

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



FILED

Jul 25, 2023, 2:08 pm  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0939

Plan ID No.: [REDACTED]

vs.

MANAGED CARE OF NORTH AMERICA, 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 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Kimberly Hayden  
Supervisor of Grievances and Appeals  
Managed Care of North America, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s denial of dental services, code D8080 for comprehensive orthodontic treatment, was 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.

Kimberly Hayden, Supervisor of Complaints and Grievances Specialist for Managed Care of North America, Inc. (“MCNA”), appeared on behalf of the Respondent. Victor Correa, Grievances and Appeals Administrator for MCNA, and Josie Guevara, Grievances and Appeals Manager for MCNA, attended as witnesses for MCNA.

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.

The Fair Hearing was held open for Petitioner to file evidence post hearing. Petitioner filed with the Office of Fair Hearings and sent to Respondent an eight (8)-page evidence and a one (1)-page evidence packet. The evidence packets appear in the Office of Fair Hearings’ case management system as “23-FH0939 Petitioner evidence and DAR.pdf,” and “Additional information pt.2.pdf.” Without objection, the evidence packets were admitted into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”) and Petitioner’s Composite Exhibit 2 (“PCE 2”), respectively.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings and sent to Petitioner a fifty-two (52)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “SFH-[Petitioner]-Packet-Final.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 MCNA. See RCE 1 at page 1. MCNA is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 22 – 27.

2. Petitioner is [REDACTED] ([REDACTED] [REDACTED] old. *Id.* at 12.

3. On February 20, 2023, Petitioner requested an authorization for comprehensive orthodontic treatment (code D8080) for Tooth [REDACTED] and Tooth [REDACTED]. *Id.* at 4.

4. Petitioner’s orthodontic dental provider is [REDACTED] (“[REDACTED]”), DMD, Orthodontic Dentist, at [REDACTED]. *Id.* at 20. [REDACTED] provided radiographs and photos of Petitioner with the authorization request. See PCE 1 at pages 5 – 6, and PCE 2 at page

1. [REDACTED] also submitted a Florida Medicaid Orthodontic Initial Assessment Form (“IAF”). PCE 1 at 3 – 4. In the IAF, no auto-qualifying handicapping malocclusions are identified, and Petitioner’s total IAF score is [REDACTED]. *Id.* [REDACTED] described the following problems on the IAF:

[REDACTED]  
Midlines: Upper Centered, Lower Right  
[REDACTED] Overbite  
[REDACTED] Overjet

Please describe tentative treatment plan:

Comprehensive Orthodontics  
Full Upper & Lower Braces Level/align both arches  
Correct all rotations  
Resolve crowding Elastics as needed  
Finish and retain

*Id.*

5. On or about February 2, 2023, MCNA’s Staff Dentist, Dr. Malcolm Meister, DDS, reviewed Petitioner’s pre-treatment authorization and available records, which included dental photographs and intraoral radiographs, and the IAF. See RCE 1 at pages 4 - 8. Dr. Meister

denied the Petitioner's request for Orthodontic services in a Notice of Adverse Benefit Determination ("NABD") dated February 24, 2023. *Id.* 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.

Must meet accepted medical standards and not be experimental or investigational.

Must be able to be 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.

Must be furnished in a manner that is not primarily intended for convenience of the recipient, caretaker, or provider.

...

The facts that we used to make our decision are:

The dental service(s) that you or your dentist asked for are not approved because the Clinical Reviewer has determined that the requested service(s) will not correct or improve your condition. Your condition does not meet MCNA's Orthodontic criteria as stated in MCNA's Utilization Review Criteria and Guidelines. The information we received from your requesting provider does not show that:

- You have a cleft palate defect where the roof of your mouth has not formed the right way.
- Your lower teeth are hitting and harming the gums behind the upper front teeth.
- Your upper front teeth are behind the lower front teeth causing damage to the gums of the lower teeth.
- You have had an injury that caused harm to the teeth or gums, for example, burn or infection.

See RCE 1 at pages 4 - 5.

6. Petitioner requested an expedited plan appeal on March 3, 2023, *id.* at 11 – 12, that was received by MCNA on March 5, 2023. *Id.* at 14. On March 6, 2023, MCNA's Orthodontic Dentist,

Dr. Henry Hammer, DDS, reviewed Petitioner's records and denied the request for an expedited plan appeal because he concluded that the standard for an expedited appeal was not met. *Id.* The appeal was placed in regular appeal process. *Id.*

7. In the Expedited Clinical Appeal Case Summary Form, dated March 6, 2023, Dr. Hammer reviewed Petitioner's records and upheld the denial. *Id.* at 21. Dr. Hammer provided the following reason for his decision:

Deny 8080 x2 (CARC 400, CARC 506) – The member does not meet the required criteria necessary to qualify for benefits. The provider shared an Orthodontic Initial Assessment Form (IAF) and noted a total score of [REDACTED]. The qualifying score is 26. This reviewer also assessed the malocclusion utilizing the IAF form and scored the member at a non-qualifying total of [REDACTED]. Additionally, it should be noted that the provider did not share the required cephalometric xray. In reviewing all the presented records, it should be pointed out that the smiling facial photograph appears to present a difference occlusal pattern than demonstrated in the intraoral radiographs. Reviewing the records provided, the member demonstrates an [REDACTED]

*Id.* at 21, 24. Dr. Hammer's completed IAF form for Petitioner's assessment is shown on page 23 of Respondent's Composite Exhibit 1.

8. On March 14, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial. *Id.* at 32 – 34. The NPAR states, in pertinent part, as follows:

On March 10, 2023, after consideration of the information you provided to MCNA in support of your plan appeal, MCNA Dental hereby denies your plan appeal. MCNA has denied your appeal because the Orthodontic Specialty Reviewer, who is a licensed Board Certified Orthodontist, determined that the member does not meet the required criteria necessary to qualify for benefits. The provider shared an Orthodontic Initial Assessment Form (IAF) and noted a total score of [REDACTED]. The qualifying score is 26. This reviewer also assessed the malocclusion utilizing the IAF form and scored the member at a non-qualifying total of [REDACTED]. Additionally, it should be noted that the provider did not share the required cephalometric x-ray. In reviewing all of the presented records, it should be pointed out that the smiling facial photograph appears to present a different occlusal pattern than demonstrated on the intraoral radiographs. Reviewing the

records provided, the member demonstrates [REDACTED]  
[REDACTED] There is no maxillary crowding but there is a [REDACTED] present. Obviously, there is no overjet or overbite based on the end-on anterior relationship. No posterior crossbites could be identified.

Based on the information reviewed with the appeal, our Orthodontic Specialty Reviewer determined Bertrand's condition did not meet MCNA's Clinical Criteria for Orthodontics as stated in MCNA's Utilization Review and Criteria Guidelines. Dental services must meet the definition of medical necessity as defined in 59G-1.010 of the Florida Administrative Code.

*Id.* at 32.

9. Petitioner timely requested a Fair Hearing on April 21, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on May 18, 2023. The order set this matter for hearing on June 6, 2023, at 1:00 p.m. EST. *Id.* at 46 – 50.

10. [REDACTED] argued that Petitioner's Orthodontic services are medically necessary because Petitioner's dentist provider, [REDACTED], has referred [REDACTED] to see an orthodontist and an oral surgeon because of [REDACTED], and teeth that are located outside of [REDACTED] and [REDACTED]. *Id.* at 12. [REDACTED] testified that these [REDACTED] teeth cause Petitioner to have constant [REDACTED] and [REDACTED] on [REDACTED] tongue; render [REDACTED]; and cause [REDACTED] and [REDACTED]. *Id.* [REDACTED] testified that [REDACTED] believes Petitioner has [REDACTED] causing [REDACTED] discomfort. *Id.* [REDACTED] contends that Petitioner is a [REDACTED] who cannot know when [REDACTED] is suffering. *Id.*

11. Ms. Hayden testified that the records analysis and resulting determinations by Drs. Meister and Hammer show that Petitioner does not meet the Florida Medicaid criteria for a handicapping malocclusion, and [REDACTED] has no medically compromising conditions based on the

available documentation. As Ms. Hayden testified, the radiographs and photographs provided do not show a handicapping malocclusion and medical necessity is not demonstrated. *Id.* at 32.

12. Ms. Hayden testified that when assessing the medical necessity for handicapping malocclusions, dentists and orthodontists use a score sheet and give points for any malocclusion conditions. Petitioner's provider submitted a Medicaid Orthodontic Initial Assessment Form (IAF) for Petitioner, with a total score of [REDACTED] ( [REDACTED] for Petitioner's malocclusion conditions. See PCE 1 at pages 3 - 4. The threshold score that would make braces for the Petitioner a medical necessity is twenty-six (26). See RCE 1 at page 23 - 24.

13. Ms. Hayden compared the provider's IAF score sheet to the IAF scoresheet prepared independently by MCNA's Orthodontic Dentists who gave a total score of [REDACTED] ( [REDACTED] for Petitioner's malocclusion conditions. *Id.* Again, Ms. Hayden explained, the MCNA dentist's score also fell below the 26-point threshold for the medical necessity for a handicapping malocclusion requiring braces, as further explained in the NPAR. See RCE 1 at page 32. Ms. Hayden concluded that the IAF scores show that Petitioner's conditions are not handicapping malocclusions requiring braces a medical necessity. *Id.*

14. Pursuant to the Florida Medicaid Dental Program Member Handbook, orthodontic services, specifically, braces or other ways to correct teeth location, are covered services if medically necessary for children between the ages 0 - 20 years. *Id.* at 30.

#### **CONCLUSIONS OF LAW**

15. 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).

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

17. 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.)

18. 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.

...

**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 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 Orthodontic Services**

Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions as follows:

- Up to 25 units within a 36 month period, including the removal of the appliances and retainers at the end of treatment
- Once replacement retainer(s) per arch, per lifetime

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 orthodontic services according to "medical necessity." Respondent, through the issuance of the NPAR, determined that orthodontic services 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 comprehensive orthodontic services because the services were not medically necessary. See supra ¶ 5. Specifically, MCNA 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; "must be individualized, specific, consistent with symptoms or diagnosis or illness or injury and not be in excess of the patient's need; "must meet accepted medical standards and not be experimental or investigational; and "must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider." See supra ¶ 5.

23. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions. See supra ¶ 16. In this case, Petitioner does not qualify for braces under the Dental Coverage Policy because [REDACTED] does not have a handicapping malocclusion condition. Petitioner's provider assessed Petitioner's condition and submitted an IAF with a total score of [REDACTED] ([REDACTED]) which is below the malocclusion handicap qualifying score of 26. See supra ¶ 4. MCNA's reviewing dentists, Drs. Meister and Hammer, assessed Petitioner's malocclusion and submitted IAFs with a score of [REDACTED] ([REDACTED]) which is well below the malocclusion handicap qualifying score of 26. See supra ¶ 7.

24. [REDACTED] argued that the requested Orthodontic services should be approved because Petitioner's provider recommended the treatment. See supra ¶ 3, 4, 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] both the Dental Policy and the EPSDT requirements necessitate review of Respondent’s denial of Petitioner’s request for orthodontic 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. [REDACTED] testified that Petitioner needs braces because of [REDACTED] crooked teeth, *i.e.*, malocclusion, and that [REDACTED] teeth are causing [REDACTED] [REDACTED]. See supra ¶ 10.

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 a handicapping malocclusion based on the Petitioner’s provider’s IAF as well as the radiographs and photos submitted. As such, the greater weight of evidence shows that the requested orthodontic services are not 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 orthodontic 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 comprehensive orthodontic treatment for Code D8080 was incorrect.

**DECISION**

The Respondent's denial of Petitioner's request for comprehensive orthodontic treatment, code D8080 for braces, is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

**DONE and ORDERED** this 25th 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**  
**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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