



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

FILED

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OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1180

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

Stephanie Lang, Program Operations Administrator, Bureau of Medicaid RPA, for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not submit 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-six (46)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “[PETITIONER] 23-FH1180 SFH 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] at the time of the present hearing. *Id.*
3. On December 1, 2023, Petitioner requested an authorization for extraction of impacted tooth, completely bony (code D7240), [REDACTED]; extraction of impacted tooth, completely bony with unusual surgical complications (code D7241), [REDACTED]; extraction of impacted tooth, completely bony (code D7240), [REDACTED]; extraction of impacted tooth, completely bony with unusual surgical complications (code D7241), [REDACTED]; extraction of impacted tooth, completely bony with unusual surgical complications (code D7241), Tooth [unidentified];

intravenous moderate (conscious) sedation/analgesia, first 15 minute increment (code 9239); and intravenous moderate (conscious) sedation/analgesia – each subsequent 15 minute increment (code 9243), times four (4). *Id.* at 10, 20.

4. On December 1, 2022, an initial Authorization Determination was issued by Dr. Michael Sofianos, DMD, denying the teeth extraction for numbers [REDACTED], and the unidentified tooth, and one (1) of the doses of intravenous moderate (conscious) sedation/analgesia-each subsequent 15 minute increment. Extraction of teeth numbers [REDACTED] were denied for the reason that “[p]er Dental Director review, the x-rays do not support the code requested. A less severe extraction code would be considered. Please review the ADA code you requested and resubmit with the appropriate extraction code.” *Id.* at 19. Extraction of the unidentified tooth was denied for the reason that “[t]he required tooth/quad/arch is invalid, was not submitted, or is not included in the member’s benefit package for this procedure code. Please refer to your ORM and resubmit a claim with the appropriate information”. 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. The one (1) dose of IV sedation/analgesia was denied for the reason stated that “[w]e have approved the amount of anesthesia that is normally needed to safely complete the services requested. Based on the Dental Director review, the additional time requested is not medically necessary.” *Id.*

5. Subsequently, Respondent denied the Petitioner’s request for teeth extraction for numbers [REDACTED] (codes D7241), and an IV sedation (code D9243) in a Notice of Adverse Benefit Determination (“NABD”) dated December 2, 2022. *Id.* at 12 – 16. The NABD gave the following reasons for the denial:

X 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.

...

X Other authority

Code on Dental Procedures and Nomenclature (CDT Code) as published by the American Dental Association (ADA)

The facts that we used to make our decision are:

Anesthesia is a medicine your dentist will use to make you relax or sleep during your treatment. The goals of using this medicine are to 1) guard against safety and well-being; 2) reduce your physical discomfort and pain; 3) control your anxiety; 4) change your actions or movement so the dentist can safely complete the procedure; and 5) return you to a state after the procedures that it is safe for your dentist to send you home. The goals are met by using the lowest dose of the drug that is the safest and best for the procedure(s) being done. The time you need to relax or sleep is based on the service(s) your dentist asked for. Our dentist looked at the request and the information your dentist sent. We have approved part of the time to help you relax or sleep during your treatment for the service(s) that your dentist has asked for. Your dentist asked for more time than our rules say is medically necessary to safely complete the procedure(s) requested. We have also let your dentist know. Please talk with your dentist if you have questions about this.

This denial applies to this service(s):

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

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):

- D7241 extraction of impacted tooth with complications [REDACTED]
We based this decision on:
- DentaQuest Clinical Criteria for Surgical Extraction

- D7241 extraction of impacted tooth with complications [REDACTED]
We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction

....

RCE-1 at 12 – 13.

6. Petitioner requested a plan appeal on January 23, 2023. *Id.* at 24 - 25. As a result, on January 26, 2023, Respondent issued an NPAR upholding the denial. *Id.* at 27 – 29. 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:

We looked at your request for D7241 extraction of impacted tooth with complications. The denial is upheld. The required tooth/quad/arch is invalid; it was not submitted; or it is not included in your benefit package for this code. We have asked your dentist to resend the request with the information. Our dentist looked at your request for D9243 IV Sedation each 15 minutes. The denial is upheld. Your dentist asked for more time than our rules say is medically necessary to safely complete the procedure(s) requested. Our dentist looked at your request for D7241 extraction of impacted tooth with complications Teeth [REDACTED]. 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. Your dentist can also send us a new code for consideration. Please talk to your dentist.

....

Id. at 27.

7. Petitioner timely requested a Fair Hearing on May 16, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on June 6, 2023. The order set this matter for hearing on June 22, 2023, at 9:00 a.m. EST. *Id.* at 1 – 8.

8. [REDACTED] testified that Petitioner and [REDACTED] family have been going to their oral surgeon dental provider for years, and they trust him. [REDACTED] further testified that Petitioner needs

teeth numbers , and a third tooth, extracted. argues that oral surgeon has already told that he is unwilling to change the extraction procedure code from D7241. is concerned that if oral surgeon does not extract teeth, that there would not be another oral surgeon who would, based on a different code for the procedure. testified that complains that has pain from .

9. Dr. Dorrego testified that information the provider dentist sent for authorization did not meet the criteria necessary for the teeth extraction for numbers , and the unidentified tooth, and for one dose of the IV sedation/analgesia. Dr. Dorrego testified that a review of the records, including the X-rays, reveal that the roots for teeth are not fully formed, therefore extraction under code D7241, for unusual or complicated surgical procedures, is not warranted. Dr. Dorrego explained that the American Dental Association (ADA) describes the criteria for an extraction to be eligible for a code D7241 procedure as “removal of impacted tooth – completely bony, with unusual surgical complications....unusually difficult or complicated due to factors such as nerve dissection required, separate closure of maxillary sinus required, aberrant tooth position, or unusual depth of impaction....” Id. at 40. Dr. Dorrego contended that the provider must present a claim authorization for a lesser extraction code, or submit narrative and x-rays or photos describing the difficult or complicated factors required for an extraction under code D7241.

10. 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 36 – 38 of RCE 1.

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.

15. 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.

16. 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.

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

18. 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.

19. 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], the unidentified tooth, and the one dose of IV sedation/anesthetic 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.

20. As established on the record, Respondent denied Petitioner's request for extraction of [REDACTED] wisdom teeth [REDACTED], and the unidentified tooth 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.

21. 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. Dorrego, assessed Petitioner's X-rays, and determined that unless additional documentation was received, such as a narrative describing how the

extractions meet the code 7241 criteria, the services do not meet a medical necessity need. *See supra* ¶ 5.

22. [REDACTED] argued that the requested the wisdom teeth extraction services should be approved because Petitioner’s provider recommended the treatment. *See supra* ¶ 8. 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* ¶ 23.

23. 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 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 Lazier testified that Petitioner needs the extraction of [REDACTED] [REDACTED] because they are causing [REDACTED] pain, *see supra* ¶ 8, there was no medical evidence presented that Petitioner is experiencing greater than normal eruption pain or that Petitioner’s teeth otherwise required the procedures under code D7241.

24. 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] under code D7241, and the unidentified

tooth with intravenous sedation/analgic. 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.

25. 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 under code D7241 for numbers [REDACTED], and the unidentified tooth with intravenous sedation/analgesic, is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

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



Debbie K. Winicki
23-FH1180
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DEBBIE 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:

[REDACTED]
[REDACTED]

**DentaQuest of Florida, Inc.
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**AHCA Medicaid Hearing Unit
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