



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

FILED

Aug 01, 2024, 11:12 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1200

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 June 6, 2024, at 10:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Mayckol Chamorro
Grievance 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 decision to deny Petitioner’s request for oral and maxillofacial surgery services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared to provide testimony on behalf of Petitioner.

Maykol Chamarro (“Mr. Chamarro”), Grievance and Appeals Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of Respondent. Dr. Linda Johnson (“Dr. Johnson”), Dental Consultant for DentaQuest appeared as a witness for Respondent.

Stephanie Lang, Program Operations Administrator for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-four (44)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as “24-FH1200 Evidence Packet.pdf.” Absent an objection from the Petitioner, the undersigned admitted the forty-four (44)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

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. See page 10 of RCE 1.
2. Petitioner is [REDACTED]. *Id.*
3. Petitioner requested oral and maxillofacial surgery services, specifically 2 units of code D7240 (removal of impacted tooth-completely bony), 1 unit of code D9239 [intravenous moderate (conscious) sedation/analgesia-first 15 minutes], and 2 units of code D9243 [intravenous moderate (conscious) sedation/analgesia-each subsequent 15 minute increment]. In a Notice of Adverse Benefit Determination (“NABD”), dated April 4, 2024, Respondent denied Petitioner’s request. *Id.* at 12-15. 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:

For you to need to sleep during your treatment: you must need to have a lot of dental work done on the same day; you must need four or more teeth pulled out; or you must be very nervous about your treatment and your dentist must have tried using a different drug to help you relax during your treatment, but the drug did not work. Our dentist reviewed the information we got from your dentist. It does not meet our rules for you to need to sleep during your treatment. We let your dentist know also. Please talk with your dentist if you have questions about this.

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 I.V. Sedation each 15 minutes

We based this decision on:

- DentaQuest Clinical Criteria for General Anesthesia and IV Sedation

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 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 [REDACTED]

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction
- D7240 extraction of impacted tooth covered by bone [REDACTED]

We based this decision on:

- DentaQuest Clinical Criteria for Surgical Extraction

Id. at 12-13.

4. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated April 10, 2024, upholding the denial. *Id.* at 31-32. The NPAR explained as follows:

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 as your tooth is breaking through the gums. The associated sedation services are also denied. The services are not medically necessary. We based this decision on DentaQuest Clinical Criteria for Surgical Extraction and DentaQuest Clinical Criteria for General Anesthesia and IV Sedation.

Id. at 31.

5. On April 11, 2024, Petitioner requested a Fair Hearing regarding the denial of oral and maxillofacial surgery services. On May 3, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for June 6, 2024, at 10:00 a.m. EST. *Id.* at 2-6.

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

a. Petitioner has complained of [REDACTED]
[REDACTED].

b. Petitioner’s [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. Dr. Johnson is a Dental Consultant for DentaQuest. Dr. Johnson testified to the following:

a. Approval criteria for dental extractions requires that “[REDACTED]
[REDACTED]
[REDACTED].” *Id.* at 37-38.

- b. The decision to deny the requested extraction was due to the lack of root development.
- c. The submitted x-ray shows the upper right tooth ([REDACTED]) shows almost no root development, and the lower left tooth ([REDACTED]) has no root, only just a crown. Both teeth do not demonstrate at least 50% root development. *Id.* at 22.
- d. Dr. Johnson explained that due to the minimal development of both teeth, neither [REDACTED] have the ability to force or move teeth.
- e. Intravenous (“IV”) sedation can be authorized for impacted wisdom teeth surgical procedures. *Id.* at 39.
- f. The extractions were denied therefore the IV sedations were also denied.
- g. Petitioner does not qualify for IV sedation also because the lower lip biopsy was less than 1.25 cm and no other medical condition applied. *Id.*

8. Exhibit B Benefits Covered for FL Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid (“Exhibit B”) found on pages 40-44 of RCE 1, show the dental services covered under Florida Medicaid. Exhibit B states:

The prophylactic extraction of asymptomatic impacted or erupted teeth is not a covered benefit. Symptomatic conditions would include pain and/or infection or demonstrated malocclusion causing a shifting of existing dentition.

...

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 a mucoperiosteal flap and removal of bone and/or sectioning of the tooth for the convenience of the provider is not a surgical extraction.

...

Adjunctive general services include: IV sedation and emergency services provided for relief of dental pain.

Use of IV sedation and general anesthesia will be reviewed on a periodic basis. The service is not routinely used for the apprehensive dental patient. Medical necessity must be demonstrated. Use of nitrous oxide and conscious sedation will also be reviewed on a periodic basis, and patient medical records must include documentation of medical necessity.

Analgesia may be reimbursed only when the recipient has a severe physical or mental disability, or is difficult to manage. Reimbursement is limited to three times per 366 days per recipient.

Id. at 40, 43.

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

10. 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.").

11. 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.).

12. 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.

13. 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

Oral and Maxillofacial Surgery Services Policy at page 3.

14. 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.

15. In the instant case, Petitioner requested oral and maxillofacial surgery services, specifically removal of impacted tooth-completely bony (code D7240), intravenous moderate (conscious) sedation/analgesia-first 15 minutes (code D9239), and intravenous moderate (conscious) sedation/analgesia-each subsequent 15 minute increment (code D9243). See ¶ 3-4. Respondent denied these services. See ¶ 3-4. As the basis for their decision, Respondent cited that the services must be “necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain” and “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” See ¶ 4, 14. In the NPAR dated April 10, 2024, Respondent upheld their denial. See ¶ 4. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 11.

16. In the instant case, [REDACTED] testified that Petitioner has experienced [REDACTED]. See ¶ 6. [REDACTED] further testified that Petitioner has complained of [REDACTED]. See ¶ 6. [REDACTED] argued that although oral gel has been used to remedy the pain, [REDACTED] believes sedation is necessary. See ¶ 6. Exhibit B maintains that symptomatic conditions for extraction of impacted or erupted teeth would include pain and/or infection or demonstrated malocclusion causing a shifting of existing dentition. See ¶ 8. Additionally, medical necessity must be demonstrated for the use of IV sedation. See ¶ 8. According to Dr. Johnson’s testimony, the submitted x-ray shows the upper right tooth ([REDACTED]) shows almost no root development, and the lower left tooth ([REDACTED]) has no root. See ¶ 7. This lack of at least 50% root development


demonstrated with both teeth did not meet the approval criteria for the requested extractions. See ¶ 3, 7-8. Moreover, Dr. Johnson testified that due to the minimal development of both teeth, neither have the ability to force or move teeth. See ¶ 7. Accordingly, the requested IV sedations are not medically necessary where no pathology for extractions was present and no showing of demonstrable need. See ¶ 7-8. The record also shows Petitioner does not qualify for IV sedation because [REDACTED] lower lip biopsy was less than 1.25 cm and no other medical condition applied as qualifying conditions. See ¶ 7-8. Based on the dental criteria, the record shows no justification for the extractions or IV sedations. See ¶ 3-4, 7-8, 13.

17. 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. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are necessary 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 oral and maxillofacial surgery services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of oral and maxillofacial surgery services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE AND ORDERED this 1st day of August, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
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KIMBERLY ROCHE, 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 of Florida, Inc.
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