



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

**FILED**

Jul 11, 2024, 12:48 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 24-FH1497

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 18, 2024, at 9:59 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 orthodontic treatment (braces) was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED],

[REDACTED] (" [REDACTED] "), appeared to provide testimony on behalf of the Petitioner.

Shonda Rushing (“Ms. Rushing”), Complaints and Grievance Specialist for DentaQuest of Florida, Inc. (“DentaQuest”) appeared for both Fair Hearings on behalf of Respondent. Dr. Michael Sofianos (“Dr. Sofianos”), Dental Consultant for DentaQuest, appeared as a witness for Respondent.

Sandra Durden, 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.

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-FH1497 Part 1 SFH Evidence Packet.pdf” and “24-FH1497 Part 2 SFH 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. See page 10 of RCE 1. DentaQuest is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.*
3. Petitioner requested orthodontic treatment services (braces), specifically, one unit of code D8080. *Id.* Petitioner’s provider completed an ADA Dental Claim Form requesting the services, accompanied by pictures of the Petitioner and an Orthodontic Criteria Index Form

("Index Form"). *Id.* at 10 and 20-24. Petitioner's provider selected "Yes" for the Anterior crossbite criteria listed on the Index Form. *Id.* at 22.

4. In a Notice of Adverse Benefit Determination ("NABD"), dated March 29, 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:

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

*Id.* at 12-13.

5. Petitioner requested a plan appeal and received Notice of Plan Appeal ("NPAR") dated April 8, 2024, upholding the denial. *Id.* at 26-30. The NPAR explained as follows:

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 29.

6. On May 3, 2024, Petitioner requested a Fair Hearing regarding the denial of dental services. On May 20, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for June 18, 2024, at 10:00 a.m. EST.

7. [REDACTED] testified to the following:

- a. Petitioner's dentist recommended braces to correct Petitioner's crossbite and deteriorating bottom gums.
- b. Petitioner has difficulty and pain when eating due to the problems with [REDACTED] teeth.

8. Dr. Sofianos testified to the following:

- a. DentaQuest is third-party administrator and follows the state Medicaid guidelines.
- b. Based on the dental guidelines and criteria, this case does not qualify for comprehensive orthodontic service at this time. *Id.* at 36.
- c. Code D8080 is comprehensive treatment of adolescent dentition. *Id.* at 18, 42.
- d. To approve this orthodontic service, there needs to be more permanent teeth than nonerupted (baby) teeth, with at least 13 permanent teeth. *Id.* at 40.
- e. The submitted x-rays and photographs presents mixed dentition; specifically, there are about [REDACTED]. *Id.* at 20-21, 24.
- f. A provider could submit a prior authorization request under other code(s) to address a crossbite. *Id.* at 36-40.

9. Exhibit B Benefits Covered for FL Statewide Medicaid Dental Health Program – Children Medicaid & MediKids Medicaid (“Exhibit B”) found on pages 41-44 of RCE 1, show the dental services covered under Florida Medicaid:

2) 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 orthognathic 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.

*Id.* at 41 (emphasis added).

#### **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 (2022). 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 Rule 59G-1.100(17)(b), Florida Administrative Code Rule (“Fla. Admin. Code R.”).

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

...

**4.3 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.

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

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

### (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. In the instant case, Petitioner is under 21 years of age and requested orthodontic treatment (braces). *See* ¶ 2-3. In a NABD, dated March 29, 2024, Respondent denied Petitioner’s request citing the lack of medical necessity. *See* ¶ 4. Specifically, Respondent explained that the treatment is not “necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain” and not “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.” *See* ¶ 4-5. In the NPAR dated April 8, 2024, Respondent upheld their denial. *See* ¶ 5. Petitioner has

the burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 12.

18. Code D8080 is comprehensive treatment of adolescent dentition. *See* ¶ 8-9. According to [REDACTED]'s testimony, Petitioner has difficulty and pain when eating due to problems with [REDACTED] teeth. *See* ¶ 7. Petitioner's dentist recommended braces to correct Petitioner's crossbite and deteriorating bottom gums. *See* ¶ 3, 7. Exhibit B maintains that comprehensive orthodontic treatment utilizes fixed orthodontic appliances through procedure codes D8070, D8080 or D8090 in conjunction with the appropriate stage of dentition development. *See* ¶ 8-9. According to Dr. Sofianos's testimony, the approval criteria for the requested services require more permanent teeth than baby teeth present. *See* ¶ 8. Based on the submitted x-rays and photographs, Petitioner presents mixed dentition. *See* ¶ 8. Dr. Sofianos testified that it appeared that Petitioner has about [REDACTED] that have erupted, which is less than the minimum number of permanent teeth to proceed with the service. *See* ¶ 8. The record shows Petitioner does not qualify for comprehensive orthodontic service due to having an insufficient number of permanent teeth. *See* ¶ 8-9. As such, no adolescent dentition through code D8080 is evidenced in the record to demonstrate that the braces are necessary at this time. *See* ¶ 3, 7-9, 13-15.


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 not in excess of Petitioner's needs. 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 orthodontic treatment (braces) was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED:**

Respondent's denial of orthodontic treatment (braces) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE AND ORDERED** this 11th day of July, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
24-FH1497  
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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:**



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