

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



FILED

May 10, 2024, 2:48 pm

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 24-FH0291

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 18, 2024, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Chamarro

Grievance and Appeals Specialist

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 dental services was incorrect.

PRELIMINARY STATEMENT

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

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

Michael Chamarro (“Mr. Chamarro”), Grievance and Appeals 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.

Linda Latson (“Ms. Latson”), Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

The Office of Fair Hearings received a five (5)-page evidence packet from Petitioner. This evidence packet is identified in the Office of Fair Hearings document management system as file title: “[PETITIONER] MFH Request.pdf.” Absent an objection from Respondent, the undersigned admitted the five (5)-page evidence packet as Petitioner’s Composite Exhibit 1 (“PCE1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-seven (47)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as file title “24-FH0291 Evidence Packet.pdf.” Absent an objection from the Petitioner, the undersigned admitted the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of DentaQuest. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. RCE 1 at 44-45.
2. Petitioner was [REDACTED] on the date of the hearing. *Id.* at 10.
3. Petitioner requested the following services: Code D7240 - extraction of impacted tooth covered by bone for [REDACTED]; Code D7921 - Collection and application of blood

collected from the patient; Code D9239 I.V. Sedation - first 15 minutes; Code D9243 IV Sedation each 15 minutes; and Code D9612 - drug injection 2 or more. *Id.* at 12-13.

4. Petitioner’s provider submitted an ADA Dental claim form requesting pre-authorization for codes: D7921, D9612, D9239, D9243, and D7240. *Id.* at 10.

5. In a Notice of Adverse Benefit Determination (“NABD”), dated December 11, 2023, Respondent denied Petitioner’s request. The NABD explained the basis of the denial as follows:

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 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 facts that we used to make our decision are:

This service can only be approved when the other services are approved. The other services were not approved. We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D9612 drug injection 2 or more We based this decision on:
 - DentaQuest Clinical Criteria for Drugs

This service can only be approved when the other services that relate to this service are approved. The other services were not approved. We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D7921 Collection and application of blood collected from the patient.

To approve this service you must have severe pain in your tooth, the tooth must be in a position that will not let it break through the gum by itself, and your gums or bone around the tooth are diseased. Our dentist looked at the x-ray and the information from your dentist. It does not appear that this tooth follows our rules to be pulled out. We have let your dentist know. Please talk with your dentist if you have questions about this.

This denial applies to this service(s):

- D7240 extraction of impacted tooth covered by bone Tooth 16 We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone Tooth 17 We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone Tooth 32 We based this decision on:
 - DentaQuest Clinical Criteria for Surgical Extraction

Your dentist has asked for anesthesia (a medicine to make you sleep) for a service that has been denied. The request to make you sleep is also denied. We have also told your dentist. Please talk to your dentist.

This denial applies to this service(s):

- D9239 I.V. Sedation - first 15 minutes We based this decision on:
 - DentaQuest Clinical Criteria for General Anesthesia and IV Sedation
- D9243 IV Sedation each 15 minutes We based this decision on:
 - Clinical Criteria for General Anesthesia and IV Sedation

Id. at 12-13.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated January 16, 2024, denying the plan appeal. The NPAR explained as follows, in pertinent part:

On 12/19/2023 we received your timely plan appeal request regarding DentaQuest’s Notice of Adverse Benefit Determination dated 12/11/2023, NABD Number [REDACTED], for authorization number [REDACTED] DENYING the SERVICE provided to [PETITIONER].

On 01/16/2024 after consideration of the information you provided to DentaQuest in support of your plan appeal, DentaQuest hereby DENIES your plan appeal.

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 your request to remove teeth [REDACTED]. We found no sign of infection. Your dentist did not tell us you are in pain that is more than normal eruption pain. Your teeth are in a position that will let them break through the gum on their own. The associated sedation services are denied. The services are not medically necessary.

Id. at 35.

7. On January 26, 2024, Petitioner requested a Fair Hearing regarding the denial of dental services. On February 14, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for March 18, 2024, at 1:00 p.m. EST.

8. [REDACTED] testified as follows:

- a. [REDACTED].
- b. The wisdom teeth are causing pain.
- c. They have been trying to get the procedure covered since [REDACTED].

9. Dr. Dorrego testified as follows:

- a. Petitioner has a lack of root development for the teeth that are requested to be extracted.
- b. There is no indication of infection, swelling of the lymph nodes or any other symptoms indicative of anything other than normal eruption discomfort.
- c. The plan's criteria for approval of the procedures have not been met.

10. In making their decision, DentaQuest followed the FL Dental Clinical Criteria which states as follows in pertinent part:

18.01 Criteria for Dental Extractions

Not all procedures require review.

Documentation needed for review procedure:

- Appropriate radiographs showing clearly the adjacent teeth should be submitted for review: bitewings, periapicals or panorex.
- Treatment rendered under emergency conditions, when review is not possible, will still require that appropriate radiographs showing clearly the adjacent and opposing teeth be submitted with the claim for review for payment.
- Narrative demonstrating medical necessity.

Surgical extractions of erupted teeth are defined as extractions **requiring** elevation of a mucoperiosteal flap and removal of bone and/or section of the tooth and closure in order to remove the tooth. Elevation of mucoperiosteal flap and removal of bone and/or sectioning of the tooth for the **convenience of the provider** is not a surgical extraction.

The removal of primary teeth whose exfoliation is imminent is not a covered benefit. In most cases, extractions that render a patient edentulous must be deferred until authorization to construct a denture has been given. Extractions performed as a part of a course of orthodontics are covered only if the orthodontic case is a covered benefit.

Criteria

The prophylactic removal of asymptomatic teeth (i.e. third molars) or teeth exhibiting no overt clinical pathology (except for orthodontics) is not a covered service. DentaQuest will not reimburse for any surgical extraction of third molars which are asymptomatic or do not exhibit any evidence of pathology or which were extracted for prophylactic reasons only.

1. General Practitioner, Pedodontist, or Orthodontist determines patient may need third molars extracted - no referral is necessary
 - a. Can refer patient directly to DQ Oral Surgeon
 - b. Provider or member can call DQ - 1-888-468-5509. DQ will assist member in finding an OS
2. Oral Surgeon - Submission of treatment for approval
 - a. Non-emergency
 - Pre-payment review – perform treatment and submit documentation with claim – no guarantee provider will get paid for service – procedure must meet medical necessity guidelines for DQ to pay.

- Prior authorization – submit documentation prior to performing treatment. If DQ approves, provider is guaranteed payment as long as patient is eligible on date of service.
- b. Emergency (treatment necessary within 24 hours) – if want prior approval - fax request to (262) 387-3736. Requests must still include documentation when required
3. Documentation of medical necessity for oral surgery - evidence of diagnosed pathology or demonstrable need (including ortho), rather than anticipated future pathology.
- a. Pathology
- Provider must submit narrative and x-rays or photos describing pathology
 - Each tooth must show pathology
 - Symptomology or impactions without pathology may not be enough
- b. Demonstrable need
- Narrative describing need
 - Supporting documentation (e.g. x-rays, photos, hospital admissions, etc.)
- c. Extractions in conjunction with approved orthodontic treatment
- Provider must submit request for extractions from orthodontist.
 - Needs to be an approved orthodontic case
 - To expedite process, provider may also want to submit orthodontic approval
4. General Approval vs. Denial Guidelines
- a. Probable Approval • Pathology =
- i. Non-restorable Decay
 - ii. Tooth erupting on an angle and impinging on 2nd molars
 - An unerupted third molar must demonstrate, by radiographic evidence, both an aberrant tooth position beyond normal variations **and** substantial (> 50%) root formation.
 - iii. Recurrent Pericoronitis
 - iv. Dentigerous Cyst or other growth
 - v. Internal or External Root Resorption
 - vi. 3rd molar has over-erupted due to lack of opposing tooth contact
- Demonstrable need =
1. In conjunction with approved orthodontics where orthodontist requests the 3rd molars be removed to guarantee the success of

the orthodontic case (provide referral from ortho and prior auth approval of ortho if possible)

2. Pain with no pathology – On a per tooth basis, provider must furnish a narrative that describes pain that is more than normal eruption pain – for example: a description of duration, intensity, medications, or other factors that are more than normal eruption pain – the description of such factors is necessary to demonstrate need

b. Probable Denial

- Impaction or Symptomology =

1. Impaction with no other pathology
2. Pain or discomfort with unknown pathology
 - Other 3rd molars have pathology (if one, two, or three teeth show pathology, DQ will not automatically approve the extraction of the remaining non-pathologic teeth)

5. Denials

- a. If administrative denial (e.g. lack of documentation) - Resubmit according to deficiencies noted in EOB.

b. If clinical denial:

- Resubmit with documentation showing additional clinical evidence for extraction
- Advise member service is not covered
 1. Member can appeal following appeal process in member handbook.
 2. Provider and member may work out an out of pocket arrangement.

6. The extraction of primary or permanent teeth does not require authorization unless:

- a. Teeth are impacted wisdom teeth.
- b. Residual roots requiring surgical removal.
- c. Surgical extraction of erupted teeth.

The removal of primary teeth whose exfoliation is imminent does not meet criteria.

Alveoloplasty (code D7310) is a covered service only when the procedure is done in conjunction with four or more extractions in the same quadrant. D7310 will not pay for surgical extracts. Smoothing and contouring of ridges in conjunction with the surgical removal of a tooth is considered an inclusive part of the complete surgical extraction procedure unless rationale is

submitted indicating necessity of the additional surgical bone removal. D7310 will pay with simple extractions (D7140). It is set to not pay with surgical extractions (where as part of extraction bone is removed – so alveoloplasty (bone remove and smoothing) with surgical extractions is redundant).

18.09 Criteria for General Anesthesia and Intravenous (IV) Sedation

Documentation needed for review of procedure:

- Treatment plan (authorized if necessary).
- Narrative describing medical necessity for general anesthesia or IV sedation.
- Treatment rendered under emergency conditions, when review is not possible, will still require submission of treatment plan and narrative of medical necessity with the claim for review for payment.

Criteria

Requests for general anesthesia or IV sedation will be authorized (for procedures covered by health plan) if any of the following criteria are met:

Extensive or complex oral surgical procedures such as:

- Impacted wisdom teeth.
- Surgical root recovery from maxillary antrum.
- Surgical exposure of impacted or unerupted cuspids.
- Radical excision of lesions in excess of 1.25 cm.

And/or one of the following medical conditions:

- Medical condition(s) which require monitoring (e.g. cardiac problems, severe hypertension).
- Underlying hazardous medical condition, which could include a physical, medical, developmental or behavioral issue (such as cerebral palsy, epilepsy, mental retardation, Down's syndrome, or situational anxiety that has failed to respond to the lesser methods to prevent or reduce anxiety which would render patient non-compliant

- Documented failed sedation or a condition where severe periapical infection would render local anesthesia ineffective.
- Patients 3 years old and younger with extensive procedures to be performed.

Id. at 40-42.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.).

14. 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 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

4.2.9 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 under 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.

Dental Policy at 1-4.

15. 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.

Dental Policy at 5.

16. 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.

17. 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.

Definitions Policy at 7.

18. As established on the record, Respondent denied Petitioner's request for Code D7240 - Extraction of [REDACTED]; D7921 - Blood Collection; and Codes D9239, D9243 and D9612 - IV and Sedation. *See* ¶ 5. The denial was because the services were not medically necessary. *Id.* Specifically, DentaQuest determined the services do not meet the following medically necessary criteria: "necessary to protect life, prevent significant illness or disability or alleviate severe pain"; and "individualized, specific, consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and not in excess of the patient's needs." *See* ¶ 5.

19. The Dental Policy states that Florida Medicaid covers surgical procedures and extraction services for recipients under the age of 21 years. *See* ¶ 14-16. In this case, Petitioner does not qualify for teeth extractions under the policy because there is no pathology of and around the teeth areas. *See* ¶ 9. As testified to by Dr. Durrago, there is no swelling in the lymph nodes, no swelling or redness. *Id.* In assessing the narrative notes and X-rays, Dr. Dorrigo opined that there is a lack of root development for the teeth at issue thus, based upon the submitted clinical documentation, a finding cannot be supported the Petitioner has a medical necessity for extracting [REDACTED] as the services are not "needed to protect life, prevent significant

illness or disability or alleviate severe pain “ nor “[I]ndividualized, specific, and consistent with symptoms or diagnosis or illness or injury.” See ¶ 9-10, 14-17.

20. Based on Petitioners age, 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.” Florida Statutes limit EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient underage 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 ¶ 16.


21. As the Petitioner bears the burden of proof, Petitioner must show by a preponderance of the evidence that Respondent’s decision was incorrect. See ¶ 13. As established on the record, Petitioner did not meet the criteria for extraction and adjunctive services based upon Petitioner’s provider’s X-rays and notes submitted. As such, the greater weight of evidence shows that the requested services are not “individualized, specific, consistent with symptoms or diagnosis or illness or injury” and “are in excess of the patients need.” Therefore, Petitioner did not demonstrate 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.

22. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of teeth extraction services including Code D7240 for [REDACTED], Code D7921: blood collection, and Codes D9239, D9243 and D9612 regarding sedation and injection, 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 10th day of May, 2024, in Tallahassee, Leon County, Florida.

 Lynne Ringers
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LYNNE RINGERS, 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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