



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

FILED

Feb 28, 2024, 10:30 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 23-FH2996

Plan ID No.: [REDACTED]

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 10, 2024, at 2:06 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Shonda Rushing
Complaints and Grievance Specialist
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for comprehensive orthodontic treatment was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED] (" [REDACTED] ") appeared on behalf of the Petitioner.

Shonda Rushing, Complaints and Grievance Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of Respondent. Dr. Daniel Dorrego (“Dr. Dorrego”), Senior Clinical Dental Consultant for DentaQuest, attended as a witness for Respondent.

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

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-four (44)-page evidence packet that was admitted into evidence without objection, is admitted into evidence as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings document management system as file title “SFH Packet [Petitioner] 23 FH2996_Exhibit 1.pdf” and “SFH Packet [Petitioner] 23 FH2996_Exhibit 2-4.pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. *See* Respondent’s Composite Exhibit 1, page 10. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner an [REDACTED]. *See* Respondent’s Composite Exhibit 1, page 10.
3. On August 28, 2023, the Petitioner requested Braces (Code D8080), and monthly visits for adjustments (Code 8670), (“comprehensive orthodontic treatment”). *See* Respondent’s Composite Exhibit 1, page 12. On August 28, 2023, the Respondent issued a Notice of Adverse Benefit Determination (“NABD”), denying the Petitioner’s request. *See* Respondent’s Composite Exhibit 1, pages 12-17. The NABD explained the basis of the denial as follows:

We made our decision because:
(Check all boxes that apply)

- 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.
 - Must meet accepted medical standards and not be experimental or investigational.
 - 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.
 - Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)
- The requested service is not a covered benefit.
- Other authority

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.

4. On September 7, 2023, the Petitioner timely requested a plan appeal of the Respondent's denial of Braces (Code D8680), monthly visits for adjustments (Code 8670), and a Retainer (Code 8680). See Respondent's Composite Exhibit 1, page 30. On September 11, 2023, the Respondent sent the Petitioner a Notice of Plan Appeal Resolution ("NPAR") letter upholding the denial of Braces (Code D8680), and monthly visits for adjustments (Code 8670), and stated as follows:

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; open-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. Some dental services can only be done once. This service should only be asked for one time. We need your dentist to send us the name or type of appliance requested. We need this to decide whether this is covered under the code sent for the appliance requested. We have also told your dentist. Please talk to your dentist about your treatment choices.

...

Id.

5. On November 28, 2023, Petitioner requested a Fair Hearing regarding the denial of dental services. On December 19, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for January 10, 2024, at 2:00 p.m. EST.

6. Dr. Dorrego is a Senior Dental Consultant from DentaQuest, testified the Petitioner does not meet the qualifying factors to be eligible for orthodontics to be covered and paid for my Medicaid. Dr. Dorrego acknowledged the Petitioner could benefit from orthodontics, acknowledged there is some "crowding" of the Petitioner's teeth and [REDACTED], but an "overjet" of at least nine (9) millimeters is required

before orthodontics are eligible for reimbursement by Medicaid. See Respondent’s Composite Exhibit 1, page 24.

7. The Petitioner’s [REDACTED] testified that [REDACTED] feels [REDACTED] should qualify for orthodontics reimbursed by Medicaid due to [REDACTED] and one of [REDACTED]. The Petitioner’s [REDACTED] also argued there should be different criteria applicable to [REDACTED] and that DentaQuest should approve the reimbursement of orthodontics for [REDACTED].

8. DentaQuest relied upon the following Clinical Criteria for Orthodontics to make a Medical Necessity determination regarding Petitioner’s request for Orthodontic Braces:

18.11 Clinical Criteria for Orthodontics

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 to the recipient’s physical development.” This definition means a case which severely impacts a person’s ability to chew or speak or makes a person overly susceptible to Dental disease. DentaQuest has set the criteria in the Orthodontic Criteria Index Form included below. Please note, that if a provider does not check any criteria, DentaQuest will deny the case. The Pre-orthodontic visit (code D8660) is only covered on denied prior authorization requests for comprehensive orthodontic care. The pre-orthodontic visit includes diagnostic casts, photographs, radiographs (panoramic and cephalometric), a Orthodontic form, a ADA claim form, and a narrative including the diagnosis and treatment plan. These services are not reimbursed separately.

Orthodontic services will not be covered for the following conditions:

- Treatment primarily for cosmetic purposes; or
- Split phase treatment, with exception of cleft palate cases
- Cases that do not meet one of the auto qualifiers in the orthodontic form.

...

See Respondent’s Composite Exhibit 1, page 43.

CONCLUSIONS OF LAW

9. 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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

11. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

12. 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.).

13. Petitioner’s requests for dental services are governed by the Florida Medicaid Dental Coverage Policy (August 2018) (“Dental Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental Policy provides the following:

1.0 Introduction

Florida Medicaid provides dental services 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

...

4.2.4 Orthodontic Services

Florida Medicaid covers orthodontic services for recipients under the age of 21 years with handicapping malocclusions as follows:

- Up to 24 units within a 36 month period, including the removal of the appliances and retainers at the end of treatment
- One replacement retainer(s) per arch, per lifetime

...

4.2.9 Surgical Procedures and Extractions

Florida Medicaid covers surgical procedures and extraction services for recipients under the age of 21 years.

Florida Medicaid covers emergency dental services for recipients age 21 years and older to alleviate pain, infection, or both, and procedures essential to prepare the mouth for dentures.

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 1396d(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. For more information, please refer to Florida Medicaid's Authorization Requirements Policy.

See Dental Policy pages 1-5.

14. The Dental 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 criteria 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 Specified 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 scaling
- Individual periapical radiographs(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

See Dental Policy page 5.

15. 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.

16. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), 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 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.

17. On August 28, 2023, the Petitioner requested comprehensive orthodontic treatment. *See* ¶ 3. In a NABD, dated August 28, 2023, Respondent denied Petitioner’s request for comprehensive orthodontic treatment. *Id.* Respondent explained that Petitioner’s request was not medically necessary, as Petitioner’s request was in excess of the patient’s needs. *See* ¶ ¶ 3 and 6. The Respondent further explained that Petitioner did not demonstrate at least one (1) of the eight (8) qualifying requisites for comprehensive orthodontic treatment, and under the DentaQuest Clinical Criteria for Orthodontics, a complete set of braces for the Petitioner is not eligible for reimbursement under Florida Medicaid. *See* ¶ 6.

18. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision to deny the Petitioner's comprehensive orthodontic treatment was incorrect. As provided in the Dental Policy, orthodontic treatment is approved for recipients with handicapping malocclusions. See ¶ 12. A handicapping malocclusion is a condition that results in a disability or impairment to the recipient's physical development. *Id.* Here, the Petitioner has some [REDACTED] [REDACTED], but there is no evidence that the Petitioner has a handicapping malocclusions. See ¶ ¶ 3, 4, and 6. Moreover, there is no indication that the alignment of the Petitioner's teeth are causing pain or [REDACTED] is suffering from a disability or any impairment to [REDACTED] development, and that orthodontia is appropriate to treat the Petitioner. Thus, although Petitioner may benefit from orthodontic treatment, [REDACTED] does not have the required handicapping malocclusion that orthodontics are intended to correct under Florida Medicaid. Therefore, Petitioner did not show that the requested comprehensive orthodontic treatment is "individualized, specific, consistent with symptoms or diagnosis" and not "in excess of the patient's needs."

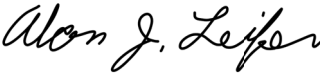
19. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested services are medically necessary and that comprehensive orthodontic treatment is not in excess of the Petitioner's needs. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that comprehensive orthodontic treatment is 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 proved by a

preponderance of the evidence that Respondent's denial of comprehensive orthodontic dental treatment services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 28th day of February, 2024, in Tallahassee, Leon County, Florida.

 Alan J. Leifer
23-FH2996
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ALAN J. LEIFER, 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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