



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

FILED

Oct 24, 2023, 12:55 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1926

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 September 12, 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 Respondent 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 DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of the Respondent. Dr. Linda Johnson (“Dr. Johnson”), DDS, Dental Consultant for DentaQuest, attended as a witness for Respondent.

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

Prior to the Fair Hearing, Petitioner filed with the Office of Fair Hearings a sixteen (16)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1926 Email Correspondence.pdf.” Without objection, the evidence packet was admitted into evidence as Petitioner’s Composite Exhibit 1.

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 “23-FH1926 SFH Evidence Packet.pdf.” Without objection, the evidence packet was admitted into evidence as Respondent’s Composite Exhibit 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]. *Id.* On or around July 3, 2023, Petitioner requested an authorization for comprehensive orthodontic treatment for braces (code D8080), and monthly visits (code D8670). *Id.* at 10, 13.

3. Petitioner's provider, [REDACTED], [REDACTED], P, submitted an ADA Dental Claim Form requesting pre-treatment authorization for orthodontic services. *Id.* at 10. Petitioner's provider also submitted a Medicaid Orthodontic Criteria Index Form ("Orthodontic Criteria Index"). *Id.* at 25 - 26. The Orthodontic Criteria Index contains a checkmark under the "yes" column by a condition considered to be qualifying handicapping malocclusion. *Id.* The condition is "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. [REDACTED] described the criteria concerning Petitioner as "Impinging OB, Crowding U/L, and ↑ OJ." *Id.* at 26. [REDACTED] provided x-rays and photos. *Id.* at 22 – 24.

4. On or around July 3, 2023, DentaQuest's Staff Dentist, Angel Sylve, DDS, reviewed Petitioner's pre-treatment authorization and all available records, which included dental photographs and radiographs. *Id.* at 19 - 21. Dr. Sylve denied the requested Orthodontic services under code D8080 for braces because the "[d]ocumentation did not meet the DentaQuest clinical criteria for comprehensive orthodontic treatment of the adolescent definition" and under code D8670 because "Documentation did not meet the DentaQuest clinical criteria for periodic orthodontic treatment visit." *Id.* at 19 - 21.

5. Subsequently, Respondent denied the Petitioner's request for Orthodontic services in a Notice of Adverse Benefit Determination ("NABD") dated July 4, 2023. *Id.* at 13 - 16. 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):

- D8080 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

- D8670 monthly visit

We based this decision on:

- DentaQuest Clinical Criteria for Other Orthodontic Services

Id. at 13 - 14.

6. Petitioner requested a plan appeal, and on July 12, 2023, DentaQuest's dental consultant, F. Manteiga, DMD ("Dr. Manteiga") who did not participate in the initial decision, completed a review of all the available documentation. *Id.* at 31 - 32. Dr. Manteiga determined that

Petitioner is approved for pre-orthodontic treatment examination to monitor growth and development. Dr. Manteiga did not address the request for orthodontic services for braces (D8080) or periodic orthodontic treatment visit (D8670). *Id.*

7. On July 12, 2023, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial. *Id.* at 34 - 36. The NPAR upheld the denial of Orthodontic services, stating, 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:

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. 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 overbite; over-bite with your front teeth; cross-bite with your front; impacted front teeth; over-jet bigger than 9mm or negative over-jet bigger than 3.5mm; cleft lip; cleft; or issues with your teeth that would need braces and surgery in order to fix them. We need this to decide if this is covered under the code that was sent for the appliance requested. We have also told your dentist. Please talk to your dentist about your treatment choices.

Id. at 34.

8. Petitioner timely requested a Fair Hearing on August 3, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on August 22, 2023. The order set this matter for hearing on September 12, 2023.

9. [REDACTED] argued that Petitioner’s orthodontic services are medically necessary due to the [REDACTED]. [REDACTED] testified that [REDACTED] cannot [REDACTED]. [REDACTED] explained that Petitioner becomes [REDACTED].

and [REDACTED] will [REDACTED]
[REDACTED]. [REDACTED] testified that this is causing [REDACTED]. [REDACTED]
noted that [REDACTED]. [REDACTED] referred to the
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Page 14 of PCE 1. [REDACTED] contends that the [REDACTED]
[REDACTED] provides that [REDACTED]'s Medicaid needs would be covered, and that the State
of Florida agreed to help [REDACTED] with [REDACTED].

10. Dr. Johnson testified that all the submitted documentation was taken into consideration in this case. Dr. Johnson referred to section 18.11 of the Clinical Criteria for Orthodontics under the DentaQuest policy, which provides, in pertinent part, "Florida Medicaid requires that for any orthodontic case to be determined as medically necessary the case must demonstrate a "handicapping malocclusion." The state defines "handicapping malocclusion" as "a condition that results in a disability or impairment of the recipient's physical development." . . . Page 40 of RCE 1. Dr. Johnson testified that Petitioner does not meet the criteria for a qualifying handicapping malocclusion under the Orthodontic Criteria Index Form for "deep impinging overbite that shows palatal impingement of the majority of lower incisors – tissue destruction of the palate must be clearly visible in mouth" ("DO"). *Id.* at 25. Dr. Johnson examined the photos of Petitioner's mouth and x-rays provided by [REDACTED]. *Id.* at 22 - 24. Dr. Johnson contends that the photos and x-rays do not demonstrate that there is palatal impingement of the majority

of lower incisors or tissue destruction of the palate clearly visible in the mouth that meets the medical necessity criteria requiring orthodontic treatment. Dr. Johnson testified that the panoramic x-ray of Petitioners mouth shows that Petitioner's [REDACTED] [REDACTED]. *Id.* at 23.

11. The Orthodontic Criteria Index Form contains the following criteria, in pertinent part:

Deep impinging overbite that shows palatal impingement of the majority of lower incisors – tissue destruction of the palate must be clearly visible in mouth. On study models, the lower teeth must be clearly touching the palate and there must be clear evidence of damage visible on the submitted models or photographs; touching or slight indentation do not qualify.

Id. at 43.

CONCLUSIONS OF LAW

12. 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).

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

14. 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.)

15. 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.

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

Dental Coverage Policy at page 5.

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.

Dental Coverage Policy at page 4.

18. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

(3) Dental Services

(A) which are provided –

- (i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and
- (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

Further, according to 42 U.S.C. § 1396d(r)(5), EPSDT include, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate

defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

19. 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 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, 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.

23. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients with handicapping malocclusions. *See supra* ¶ 15. In this case, Petitioner's provider submitted a Criteria Index Form indicating that Petitioner has the following handicapping malocclusions that automatically qualify [REDACTED] for orthodontic treatment: 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"). *See supra* ¶ 3. As Dr. Johnson testified, she and DentaQuest's dental consultant, Dr. Sylve, considered the submitted clinical documentation and they agree that the documentation does not support a finding that Petitioner has a qualifying handicapping malocclusion. *See supra* ¶ 4, 5, 7, 10. As Dr. Johnson further testified, Petitioner's photos and x-rays do not show a disability or impairment to the Petitioner's physical development. *See supra* ¶ 10. Therefore, Petitioner does not have a handicapping malocclusion under the Orthodontic Criteria Index Form for "deep impinging overbite that shows palatal impingement of the majority of lower incisors – tissue destruction of the palate must be clearly visible in mouth" ("DO"). *See supra* ¶ 3.

24. [REDACTED] testified 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* ¶ 21. [REDACTED] also testified that the requested Orthodontic services should be approved because the [REDACTED] with the State of Florida provides that Petitioner will receive Medicaid benefits as provided under Title XIX of the Social Security Act, in accordance with the procedures applicable in Florida. However, the condition of Petitioner's teeth does not meet the criteria for comprehensive orthodontic treatment of the adolescent definition, as provided by the Florida Medicaid Dental Orthodontic procedures applicable in Florida. *See supra* ¶ 15.

25. [REDACTED] further testified that Petitioner experiences pain that is exacerbated when [REDACTED] chews meat, or other hard foods. *See supra* ¶ 9. Based on Petitioner's age, (13 years of age at the time of the hearing), 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. 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

....

See supra ¶ 21. As provided by Section 409.905(2), Florida Statutes, governing EPSDT services, the amelioration of pain for Petitioner is medically necessary if the pain is severe. Although [REDACTED] testified that Petitioner has [REDACTED], and that [REDACTED] is [REDACTED], there was no corroborating evidence given to show that Petitioner is in severe pain, or the onset of significant illness or significant disability. See supra ¶ 9, 24.

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 DO based on the Petitioner's provider's Criteria Index form 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. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of comprehensive orthodontic treatment (D8080) and periodic orthodontic treatment visit (D8670) was incorrect.

DECISION

The Respondent's denial of comprehensive orthodontic treatment (code D8080), retainer (code D8680), and periodic orthodontic treatment visit (code D8670) is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 24th day of October, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH1926
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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:

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