



FILED

Aug 01, 2023, 11:59 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1147

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 30, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Mayckol Chamorro
Complaints and Grievances
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, D8080 for braces and D8670 for monthly visits, 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.

Mayckol Chamorro, Complaints and Grievances Specialist for DentalQuest of Florida, Inc. (“DentalQuest”) appeared on behalf of the Respondent. Dr. Daniel Dorrego (“Dr. Dorrego”), DDS, Senior Clinical Dental Consultant for DentaQuest, attended as a witness for Respondent.

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

Prior to the hearing, Petitioner filed with the Office of Fair Hearings and Respondent a fourteen (14)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as “23-FH1147 Evidence and DAR.pdf.” Absent an objection from the Respondent, the undersigned admitted the fourteen (14)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent filed with the Office of Fair Hearings a forty-nine (49)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1147 Evidence Packet.pdf.” Absent an objection from the Petitioner, the forty-nine (49)-page 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 RCE-1 at 10.

2. Petitioner is [REDACTED]. *Id.* On December 8, 2022, Respondent received Petitioner’s request for an authorization for braces (Code D8070) and monthly visits (code D8670) (hereinafter referred to as “orthodontic services”). *Id.* at 13.

3. Petitioner’s provider, Dr. Rodney Torres of [REDACTED], submitted an ADA Dental Claim Form requesting pre-treatment authorization for orthodontic services. *Id.* at 11. Dr. Torres provided radiographs and photographs of Petitioner’s teeth and mouth. *Id.* at 22 – 24. Petitioner’s provider also submitted a DentaQuest Orthodontic Criteria Index Form (“Orthodontic Criteria Index”). *Id.* at 25. The Orthodontic Criteria Index contains an “x” under the “yes” column by one condition considered to be an automatically-qualifying condition: [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

4. On or around December 9, 2022, DentaQuest’s dental consultant, Dr. Brett Ragusa, D.M.D. (“Dr. Ragusa”), reviewed Petitioner’s pre-treatment authorization and all available records, which included all the submitted dental photographs and radiographs. *Id.* at 19 – 21. Dr. Ragusa denied the requested comprehensive orthodontic treatment of the transitional dentition (braces) because the handicapping malocclusion is not demonstrated and because the documentation did not meet the DentaQuest clinical criteria for comprehensive orthodontic treatment of the transitional dentition. Dr. Ragusa denied the requested orthodontic services

for periodic orthodontic treatment visits because the handicapping malocclusion is not demonstrated and because the documentation did not meet the DentaQuest clinical criteria for periodic orthodontic treatment visits. *Id.*

5. Respondent denied the Petitioner's request for orthodontic services in a Notice of Adverse Benefit Determination ("NABD") dated December 11, 2022. *Id.* at 13 - 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 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):

- D8070 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

- D8670 monthly visit
We based this decision on:
 - DentaQuest Clinical Criteria for Comprehensive Orthodontics

Id. at 13 - 14.

6. Petitioner requested a plan appeal on December 19, 2022. *Id.* at 28. On December 20, 2022, DentaQuest’s dental consultant, Dr. Frank Manteiga (“Dr. Manteiga”), who did not participate in the initial decision, completed a review of all the available documentation. *Id.* at 30 – 35. Dr. Manteiga determined that Petitioner does not meet the Medicaid criteria for handicapping malocclusion. *Id.* at 30. Dr. Manteiga’s comments stated, in pertinent part:

Per Dental Director review, handicapping malocclusion is not demonstrated. 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 the need for this service.

Documentation did not meet the DentaQuest clinical criteria for: comprehensive orthodontic treatment of the adolescent dentition.

....

Documentation did not meet the DentaQuest clinical criteria for: periodic orthodontic treatment visit[s].

Id. at 30 – 35.

7. On December 22, 2022, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial. *Id.* at 38 - 41.

8. Petitioner timely requested a Fair Hearing on May 10, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on May 26, 2023. The order set this matter for hearing June 19, 2023.

9. [REDACTED] testified that Petitioner’s orthodontic services are medically necessary because Petitioner’s regular dentist said Petitioner needed to see an orthodontist. [REDACTED]

argued that the provider stated it [orthodontic services] is medically necessary at Petitioner's age of [REDACTED] or Petitioner's jaw would be deformed because Petitioner does not have space for [REDACTED] teeth. [REDACTED] repetitively referred to Petitioner's pictures as [REDACTED] reason for requesting the orthodontic services. [REDACTED] stated that Petitioner is being teased at school because of [REDACTED] teeth.

10. Dr. Dorrego testified that based on the criteria for orthodontic treatment established by the Agency and the plan, Respondent reached the correct determination. Referring to page 25 of RCE 1, Dr. Dorrego testified that the Orthodontic Criteria Index Form lists the qualifying conditions in order for approval for orthodontic treatment.

11. The Orthodontic Criteria Index Form submitted by Petitioner's provider contains the following criteria:

DO Deep impinging overbite that shows palatal impingement of the majority of lower incisors – tissue destruction of the palate must be clearly visible in mouth.

Id. at 25.

12. Dr. Dorrego explained via testimony that (1) "impingement means" the teeth are actually in contact with the pallet or roof of the month right behind the upper front teeth and (2) "destruction of the palate" means ulcerations, sores, and bleeding must be visible in order to make this determination. Further, Dr. Dorrego referred to the eight photos of Petitioner's teeth, testifying that there must be clear evidence of tissue destruction of the palate and that the photos show no such tissue trauma, no ulcerations, no bleeding. Also, there is a clear space between the lower teeth and the palate, so there is no contact with the lower teeth and the palate. Dr. Dorrego concluded that based on the criteria and lack of evidence indicating that deep impinging overbite is a qualifying condition, Respondent reached the correct determination.

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.

...

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

16. 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

17. 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.

18. A state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§440.230(a), (b), (d).

19. 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.

20. 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 Florida Medicaid Definitions Policy (August 2017), 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 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.

Definitions Policy at page 7.

21. As established on the record, Respondent denied Petitioner's request for comprehensive orthodontic treatment services, and periodic orthodontic treatment visits, because the services were not medically necessary. *See supra* ¶ 5, 7. Specifically, DentaQuest determined the services failed the following two medical necessity criteria: "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* ¶ 5.

22. [REDACTED] argued that the requested Orthodontic services should be approved because Petitioner's provider recommended the treatment. *See supra* ¶ 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* ¶ 20.

23. 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 DO based on the Petitioner's provider's Criteria Index form as well as the radiographs and photographs submitted. *See supra* ¶ 4-6, 10-12. 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.

24. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of comprehensive orthodontic treatment (D8070) with periodic orthodontic visits (D8670) was incorrect.

DECISION

The Respondent's denial of comprehensive orthodontic treatment (Code D8070) and periodic orthodontic visits (code D8670) is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 1st day of August, 2023, in Tallahassee, Leon County, Florida.



Kameisha Presley
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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.

COPIES FURNISHED TO:



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