



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

**FILED**

May 13, 2024, 12:51 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 24-FH0002

Plan ID No: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing in the instant case on March 6, 2024, at 10:06 a.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Mayckol Chamaro  
Grievance and Appeals Specialist  
DentaQuest of Florida, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that the Respondent's denial of braces (code D8070) and monthly visits (code D8670) was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

Mayckol Chamaro, Grievance and Appeals Specialist, appeared for DentaQuest Dental Plan of Florida (“DentaQuest” or “Respondent”) as its representative. Dr. Linda Johnson, DDS, (“Dr. Johnson”) Dental Consultant for DentaQuest appeared as a witness for Respondent.

Chrissie Simmons, Medical Health Care Program Analyst, appeared on behalf of the Agency for Health Care Administration (“Agency” or “AHCA”) for observational purposes.

Interpreter Hano with Language Line Solutions provided Spanish translation services for Petitioner.

Petitioner did not present any exhibits at the Fair Hearing.

Prior to the hearing, Respondent submitted to the Office of Fair Hearings and Petitioner a seventy-two (72)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “24-FH0002 Packet.pdf.” With no objection from the Petitioner, the undersigned admitted the evidence packet into the record 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* Respondent’s Composite Exhibit 1 at page 16.
2. As of the date of the Fair Hearing, Petitioner was [REDACTED]. *Id.* at 16. On November 17, 2023, Petitioner requested authorization for braces (Code D8070) and monthly visits (code D8670) (hereinafter referred to as “orthodontic services”). *Id.* at 27.
3. Petitioner’s provider, [REDACTED] submitted an ADA Dental Claim Form requesting pre-treatment authorization for orthodontic services. *Id.* at 16. Petitioner’s provider

also submitted a Medicaid Orthodontic Criteria Index Form (“Orthodontic Criteria Index”). *Id.* at 41-42. The Orthodontic Criteria Index contains a line down the “no” column indicating that none of the conditions considered to be automatically-qualifying handicapping malocclusion are present. *Id.* [REDACTED] provided radio graphs and photos. *Id.* at 38-42.

4. On November 20, 2023, DentaQuest’s Staff Dentist, Dr. Frank Manteiga, DDS, reviewed Petitioner’s pre-treatment authorization and all available records, which included dental photographs and radiographs. *Id.* at 31-36. Dr. Manteiga denied the requested orthodontic services because a handicapping malocclusion was not demonstrated. *Id.*

5. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated November 20, 2023. *Id.* at 27 - 30. 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):

- D8070 braces

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

- D8670 monthly visit

We based this decision on:

- DentaQuest Clinical Criteria for Comprehensive Orthodontics

*Id.* at 27-30.

6. Petitioner requested a plan appeal on December 14, 2023. *Id.* at 55. On December 18, 2023, DentaQuest’s dental consultant, Dr. Manteiga, completed a review of all the available documentation. *Id.* at 46-51. Dr. Manteiga determined that Petitioner does not meet the Medicaid criteria for a handicapping malocclusion and upheld the denial. *Id.*

7. On December 18, 2023, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial. *Id.* at 55-56. The NPAR upheld the denial of orthodontic services. *Id.* The NPAR gave the following reason for the decision, “[o]ur Dentist looked at your request for braces. The denial is upheld. The documentation from your dentist did not show any medical need for braces. We based this decision on DentaQuest Clinical Criteria for Comprehensive Orthodontics.”

*Id.* at 55.

8. Petitioner timely requested a Fair Hearing on December 28, 2023. At the request of the Petitioner, the Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions rescheduling the matter for hearing on March 6, 2024.

9. [REDACTED] argued that Petitioner's requested orthodontic services are medically necessary because Petitioner's provider recommended the treatments. [REDACTED] asserted that Petitioner has been told for [REDACTED] years that [REDACTED] needs braces because of the way [REDACTED] teeth are coming in.

10. Dr. Johnson testified that all of the submitted documentation was taken into consideration in this case. Referring to Respondent's Composite Exhibit 1 at page 41, Dr. Johnson testified that Petitioner does not meet the Medicaid criteria for braces because [REDACTED] does not have a handicapping malocclusion. Dr. Johnson examined the photos of Petitioner's mouth and the radiographs provided by [REDACTED], *Id.* at 24, and [REDACTED] agrees with the previous DentaQuest reviewer that the criteria for braces are not met. There was no evidence provided by [REDACTED] showing that Petitioner has a handicapping malocclusion. Therefore, the braces are in excess of Petitioner's needs.

11. Section 18.11 of the DentaQuest Clinical Criteria for Orthodontics states, in pertinent part, as follows:

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." 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.

*Id.* at 65.

#### **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 Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.060. The Dental 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 Policy at pages 1-3.

16. 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 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 Policy at page 5.

17. Section 4.3 of the Dental 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 Policy at page 4.

18. A state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§440.230(a), (b), (d). However, Section 409.905(2), Florida Statutes, limits EPSDT services with a medically necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

19. Based on Petitioner's age, both the Dental Policy and the EPSDT requirements necessitate review of Respondent's denial of Petitioner's request for 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 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 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, 7.

16. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients with handicapping malocclusions. *See supra* ¶ 11, 15. In this case, Petitioner's provider submitted a Criteria Index Form indicating that Petitioner does not have a handicapping malocclusion. *See supra* ¶ 3. As Dr. Johnson testified, [REDACTED] and DentaQuest's dental consultant (Dr. Manteiga) considered the submitted clinical documentation and they agree that the documentation from Petitioner's provider does not support a finding that Petitioner has a handicapping malocclusion. *See supra* ¶ 3, 4, 6, 10. Therefore, the requested braces are in excess of Petitioner's needs.

21. [REDACTED] argued that the requested Orthodontic services should be approved because Petitioner's provider recommended the treatment due to the way that Petitioner's teeth are coming in. *See supra* ¶ 10. 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* ¶ 19.

22. 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 based on the Petitioner's provider's Orthodontic 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.

23. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of orthodontic services was incorrect.

**DECISION**

The Respondent's denial of braces (Code D8070) and monthly visits (code D8670) is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

**DONE and ORDERED** this 13th day of May 2024, in Tallahassee, Leon County, Florida.

Laura Gallagher

24-FH0002



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**LAURA GALLAGHER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**Copies Furnished To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

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