



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

FILED

Aug 30, 2024, 1:28 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH2082

Plan ID No.: [REDACTED]

vs.

MANAGED CARE OF NORTH AMERICA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing in the instant case on August 21, 2024, at 10:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Kimberly Williams

Grievances and Appeals Supervisor

Managed Care of North America, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of Orthodontic services 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.

Kimberly Williams, Grievances and Appeals Supervisor for MCNA of Florida, Inc. (“MCNA”) appeared on behalf of the Respondent. Dr. Linda Altenhoff, DDS, (“Dr. Altenhoff”) Chief Dental Officer and Vice President for Program Integrity for MCNA, attended as a witness for Respondent. Dr. Diane Piper, DDS, (“Dr. Piper”) Interim Dental Director for Florida, for MCNA, attended as a witness for Respondent.

Doris Rivera, Medical Health Care Program Analyst with the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a fifty-one (51)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as file title: “Evidence Packet – [REDACTED] Issue 354412.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 MCNA, which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *See* RCE 1 at 1.
2. Petitioner is [REDACTED]. *Id.* at 11. On or around May 23, 2024, Petitioner requested an authorization for Comprehensive Orthodontic Treatment of The Adolescent Dentition (CDT 8080). *Id.* at 14.
3. Petitioner’s provider, [REDACTED], (“[REDACTED]”), suggested a tentative treatment plan for the orthodontic services at issue. *Id.* at 16. [REDACTED] submitted a

Medicaid Orthodontic Initial Assessment Form (“IAF”), dated May 3, 2024, for the purpose of determining whether orthodontics are medically necessary for Petitioner. *Id.* at 14. The form did not indicate that the criteria had been met. *Id.* at 14. [REDACTED] submitted x-rays and photos of Petitioner’s mouth. *Id.* at 11-13. In the narrative section of the IAF, [REDACTED] wrote:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. at 16.

4. [REDACTED] further suggested the following tentative treatment plan for the Orthodontic services at issue:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. at 16.

5. Respondent denied the Petitioner’s request for Orthodontic services in a Notice of Adverse Benefit Determination (“NABD”) dated May 28, 2024. *Id.* at 4 - 10. 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.

Must meet accepted medical standards and not be experimental or investigational.

...

X Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

...

The facts that we used to make our decision are:

The dental service(s) that you or your dentist asked for are not approved because the Clinical Reviewer has determined that the requested service(s) will not correct or improve your condition. Your condition does not meet MCNA's Orthodontic criteria as stated in MCNA's Utilization Review Criteria and Guidelines. The information we received from your requesting provider does not show that:

- You have a cleft palate defect where the roof of your mouth has not formed the right way.
- Your lower teeth are hitting and harming the gums behind the upper front teeth.
- Your upper front teeth are behind the lower front teeth causing damage to the gums of the lower teeth.
- You have had an injury that caused harm to the teeth or gums, for example, burn or infection.

Id. at 4 – 5.

6. On June 10, 2024, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial of Orthodontic services, CDT 8080, based on medical necessity. *Id.* at 32 -

34. The NPAR included the rationale for the denial, as follows:

On June 10, 2024, after consideration of the information you provided to Florida Medicaid Dental Health Program in support of your plan appeal, MCNA Dental hereby denies your plan appeal.

Based on the information reviewed with the appeal, our Clinical Reviewer determined [Petitioner's] condition did not meet MCNA's Orthodontics Criteria as stated in MCNA's Utilization Review and Criteria Guidelines. Dental services must meet the definition of medical necessity as defined in 59G-1.010 of the Florida Administrative Code.

Id. at 32.

7. Petitioner timely requested a Fair Hearing on June 19, 2024. The Office of Fair Hearings issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions on July 25, 2024. The order set this matter for hearing on August 21, 2024, at 10:00 a.m. EST.

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

- a. [REDACTED]
[REDACTED].
- b. [REDACTED].
- c. [REDACTED]'s assessment leaving [REDACTED] points short of receiving the services is not that far off. There should be a standard more reasonable than "not medically necessary" under the circumstances.
- d. [REDACTED] asked MCNA to please reconsider.

9. Dr. Piper testified as follows:

- a. MCNA is an Administrator of the Plan. The State sets the criteria.
- b. The score on the IAF was provided by Petitioner's Provider. The score received by the Petitioner was [REDACTED]. 26 is required for the requested services. *Id.* at 14-16, 49.
- c. The score does not support authorization of the services requested. *Id.* at 16.
- d. Petitioner does not have an otherwise auto qualifying condition.

10. MCNA Dental's Florida Medicaid Dental Program Member Handbook states the Plan's Benefits in Section 12. *Id.* at 39-40. The Member Handbook states that the requested services are "covered as medically necessary." *Id.* at 40. The MCNA Dental Florida Medicaid Provider Manual, dated March 11, 2024, states that the intent of the program is to provide orthodontic care to recipients with handicapping malocclusion to improve function. Although aesthetics is an

important part of self-esteem, services that are primarily for aesthetics are not within the scope of benefits of this program. *Id.* at 49.

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 Orthodontic 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.

...

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:

...

4.2.2 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

Dental Coverage Policy at pages 1-3.

15. The Dental Coverage Policy also establishes Orthodontic 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.

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. See ¶ 6. 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, MCNA 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-. In this case, Petitioner's provider completed an IAF that shows none of the required conditions to meet the criteria for orthodontic treatment. See ¶3. As Dr. Piper's testimony and evidence in the record established, none of the criteria on the IAF are applicable to Petitioner's teeth. See ¶ 3, 9. Therefore, based on the record evidence and testimony, Petitioner does not satisfy the criteria.

22. [REDACTED] See ¶ 8. Further, [REDACTED] stated the requested Orthodontic services should be approved because Petitioner's Orthodontic provider described a tentative treatment plan. See ¶ 8. However, "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." 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 that the score provided by their provider was incorrect. 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 Orthodontic services was incorrect.

DECISION

The Respondent's denial of CDT 8080 Area 1,2- Comprehensive Orthodontic Treatment of the Adolescent Dentition is **AFFIRMED**. The Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 30th day of August, 2024, in Tallahassee, Leon County, Florida.



Robert Arnold
24-FH2082
2024.08.30 08:29:34 -04'00'

ROBERT ARNOLD, 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 (w/ Enclosure):

[Redacted]
[Redacted]

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