



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

FILED

Dec 20, 2023, 11:29 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2330

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 October 17, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner's Authorized Representative

For the Respondent: Kimberly Hayden
Grievances and Appeals Supervisor
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, D8080 for comprehensive orthodontic treatment of the adolescent dentition, was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative, appeared on behalf of Petitioner.

Kimberly Hayden, Grievances and Appeals Supervisor for Managed Care of North America, Inc. (“MCNA” or “Respondent”) appeared on behalf of the Respondent.

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

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a sixty-six (66)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “SFH PACKET - [Petitioner’s Name].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 which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. See page 1 at RCE 1.
2. Petitioner is [REDACTED]. *Id.* at 18. On or around July 26, 2023, Petitioner requested an authorization for comprehensive orthodontic treatment of the adolescent dentition, (code D8080). *Id.* at 4.
3. Petitioner’s provider, [REDACTED], DDS, Orthodontic Dentist, requested pre-treatment authorization for the orthodontic services at issue. *Id.* at 18. Petitioner’s provider

submitted a Medicaid Orthodontic Initial Assessment Form (“IAF”). *Id.* at 19. The IAF indicated that Petitioner scored a non-qualifying score of [REDACTED] *Id.* The provider also submitted x-rays and photos of Petitioner’s mouth. *Id.* at 23-25.

4. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated August 1, 2023. *Id.* at 4 - 8. 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 furnished in a manner 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:

- [REDACTED]

5. Petitioner requested a plan appeal on August 10, 2023. *Id.* at 13. On or around August 21, 2023, MCNA’s Clinical Reviewing Dentist, Dr. Henry S. Hammer, DDS, MS, FACD, FICD, FADI, who did not participate in the initial decision, reviewed Petitioner’s pre-treatment authorization and all available records, which included dental photographs and radiographs. *Id.* at 18 – 25. Dr. Hammer completed an IAF, which shows that none of the auto-qualifying conditions are met and gives Petitioner a non-qualifying HLD score of [REDACTED] *Id.* at 21-22. With no auto-qualifying conditions, a minimum score of twenty-six (26) is required to qualify for orthodontic care. *Id.* at 21. Dr. Hammer denied the requested Orthodontic services, stating as follows:

[T]he member does not meet the required criteria necessary to qualify for Medicaid benefits. The provider shared on the Orthodontic Initial Assessment Form (IAF) that the member scored a non-qualifying total score [REDACTED] even with the provider mis-scoring the member in the [REDACTED] areas. This reviewer scored the malocclusion at an IAF total of a non-qualifying total score [REDACTED]. The member presented with [REDACTED] [REDACTED] [REDACTED] [REDACTED]. There are no posterior crossbites. Summarizing, Deny 8080.

Page 19, 22 at RCE 1.

6. On August 21, 2023, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial of D8080 Comprehensive Orthodontic Treatment, based on medical necessity. *Id.* at 45 - 48. The NPAR included the rationale for the denial, as follows:

On August 21, 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 Board-Certified Orthodontist, determined the member does not meet the required criteria necessary to qualify for Medicaid benefits. The provider shared on the Orthodontic Initial Assessment Form (IAF) that the member scored a non-qualifying total score [REDACTED] even with the provider mis-scoring the member in the [REDACTED] areas. This reviewer scored the

malocclusion at an IAF total of a non-qualifying total score [REDACTED]. The member presented with [REDACTED].

Based on the information reviewed with the appeal, our Orthodontic Specialty Reviewer, who is a Board-Certified Orthodontist, determined [Petitioner's] condition did not meet MCNA's Orthodontics Criteria 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.

Pages 45 – 46 of RCE 1.

7. Petitioner timely requested a Fair Hearing on September 13, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on September 27, 2023. The order set this matter for hearing on October 17, 2023, at 1:00 p.m. EST.

8. [REDACTED] testified that Petitioner's orthodontic services are medically necessary. [REDACTED] explained that Petitioner is in [REDACTED]. [REDACTED] testified that Petitioner is not on any medication for [REDACTED]. [REDACTED] referred to Petitioner's x-rays, *id.* at 23, to demonstrate the malocclusion that must be causing [REDACTED]. [REDACTED] further testified that [REDACTED] family have recently relocated from [REDACTED], where Petitioner had been qualified and was being prepared to get the orthodontic treatment of braces. [REDACTED] argued that if Petitioner was qualified for the services in another state, [REDACTED] should qualify in Florida.. [REDACTED] further argued that Petitioner's dental provider in Florida also recommended braces, therefore, Petitioner must be qualified for braces.

9. Ms. Hayden testified that all the submitted documentation was taken into consideration in this case. Ms. Hayden testified that MCNA administers the Medicaid dental plan for Florida. Ms. Hayden explained that a member must have an orthodontic assessment score of twenty (26) or higher to qualify. Ms. Hayden further explained that Petitioner's provider scored Petitioner's assessment at [REDACTED] and MCNA's dental clinical reviewer scored Petitioner's assessment at [REDACTED]. Ms. Hayden concluded that Petitioner does not meet the medical necessity criteria for orthodontic treatment under the Florida Medicaid dental plan.

10. The MCNA Dental: Florida Medicaid Statewide Program Provider Manual (May 19, 2023), contains the following criteria:

17.10. Orthodontic Services

Services are limited to those circumstances where the enrollee's condition creates a disability and impairs their physical development. Maintenance visits are limited to up to 24 units within a 36-month period, including the removal of the appliances and retainers at the end of treatment.

Services will not be covered if services are for:

- Limited or interceptive treatment,
- Primarily cosmetic purposes, or
- Split phase treatment, with the exception for cleft palate cases.

Page 30 of RCE 1.

11. Section 12 of MCNA Dental's Florida Medicaid Dental Program Member Handbook provides that the service of orthodontics, including braces or other ways to correct teeth location, are covered as medically necessary for children, ages 0 – 20, with prior authorization.

Id. at 38.

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 Florida Medicaid Dental Services Coverage Policy (August 2018) (“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

...

4.3 Early and Periodic Screening, Diagnosis, and Treatment

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 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. Because Petitioner is under the age of 21 years, the requirements of Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) apply. 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.

18. Petitioner is under age 21, and therefore EPSDT applies to [REDACTED] request for services.

However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R.

§§440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical 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. Section 2.83 of the Florida Medicaid Definitions Policy (August 2017)(“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.

Definitions Policy at page 7.

20. As established on the record, Respondent denied Petitioner's request for comprehensive orthodontic treatment of the adolescent dentition because the services were not medically necessary. *See supra* ¶ 4, 6. Specifically, MCNA determined the services failed the following four medical necessity criteria: "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 be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;" and "must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." *See supra* ¶ 4.

21. Florida Medicaid provides, in part, that orthodontic treatment of the adolescent dentition services are limited to those circumstances where the enrollee's condition creates a disability

and impairs their physical development, and services will not be covered if services are for limited or interceptive treatment, or primarily cosmetic purposes. See supra ¶ 10.

22. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients with handicapping malocclusions. See supra ¶ 23. In this case, Petitioner's provider submitted an IAF indicating that Petitioner has a non-qualifying score of [REDACTED] for orthodontic treatment. See supra ¶ 3. As Ms. Hayden's testimony and evidence in the record established, MCNA's dental clinical reviewer, Dr. Hammer, completed an IAF showing that Petitioner does not have an auto-qualifying handicapping occlusion and that gave Petitioner's condition a non-qualifying total score of [REDACTED]. See supra ¶ 5, 6, 9. Therefore, based on the record evidence and testimony, Petitioner does not have a qualifying handicapping malocclusion.

23. [REDACTED] testified that Petitioner has [REDACTED]. See supra ¶ 8. However, there was no testimony or evidence given to show that Petitioner is [REDACTED], and/or that Petitioner is [REDACTED]. See supra ¶ 8, 25. [REDACTED] further asserted that the requested Orthodontic services should be approved because Petitioner's dental provider here in Florida and [REDACTED] dental provider in [REDACTED] recommended the orthodontic 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 ¶ 20.

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 a qualifying malocclusion condition based on the IAF Criteria Index form submitted by Petitioner's provider 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.

25. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of comprehensive orthodontic treatment for adolescent dentition (D8080) was incorrect.

DECISION

The Respondent's denial of comprehensive orthodontic treatment for adolescent dentition (code D8080) is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 20th day of December 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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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]
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