



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

FILED

Aug 27, 2024, 4:32 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1336

Plan ID No.: [REDACTED]

vs.

DENTAQUEST OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing in the instant case on June 14, 2024, at 1:30 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Shonda Rushing
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 denial of dental services, code D8080, braces, code D8670, monthly visits, code D8220 fixed appliance and code D8660 pre-treatment visit was incorrect.

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.

Shonda Rushing, Complaints and Grievances Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared on behalf of the Respondent. Michael Sofianos, DDS, (“Dr. Sofianos”) Dental Consultant for DentaQuest, attended as a witness for Respondent.

Marielisa Amador, 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-five (45)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as file titles: “SFH Evidence Packet 24-FH1336 Part 1.pdf,” and “SFH Evidence Packet 24-FH1336 Part 2.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. See page 10 at RCE 1.
2. Petitioner is [REDACTED]. *Id.* at 10. On or around February 9, 2024, Petitioner requested an authorization for dental services, code D8080, braces, code D8670, monthly visits, code D8220 fixed appliance and code D8660 pre-treatment visit *Id.* at 10, 12.
3. Petitioner’s provider, [REDACTED] (“[REDACTED]”), requested pre-treatment authorization for the orthodontic services at issue. *Id.* at 10. [REDACTED] submitted an

Orthodontic Criteria Index Form (“OCIF”) for the purpose of determining whether orthodontics is medically necessary for Petitioner. The form identified “[REDACTED]” as a qualifying criterion. *Id.* at 22. [REDACTED] submitted x-rays and photos of Petitioner’s mouth. *Id.* at 20-21, 24. In a handwritten note dated February 9, 2024, [REDACTED] wrote, in pertinent part:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Id. at 23.

5. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated February 11, 2024. *Id.* at 12-13. 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)
- 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:
You need to get a score of at least 28 on a special dental test to get braces. The test is called the HLD (Handicapping Labio-Lingual Deviations). The test gives you points for crowded teeth. The test gives you points for missing teeth. The test gives you points for crooked teeth. And the test gives you points for spacing between your teeth. Our dentist looked at the information sent by your dentist. Our dentist scored this test for you. Your test score was less than 28. So we cannot approve braces for you as this service is not medically necessary. We have also told your dentist. Your score on the test was: [REDACTED].

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
- D8220 non-removable appliance
We based this decision on:
- DentaQuest Clinical Criteria for Harmful Habits
- D8660 pretreatment visit for braces
We based this decision on:
- DentaQuest Clinical Criteria for Other Orthodontic Services

Id. at 12-13.

6. On April 12, 2024, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial based on medical necessity. *Id.* at 29. The NPAR included the rationale for the denial, as follows:

On 04/04/2024 we received your timely plan appeal request regarding DentaQuest's Notice of Adverse Benefit Determination dated 02/09/2024, NABD Number [REDACTED], for authorization number [REDACTED] DENYING the SERVICE provided to [PETITIONER]

On 04/12/2024 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 for braces. The denial is upheld. The documentation from your dentist did not show any medical need for braces. We based this decision on DentaQuest Clinical Criteria for Comprehensive Orthodontics.

...

Id. at 30.

7. Petitioner timely requested a Fair Hearing on April 24, 2024. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on May 9, 2024. The order set this matter for hearing on June 14, 2024, at 1:30 p.m. EST.

8. [REDACTED], Petitioner's Authorized Representative and [REDACTED] testified as follows:

a. [REDACTED] believes [REDACTED] has inherited tooth issues.

b. [REDACTED] has [REDACTED].

9. Dr. Sofianos testified as follows:

a. The clinical criteria do not support authorization of the services requested. *Id.* at 37-38.

b. In the photo submitted by the provider, there is no tissue damage shown from a crossbite *Id.* at 24.

c. 1.5 mm of gum recession would be required to meet the criteria, and this is not seen in Petitioner's photos.

d. There is no evidence to show that an appliance for thumb sucking or tongue thrusting is needed.

10. The DentaQuest of Florida, Inc. (April 5, 2024), Current Dental Terminology at American Dental Association, (*Id.* at 37-38) 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
- (On a case by case basis).
- Appropriate radiographs and facial photographs - Lateral cephalometric radiograph, study models or
- OrthoCad equivalent.
- The participant must have good oral hygiene and have all dental work up to date. Both should be noted in narrative.
- 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 it 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.

Appropriate photographic requirements include:

- Facial photographs (right and left profiles in addition to a straight-on facial view)
- Frontal view, in occlusion, straight-on view

- Frontal view, in occlusion, from a low angle
- Right buccal view, in occlusion
- Left buccal view, in occlusion
- Maxillary Occlusal view
- Mandibular Occlusal view

In addition to or in lieu of the above photographic requirement, DentaQuest will accept quality photographs of study models with the following parameters:

- Occlusal view of the maxillary arch
- Occlusal view of the mandibular arch
- Right buccal view, in occlusion
- Left buccal view, in occlusion
- Facial views, straight on and low angle, in occlusion
- Posterior view of models in occlusion

Id. at 37-38.

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 (2019). 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 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 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.

15. 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

Id. at page 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. 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.

18. 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.

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 ¶ 5, 6. 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 ¶ 5.

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 ¶ 10.

21. The Dental Coverage Policy, in section 4.2.4, states that Florida Medicaid covers orthodontic services for recipients with handicapping malocclusions. See ¶ 14-15. In this case, Petitioner's provider completed an Orthodontic Criteria Index Form that checks one of the required conditions to meet the criteria for orthodontic treatment. See ¶ 3. As Dr. Sofianos' testimony and evidence in the record credibly established, none of the criteria on Orthodontic

Criteria Index Form are applicable to Petitioner's teeth. See ¶ 9. Therefore, based on the record evidence and testimony, Petitioner does not have a qualifying handicapping malocclusion.

22. [REDACTED] asserted that Petitioner's teeth affect [REDACTED] and are caused by inherited tooth issues. See ¶ 8.

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 handicapping malocclusion. See ¶ 8. As such, the greater weight of evidence shows that the requested orthodontic services are not individualized, specific, consistent with symptoms or diagnosis or illness of injury and are in excess of the patient's need. 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 D8220 fixed appliance and code D8660 pre-treatment visit was incorrect.

DECISION

The Respondent's denial of code D-8080, braces, code D-8670, monthly visits, code D-8220 fixed appliance and code D-8660 pre-treatment visit is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 27th day of August 2024, in Tallahassee, Leon County, Florida.

Lynne Ringers

Lynne Ringers
24-FH1336
2024.08.27 10:50:20
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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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