

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



FILED

May 31, 2024, 10:55 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 24-FH0435

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 April 8, 2024, at 10:02 a.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, monthly visits, and fixed appliance therapy 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. Michael Sofianos (“Dr. Sofianos”), Clinical Dental Consultant for DentaQuest, attended as a witness for Respondent.

Sandra Durden, Medical/Health Care Program Manager and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, the Petitioner sent to the Office of Fair Hearings and the Respondent a fourteen (14)-page evidence packet that was admitted into evidence without objection, is admitted into evidence as “Petitioner’s Composite Exhibit 1” and appears in the Office of Fair Hearings document management system as file title “24-FH0435 Supporting Evidence.pdf”.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-nine (49)-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 24-FH0435 [Petitioner] Part 1 (1).pdf” and “SFH Packet 24-FH0435 [Petitioner] Part 1 (2).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 a [REDACTED]  
[REDACTED] *See* Respondent’s Composite Exhibit 1, pages 24-25.

3. On October 4, 2023, the Petitioner requested Braces (Code D8680), monthly visits for adjustments (Code D8670), and a Retainer (Code D8680) (“comprehensive orthodontic

treatment”). See Respondent’s Composite Exhibit 1, page 12. On October 6, 2023, the Respondent issued a Notice of Adverse Benefit Determination (“NABD”), denying the Petitioner’s request. See Respondent’s Composite Exhibit 1, pages 12-18. 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 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):

- 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

We need your dentist to send us the name or type of appliance requested. We need this to decide if this is covered under the code that was sent for the appliance requested. We have also told your dentist.

This denial applies to this service(s):

- D8220 non-removable appliance We based this decision on:
  - DentaQuest Clinical Criteria for Harmful Habits

...

Id.

4. On November 6, 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 6. On November 6, 2023, the Respondent sent the Petitioner a Notice of Plan Appeal Resolution ("NPAR") letter upholding the denial of Braces (Code D8680), monthly visits for adjustments (Code 8670), and a Retainer (Code 8680) 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 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.

...

*Id.*

5. On February 5, 2024, Petitioner requested a Fair Hearing regarding the denial of dental services. On February 26, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for April 8, 2024, at 10:00 a.m. EST.

6. Dr. Sofianos is a Dental Consultant for DentaQuest and testified that evidence of a handicapping malocclusion(s) is grounds for approval of the requested orthodontic services, but in this case there is no such handicapping malocclusion. In addition, Dr. Sofianos testified that the existence of [REDACTED]

[REDACTED] are insufficient conditions for Medicaid to approve orthodontic services.

Dr. Sofianos testified there is no evidence of damage to the Petitioner's gums, no recession of the top teeth, and due to a poor quality x-ray, he is unable to ascertain the existence of recession of the bottom teeth, which may support approval of orthodontic services. Finally, Dr. Sofianos testified that neither the Petitioner's completed Orthodontic Criteria Index Form nor the DentaQuest Criteria for Orthodontics support the approval of comprehensive orthodontic treatment for the Petitioner, and the denial of the requested orthodontic services was proper in this case.

7. The Petitioner's [REDACTED] testified that [REDACTED] has been diagnosed with [REDACTED], which [REDACTED] attributes to [REDACTED]'s dental problems. *See also* Petitioner's Composite Exhibit 1, pages 13 and 14. [REDACTED] testified [REDACTED] is experiencing [REDACTED]

[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 39.

**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.

Definitions Policy at page 7.

17. On October 4, 2023, the Petitioner requested comprehensive orthodontic treatment. See ¶ 3. In an NABD, dated October 6, 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 although the Petitioner does have [REDACTED] [REDACTED] which is a required condition accompanying an [REDACTED] to qualify for orthodontic services. *Id.* 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 medically necessary. See ¶ ¶ 6 and 8.

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 an [REDACTED], [REDACTED]

██████████ but there is no evidence that the Petitioner has a handicapping malocclusions. See ¶ 2 and 6. Thus, although Petitioner may benefit from orthodontic treatment, ██████ 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 31st day of May, 2024, in Tallahassee, Leon County, Florida.

*Alan J. Leifer*  
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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:**

[REDACTED]  
[REDACTED]

**DentaQuest**  
**CGATeam3@dentaquest.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**