FILED

Jan 31, 2024, 3:49 pm

OFFICE OF FAIR HEARINGS

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

,

PETITIONER,

AHCA Case No.: 23-FH2782
Plan ID No.:

vs.

LIBERTY DENTAL PLAN OF FLORIDA,

RESPONDENT.
_________________________________/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on November 30, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:
Petitioner's Authorized Representative

For the Respondent: Monica Aguilar
Grievances and Appeals Analyst
Liberty Dental Plan of Florida

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of dental services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. (" "), Petitioner's Authorized Representative and , appeared on behalf of Petitioner.

Monica Aguilar, Grievances and Appeals Analyst for Liberty Dental Plan of Florida ("Liberty") appeared on behalf of the Respondent. Dr. Kelly Klair ("Dr. Klair"), DDS, a Dental Quality Specialist for Liberty, attended as a witness for 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. Diana Hearod, a Medical Health Care Program Analyst and Fair Hearing Liaison for AHCA, also appeared as an observer.

Prior to the Fair Hearing, Petitioner filed with the Office of Fair Hearings a forty-seven (47)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH2782 Supporting Documents.pdf." Without objection, the evidence packet was admitted into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a sixty-nine (69)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH2782_[Petitioner's Name]_Evidence Packet_11.15.2023.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 Liberty which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *See* page 2 of RCE-1.

2. Petitioner is [redacted]. *Id*. at 6.

3. On or about July 28, 2023, Petitioner requested an authorization for teeth extraction services, including code D7240 for extraction of teeth numbers , D7921 for collection/application of autologous blood concentrate, and adjunctive services, including codes D9239 and D9243 for intravenous sedation, and code D9612 for therapeutic parenteral drugs. *Id*. at 11 - 13.

4. Petitioner's provider, , PPLC, provided x-rays of Petitioner. *Id*. at 10.

5. On or about October 1, 2023, Liberty's Staff, Dr. John Soumi, DDS, reviewed Petitioner's pre-treatment authorization and all available records, which included dental photographs and radiographs. *Id*. at 10 - 13. Dr. Soumi denied the removal of teeth numbers ; collection and application of autologous blood concentrate product (D7921); and the therapeutic parenteral drugs, two or more administrators (D9612) based on the dental plan benefits and applicable limitations and exclusions set forth by the Agency, Section 4. *Id*. at 23 - 24. The extraction of teeth 17 and 32 were approved. *Id.* at 2.

6. Respondent denied the Petitioner's request for the teeth extraction services for teeth numbers , and the other aforementioned services in a Notice of Adverse Benefit Determination ("NABD") dated August 2, 2023. *Id.* at 14 - 17. 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) # 4, 5, 6, 7, 8
>
> 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 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.
> X 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:
> # 7, 8 MM772: The service is denied. For this service to be approved this tooth must have an infection/pain or it must be pulled because it is blocking another tooth from coming in. Based on your dentist's x-rays/notes you do not meet any of the criteria listed above. Please check with your dentist for other options.
> # 4, 5, 6 MMNPBEPSDT: The service that your dentist sent in is not covered by your plan. For this service to be allowed it must meet the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Guideline or it must be medically needed. The notes/pictures/x-rays that your dentist sent in does not show that your medical health will be affected if you do not have this service done. Please check with your dentist for other options.

Pages 14 - 15 of RCE 1.

7. Petitioner requested a plan appeal on or about August 21, 2023. *Id.* at 35. On September 6, 2023, Liberty's Staff Dentist, Dr. Puja Patel, D.M.D, who did not participate in the initial decision, completed a review of the available x-rays and notes, and as a result, issued an NPAR upholding the denial of services. *Id.* at 35 - 37. The NPAR states, in pertinent part, as follows:

> On August 21, 2023, we received your timely plan appeal request regarding LIBERTY Dental Plan's (LIBERTY's) Notice of Adverse Benefit Determination dated August 02, 2023, NABD Number [redacted], denying the tooth removal (extraction), for teeth #'s [redacted], the therapeutic parenteral drugs, two or more administrations, different meds, and the collection and application of autologous blood concentrate product, times 2.
>
> On September 06, 2023, after consideration of the information you provided to LIBERTY in support of your plan appeal, LIBERTY hereby denies your plan appeal.
>
> This is because on September 06, 2023, LIBERTY's Staff Dentist, Dr. Puja Patel, a licensed dentist, who did not take part in the first denial said [redacted] dentist notes/x-rays does not show that the services should be approved. For tooth

removal for teeth # 's [redacted], to be approved teeth #'s [redacted] must have an infection or pain. The teeth must be pulled because it is stopping one more tooth from coming in. The Staff Dentist saw the dental x-rays and notes of [redacted] teeth shows the teeth do not need to be pulled. The Staff Dentist will also like you to know the therapeutic parenteral drugs, two or more administrations, different meds, and the collection and application of autologous blood concentrate product, are not listed on [redacted] Florida Medicaid Plan. Services not listed on the Plan are not covered. The therapeutic parenteral drugs, two or more administrations, different meds, and the collection and application of autologous blood concentrate product, times 2, were reviewed under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Benefit. The services do not meet Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Benefit. The Staff Dentist saw that [redacted] dentist did not send in records that shows the medical need for [redacted] to have the services above. Therefore, the therapeutic parenteral drugs, two or more administrations, different meds, and the collection and application of autologous blood concentrate product, times 2, are not medically needed and will remain denied.

The Florida Medicaid Provider Reference Guide, section 8, states: "The prophylactic removal of a tooth or teeth that appear to exhibit an unimpeded path of eruption and/or exhibit no active pathology is not covered. The removal of asymptomatic, unerupted, third molars in the absence of active pathology is not covered."

The Florida Medicaid Provider Reference Guide says: "For all EPSDT covered services (ages 0-20), pre-authorization is required for any dental service that is not listed on the FL Medicaid benefit schedule and for any service(s) that are listed on the Medicaid plan schedule but are otherwise subject to frequency limitations or are subject to periodicity schedule guidelines and the service(s) being requested would otherwise exceed the listed limitations and/or guidelines. For all reviews prior to claim payment or pre-authorization requests, medical necessity will be determined based on radiographic and/or other documented rationale. Any EPSDT service(s) that is not pre-authorized as described above, will be denied.

Page 35 of RCE 1.

8. Petitioner timely requested a Fair Hearing on October 27, 2023. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on November 7, 2023. The order set this matter for hearing on November 30, 2023, at 9:00 a.m. EST.

9. testified that Petitioner's teeth extraction services are medically necessary because Petitioner's dental provider recommended the extractions. contends that that Petitioner, , continues to be in pain because of the wisdom teeth that need to be extracted. explained that is not eating properly because of the pain from teeth. referred to the dental policy that the service should be provided to alleviate severe pain in children. also pointed out that 's dental provider included in clinical history that "Pt [patient] is having pain w/maxillary wisdom teeth that are causing pt pain when eating and causing to lose weight because it hurts to eat." *See page* 11 of RCE 1.

10. Dr. Klair's testimony established that all the submitted documentation was taken into consideration in this case, however, Petitioner does not meet the Florida Medicaid criteria for oral surgery of teeth numbers , and has no medically compromising conditions based on the available documentation. Dr. Klair explained that if wisdom teeth do not have any pathology, for instance an infection in the area, then extraction is not a covered procedure under the Plan. Dr. Klair testified that the x-rays provided for teeth numbers show that they are still bony, and that they are erupting unimpeded, in straight-line eruption as normal, and in due course. Dr. Klair testified that the pain Petitioner is feeling around the wisdom teeth is most likely normal teething pain because there is no fracture of the teeth or infection surrounding areas of the teeth, just straight-line eruption. Dr. Klair noted that Petitioner should feel better once the wisdom teeth have fully erupted. Ms. Aguilar testified that according to the Florida Medicaid Definitions Policy, a dental service is not necessarily medically necessary because a provider recommends it.

11. Under Liberty's Clinical Criteria Guidelines for Oral Surgery, A. Extractions (Codes D7111 – D7251), the guidelines for code D7240 is as follows:

> b. An impacted tooth is "An unerupted or partially erupted tooth that is positioned against another tooth, bone, or soft tissue so that complete eruption is unlikely." (CDT)
>
> . . .
>
> > iii. Extraction of a completely bony impaction (Code D7240) is a tooth with most or all of the crown covered with bone and requires elevation of a mucoperiosteal flap and bone removal
>
> . . .

Page 65 of RCE 1.

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 Oral and Maxillofacial Surgery Services Coverage Policy (May 2016), ("Oral and Maxillofacial Surgery Coverage Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Oral and Maxillofacial Surgery Coverage Policy provides the following:

> **1.0 Introduction**

Florida Medical oral and maxillofacial surgery services provide extractions, surgical adjunctive treatment of diseases, defects and injuries of the hard and soft tissues of the oral and maxillofacial regions.

. . .

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary oral and maxillofacial surgery services.

. . .

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

Oral and Maxillofacial Surgery Coverage Policy at pages 1-2.

16. Petitioner's request for dental services is also governed by the Florida Medicaid Dental Services Coverage Policy ("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:

. . .

4.2.1 Adjunctive General Services

Florida Medicaid covers the following:

4.2.1.1.1 Behavioral Management

Up to three times per 366 days, per recipient under the age of 21 years, when provided in conjunction with a covered dental

service

4.2.1.1.2 Intravenous/Non-Intravenous Sedation
Up to three times per 366 days, per recipient

4.2.1.1.3 Palliative Treatment
For recipients under the age of 21 years

. . . .

4.2.9 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 1-4.

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. 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.

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

21. 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.

22. 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 AHCA 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 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.

Definitions Policy at page 7.

23. As established on the record, Respondent denied Petitioner's request for teeth extraction services for teeth numbers [redacted], because the services were not medically necessary. *See* supra ¶ 6. Specifically, Liberty 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 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;" and must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider." *See* supra ¶ 6.

24. The Dental Coverage Policy, in section 4.2.9, 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 teeth extractions for teeth [redacted] under the Dental Coverage Policy because [redacted] does not have any pathology of and around the teeth areas: the x-rays and notes show that active pathology is absent. *See* supra ¶ 7. LIBERTY's reviewing dentists, Drs. Soumi and Patel, assessed Petitioner's x-rays and notes and determined that the teeth did not have infection or pain, that the teeth were not blocking other teeth from coming in, and that the medical information sent by the provider dentist does not show that Petitioner's medical health will be affected if the service is not done. *See* supra ¶ 6, 7. Dr. Klair testified that [redacted] also considered the submitted clinical documentation and agrees that the documentation does not support a finding that Petitioner has a medical necessity for extracting teeth numbers [redacted]. *See* supra ¶ 10.

25. [redacted] argued that the requested extraction services and adjunctive 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 ¶ 22.

26. 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 extraction services and adjunctive 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 [redacted] wisdom teeth extracted and the related services, because [redacted] is in pain from the teeth erupting. *See* supra ¶ 9. However, there was no medical evidence presented that the pain was beyond normal eruption pain.

27. 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 and adjunctive services based on the Petitioner's provider's x-rays and notes 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 extraction and adjunctive 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

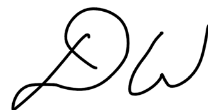
physical and mental illness or condition nor necessary to provide "relief of pain and infections, restoration of teeth, and maintenance of dental health".

28. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of teeth extraction services, including code D7240 for extraction of teeth numbers [redacted]; the collection and application of autologous blood concentrate product, code D7921; and the therapeutic parenteral drugs for code D9612, was incorrect.

DECISION

The Respondent's denial of Petitioner's request for teeth extraction services, including code D7240 for extraction of teeth numbers [redacted], code D7921 for the collection and application of autologous blood concentrate product, and code D9612 for therapeutic parenteral drugs, is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 31st day of January, 2024, in Tallahassee, Leon County, Florida.



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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:

LIBERTY Dental Plan of Florida, Inc.
regulatory@libertydentalplan.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com