

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



FILED

May 10, 2024, 2:54 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0335

Plan ID No.: [REDACTED]

vs.

LIBERTY DENTAL PLAN OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 19, 2024, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Monica Aguillar
Grievance and Appeals Specialist
Liberty Dental Plan of Florida

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: D7240 - extraction of impacted tooth covered by bone, [REDACTED]; D7240 - extraction of impacted tooth, covered by bone and [REDACTED]; D9239/D9243 – intravenous moderate conscious sedation, was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED], [REDACTED] (“[REDACTED]”) appeared on behalf of the Petitioner.

Monica Aguilar, (“Ms. Aguillar”), Grievances and Appeals Analyst for Liberty Dental Plan of Florida (“Liberty”) appeared on behalf of the Respondent. Dr. Kelly Klair (“Dr. Klair”), DDS, a Senior Dental Quality Specialist and Staff Dentist for Liberty, attended as a witness for Respondent. Analyn Perez, Fair Hearing Analyst, appeared as an observer.

Marielisa Amador, 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.

Respondent sent to the Office of Fair Hearings and Petitioner a fifty-six (56)-page evidence packet. The fifty-six (56)-page evidence packet appears in the Office of Fair Hearings’ case management system as “24-FH0335_[PETITIONER] SFH Evidence packet_2.21.2024.pdf.” Absent an objection by Petitioner, the fifty-six (56)-page 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. RCE 1 at 2.
2. Petitioner was [REDACTED] on the date of the hearing. *Id.* at 5.
3. On October 11, 2023, Petitioner requested an authorization for teeth extraction services, including code D7240 for extraction of teeth numbers [REDACTED], and codes D9239 and

D9243 for intravenous sedation. *Id.* at 2.

4. On October 12, 2023, Liberty's Staff, Dr. John Soumi, DDS ("Dr. Soumi"), reviewed Petitioner's pre-treatment authorization and all available records, which included dental x-ray.

Id. at 2. Dr. Soumi denied the removal of teeth numbers [REDACTED], and the sedation based on the dental plan benefits and applicable limitations and exclusions set forth by the Agency, Section

4. *Id.* at 1 - 2. The extraction of teeth [REDACTED], with the intravenous sedation, was approved.

Id. at 2.

5. Respondent denied the Petitioner's request for the teeth extraction services for teeth numbers [REDACTED], and the other aforementioned services in a Notice of Adverse Benefit

Determination ("NABD") dated October 12, 2023. *Id.* at 11. 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) # 1, 2, 6

Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

...

Must 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 that is not primarily intended for convenience of the recipient, caretaker, or provider.

...

The facts that we used to make our decision are:

5, 6 MMM722MM722: 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.

Id.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated October 24, 2023, upholding the denial. *Id.* at 20. The NPAR explained as follows:

On October 23, 2023, we received your timely plan appeal request regarding LIBERTY Dental Plan’s (LIBERTY’s) Notice of Adverse Benefit Determination dated October 12, 2023, NABD Number [REDACTED], denying the tooth removal (extraction), for teeth #’s [REDACTED].

On October 23, 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 October 23, 2023, LIBERTY’s Dental Quality Specialist, Dr. Kelly Klair, a licensed dentist, who did not take part in the first denial said [PETITIONER’S] dentist’s notes does not show the services should be approved. For the tooth removal, for teeth #’s [REDACTED], to be approved the teeth must have an infection and pain. The teeth must be pulled because it is stopping one more tooth from coming in. The Dental Quality Specialist saw the dental x-rays and notes of [PETITIONER’S] teeth shows the teeth do not need to be pulled.

Florida Medicaid Provider Reference guide says: *“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.”*

Id.

7. On January 30, 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 19, 2024, at 9:00 a.m. EST.

8. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner has had issues with [REDACTED] teeth for over a year.
- b. [REDACTED] wisdom teeth are causing headaches.
- c. [REDACTED] because of tooth pain.

9. Dr. Klair is a Senior Staff Dentist for Liberty. Dr. Klair testified to the following:

- d. Teeth [REDACTED] are not covered for the services at issue under Petitioner’s policy.

- e. X-rays show that there is no decay or problems with teeth [REDACTED] which would meet medical necessity criteria for extraction.

10. In arriving at their decision, Respondent relied upon: *Liberty Clinical Criteria, Guidelines and Practice Parameters, Oral Surgery Excerpt*, which states in pertinent part:

Extractions may be indicated in the presence of pathology including but not limited to non-restorable caries, untreatable periodontal disease, pulpal and periapical disease not amenable to endodontic therapy, to facilitate surgical removal of a cyst or neoplasm, or when overriding medical conditions exist, providing compelling justification to eliminate existing or potential sources of oral infection.

....

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.”

....

The prophylactic removal of an impacted, partially erupted or erupted tooth that appeared to exhibit an unimpeded path of eruption and or exhibit no active pathology is not covered.

Id. at 52-53.

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), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

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 request for dental services is governed by the Florida Medicaid Oral and Maxillofacial Surgery Services Coverage Policy (May 2016) (“Oral and Maxillofacial Surgery Services Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.207. The Oral and Maxillofacial Surgery Services Policy provides the following:

1.1 Description

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

...

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 Medical Association Current Procedural Terminology, and applicable Florida Medicaid fee schedule(s):

- Biopsies
- Bone, tissue, and cartilage grafts
- Consultations
- Debridement
- Endosteal implants when used in conjunction with reconstructive surgeries.
- Evaluation and management
- Excisions
- Impressions and custom preparation of prosthesis
- Moderate sedation
- Open and closed treatment of fractures
- Repair and destruction of lesions.
- Reconstructions
- Radiology procedures
- Surgical procedures essential to the preparation of the mouth for dentures
- Tissue repair

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.

Id. at 40-42.

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

1.0 Introduction

Florida Medical Dental services provide for the study, screening, assessment, diagnosis, prevention, and treatment of diseases, disorders, and conditions of the oral cavity.

...

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:

...

4.2.9 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.

Id. at 46-50.

16. The Dental Coverage Policy also establishes dental services specifically not covered under Florida Medicaid:

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not cover the following as part of this service benefit:

- Anesthesia for restorative services, when billed separately.
- Dental Screening and assessment performed by an RDH on the same date of service as an evaluation performed by a dentist.
- Fixed partial dentures for recipients 21 years and older.
- Full mouth scaling performed on the same date of service as root planning or periodontal screening.
- Individual periapical radiograph(s) on the same date of service when the reimbursement amount exceeds that of a complete series.
- Intraoral-completes series and a panoramic film on the same date

Id. at 50.

17. Because Petitioner is under the age of 21 years, the requirements of Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") apply. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

(3) Dental Services

(A) which are provided –

- (i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and
 - (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and
- (B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

Further, according to 42 U.S.C. § 1396d(r)(5), EPSDT include the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

Id. at 42.

18. The Florida Medicaid 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.

Id. at 33.

19. In an NABD dated October 12, 2023, Respondent denied Petitioner’s request for dental services. Respondent’s denial was made on the basis that the requested dental services are not medically necessary. See ¶ 5. Specifically, Respondent determined that Petitioner’s request was not “needed to protect life, prevent significant illness or disability, or alleviate severe pain” nor was it “individualized, specific, consistent with symptoms or diagnosis of illness or injury” and it “must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.” *Id.* Petitioner requested a plan appeal which was denied. See ¶ 6.

20. Pursuant to Liberty’s Clinical Criteria:

The prophylactic removal of an impacted, partially erupted or erupted tooth that appeared to exhibit an unimpeded path of eruption and or exhibit no active *pathology is not covered. (emphasis added)*

See ¶ 10.

21. As Petitioner bears the burden of proof, Petitioner must show by a preponderance of the evidence that Respondent’s decision was incorrect. See ¶ 13. Here, Petitioner did not establish that the extractions at issue were “needed to protect life, prevent significant illness or disability, or alleviate severe pain”, “individualized, specific, consistent with symptoms or diagnosis of illness or injury” and “[could] be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.” See ¶ 6, 8. The record shows that Petitioner has not demonstrated evidence of infection or pathology that warrants the extraction of Teeth [REDACTED]. See ¶ 6, 8. Pathology is a requirement of Liberty’s Clinical Criteria and Dr. Klair testified that Petitioner’s teeth show no evidence of problems or decay. See ¶ 9, 10.

22. [REDACTED] testimony with regards to Petitioner’s pain was considered, but Petitioner’s dental provider has not submitted a tooth specific narrative to substantiate the extent to which

Petitioner's pain is more than normal eruption pain. Accordingly, Petitioner did not demonstrate that the requested dental services were medically necessary. See ¶ 8.

23. Further, regarding Petitioner's request for sedation, Petitioner did not provide any testimony or evidence on the record as to why this service would be medically necessary once the underlying dental services are denied as to Teeth [REDACTED]. Because Petitioner has not established that the extractions are medically necessary, the sedation component of the dental services are not medically necessary. See ¶ 8, 15-16.

24. Upon review of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the extraction of Teeth [REDACTED] (codes D7230 and D7240), and accompanying sedation (codes D9239 and D9243), are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested service is necessary to correct or ameliorate a defect or a physical and mental illness or condition. See ¶ 17.

25. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of dental services: D7240 - extraction of impacted tooth covered by bone, [REDACTED]; D7240 - extraction of impacted tooth, covered by bone and [REDACTED]; D9239/D9243 – intravenous moderate conscious sedation, 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

Lynne Ringers

24-FH0335

2024.05.10

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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:

[Redacted]

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