experiencing greater than normal eruption pain or that Petitioner’s teeth otherwise required those procedures.

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 extraction of teeth [REDACTED]. 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.

27. Upon consideration of the testimony provided, the documentation evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested services are medically necessary. 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 proven 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 for numbers [REDACTED] and general anesthesia is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 19th day of July, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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DEBBIE K. WINICKI, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

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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