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OFFICE OF FAIR HEARINGS

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

PETITIONER,

AHCA Case No.: 24-FH0924
Plan ID No.:

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.
_______________________________/

FINAL ORDER

Pursuant to notice, Hearing Officer Lynne Ringers convened a telephonic Fair Hearing in the instant case on May 2, 2024, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner: Petitioner’s Authorized Representative

For the Respondent: Mayckol Chamorro
Grievances and Appeals Specialist
DentaQuest of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of dental services was incorrect. Specifically, the following services were denied: code D8080, braces; code D8670, monthly visits; code D8680, retainer; and code D8220, non-removable appliance.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [redacted] [redacted] ("[redacted]"), Petitioner's Authorized Representative and [redacted], appeared on behalf of Petitioner.

Mayckol Chamorro, Complaints and Grievances Specialist for DentaQuest of Florida, Inc. ("DentaQuest") appeared on behalf of the Respondent. Dr. Linda Johnson, DDS, ("Dr. Johnson") Dental Consultant for DentaQuest, attended as a witness for Respondent.

Doris Rivera, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA") appeared as an observer.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty (40)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "24-FH0924 Evidence Packet.pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 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. RCE 1 at 10.

2. Petitioner is [redacted]. *Id*. at 10. On or around November 20, 2023, Petitioner requested an authorization for comprehensive orthodontic treatment (code D8080), fixed appliance (code D8220), periodic orthodontic monthly visits (code D8670), and retainer (code 8680) Id. at 10.

3. Petitioner's provider, [redacted], DDS, Orthodontic Dentist, ("[redacted]"), requested pre-treatment authorization for the orthodontic services at issue. *Id.* at 10.

4. Respondent denied the Petitioner's request for Orthodontic services in a Notice of Adverse Benefit Determination ("NABD") dated November 20, 2023. *Id.* at 11-14. The NABD gave the following reasons for the denial:

> 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.
> . . .
>
> The facts that we used to make our decision are:
>
> We have also told your dentist. Please talk to your dentist about your treatment choices.
>
> To qualify for braces, you must have more adult teeth than you do baby teeth in your mouth. Our records show you have more baby teeth than adult teeth. We cannot approve braces if you still have primarily baby teeth. Your dentist can ask for braces for you when you have lost more your baby teeth and have more adult teeth than baby teeth in your mouth. 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
> - D8680 retainer
>   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 of 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.

5. On January 8, 2024, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial based on medical necessity. *Id.* at 28. The NPAR included the rationale for the denial as follows, in pertinent part:

> On 12/11/2023 we received your timely plan appeal request regarding DentaQuest's Notice of Adverse Benefit Determination dated 11/20/2023, NABD Number [redacted], for authorization number [redacted] DENYING the SERVICE provided to [PETITIONER].
>
> On 01/08/2024 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:
>
> To qualify for braces, you must have more adult teeth than you do baby teeth in your mouth. Our records show you have more baby teeth than adult teeth. We cannot approve braces if you still have primarily baby teeth. Your dentist can ask for braces for you when you have lost more your baby teeth and have more adult teeth than baby teeth in your mouth. We have also told your dentist. Please talk to your dentist about your treatment choices. We based this decision on DentaQuest Clinical Criteria for Comprehensive Orthodontics.

Id.

6. Petitioner timely requested a Fair Hearing on March 20, 2024. The undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on April 10, 2024. The order set this matter for hearing on May 2, 2024, at 9:00 a.m. EST.

7. is Petitioner’s Authorized Representative and . testified as follows:

a.

.

8. Dr. Johnson is a Dental Consultant for DentaQuest. Dr. Johnson testified as follows:

a. Currently the Petitioner has . For code D8080(braces), the Petitioner has to have more adult than baby teeth. *Id.* at 28.

b. In regard to the non-removable appliance, code D8220, it cannot be authorized to be placed on the same day or after code D8220. *Id.* at 38.

c. Petitioner can resubmit the request for code D8220 alone.

9. Respondent relied on the DentaQuest of Florida, Inc. (April 5, 2024), Clinical Criteria for Orthodontics, which contains the following criteria:

> **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." 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.

Documentation
Orthodontic treatment requires the following documentation to show medical necessity:

- Prior Authorization by DentaQuest
- Orthodontic Form
- Examination and records that show a narrative or rationale including diagnosis/prognosis/treatment plan

. . .
Id. at 34.

CONCLUSIONS OF LAW

10. 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).

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

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 request for dental services is 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.
. . .
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

. . .

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 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 Coverage Policy at pages 1-3.

14. 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 of service

Dental Coverage Policy at 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. Petitioner is under age 21, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical 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.

17. 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.

18. Petitioners request is covered by DentaQuest Current Dental Terminology: *Exhibit B Benefits Covered for Florida Statewide Medicaid Dental Health Program- Children Medicaid and MediKids Medicaid* (April 5, 2024) *Id.* at 38, which states as follows:

> **Exhibit B Benefits Covered for FL Statewide Medicaid Dental Health Program - Children Medicaid & MediKids Medicaid**
>
> General Billing Information for Orthodontics:
> The start and billing date of orthodontic services is defined as the date when the bands, brackets, or appliances are placed in the Member's mouth. The Member must be eligible on this date of service. If a Member becomes ineligible during treatment and before full payment is made, ii is the Member's responsibility to pay the balance for any remaining treatment. The Provider should notify the Member, in writing, of this requirement prior to beginning treatment.
>
> To guarantee proper and prompt payment of orthodontic cases, please submit a completed ADA form that includes the date of service (banding date) along with the required documentation via the provider portal, fax or mail.
>
> A provider may bill for:
>
> • A Pre-orthodontic visit (code D8660) which 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.
>
> • Comprehensive orthodontic treatment which is the coordinated diagnosis and treatment leading to the improvement of a patient's craniofacial dysfunction or dentofacial deformity including anatomical and functional relationships. Comprehensive orthodontic treatment utilizes fixed orthodontic appliances through procedure codes D8070, D8080 or D8090 in conjunction with the appropriate stage of dentition development. Comprehensive orthodontics (codes D8070, D8080, or D8090) may be reimbursed once in the lifetime of the recipient. Initial payments for comprehensive orthodontics do not include related extractions or oral or othognathic surgery. These services must be billed separately. The overall fee for orthodontic appliances procedure codes (D8070, D8080, or D8090) includes the removal of the appliances and retainers at the end of treatment. The fixed appliance reimbursement at the start of treatment covers the cost of appliances and materials throughout treatment, including the removal of appliances and fabrication of retainers upon completion of treatment. Once DentaQuest receives the banding date the initial payment for code D8070, D8080, or D8090) will be set to pay out.

- Periodic orthodontic treatment visits code D8670. DentaQuest will reimburse monthly maintenance visits a maximum of 24 units or 36 months whichever comes first. Extensions beyond 24 units are granted only in the most severe cases such as cleft or orthognathic surgical cases). Providers must submit claims for periodic treatment visits (Code D8670). The member must be eligible on the date of the visit. The provider may pass on the costs of broken brackets or bands to the recipient when breakage exceeds a quantity of five. The Member must be eligible with their Health Plan in order for payments to be made. Whenever the Member becomes ineligible, the Member is responsible for payment during that time period.

A Provider may not bill D8210 (Removable Appliance Therapy) or D8220 (Fixed Appliance Therapy) after or on the same day as comprehensive orthodontics (D8070, D8080 and D8090). If a Provider performs a D8210 or D8220 after or on the same day of initiating Comprehensive Orthodontics (D8070, D8080, or D8090), the procedure is considered part of the comprehensive orthodontic therapy.

Removable (D8210) and Fixed (D8220) appliances are only allowed for harmful habits such as thumb sucking or tongue thrusting. Other removable or fixed appliance therapy if independent of comprehensive treatment is considered limited orthodontic treatment or if ii is part of comprehensive treatment is part of the comprehensive care. If requesting a removable (D8210) or fixed (D8220) appliance for thumb sucking or other harmful habit, clinical photos must be submitted with the prior authorization request for the determination of medical necessity.

Id. at 38.

19. As established on the record, Respondent denied Petitioner's request for comprehensive orthodontic treatment of the adolescent dentition because the services were not medically necessary. *See* ¶ 4, 5. Specifically, DentaQuest determined the services failed the following 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* ¶ 4.

20. Florida Medicaid provides, in part, that orthodontic treatment of the adolescent dentition services is limited to those circumstances where the enrollee's condition creates a disability and

impairs their physical development, and services will not be covered if services are for limited or interceptive treatment, or primarily cosmetic purposes. *See* ¶ 9.

21. The Clinical Criteria for Orthodontics sets forth the documentation required by Florida Medicaid in order for orthodontic treatment to be authorized, including the orthodontic criteria index form. *See* ¶ 9. In this case Orthodontic Criteria Index Form was not submitted by Petitioner's provider. Therefore, there is no evidence to show Petitioner has the required conditions to meet the criteria for orthodontic treatment. *See* ¶ 3. Therefore, Petitioner does not meet the clinical criteria for the requested services.

22. Dr. Johnson provided credible testimony supporting DentaQuest's denial of the Petitioner's request for services. Specifically, Petitioner has [redacted]. See ¶ 8. Pursuant to DentaQuest Clinical Criteria for Comprehensive Orthodontics, it is necessary for the Petitioner to have more adult teeth than baby teeth to qualify for the services requested. See ¶ 9. Additionally, Dr. Johnson stated that code D8080 cannot be performed on the same day as code D8220 pursuant to *Exhibit B Benefits Covered for FL Statewide Medicaid Dental Health Program - Children Medicaid & MediKids Medicaid. See* ¶ 18.

23. 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 demonstrate the presence of a qualifying condition. As such, the greater weight of evidence shows that the requested orthodontic services are not needed to protect life, prevent significant illness or disability, or alleviate severe pain nor individualized, specific, consistent with symptoms or diagnosis or illness of injury. 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.

24. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of code D8080, braces; code D8670, monthly visits; code D8680, retainer; and code D8220, non-removable appliance, was incorrect.

DECISION

The Respondent's denial of code D8080, braces; code D8670, monthly visits; code D8680, retainer; and code D8220, non-removable appliance. is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 7th day of August, 2024, in Tallahassee, Leon County, Florida.

Lynne Ringers
24-FH0924
2024.08.07 09:40:07 -04'00'

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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AHCA Medicaid Hearing Unit
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