

FILED

NOV 16 2009

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05279

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on October 16, 2009, at 10:27 a.m., at the Caleb Service Center, in Miami, Florida. The petitioner was not present, but was represented at the hearing by her mother, _____ Representing the Agency was Mara Perez, senior human services program specialist with the Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses for the respondent were Hazel Greenberg, program administrator, AHCA and Kathy McKee, complaints and appeals specialist with Atlantic Dental Inc. (ADI). Present as an interpreter was _____ . This hearing was originally scheduled for September 25, 2009, but was continued at the request of the petitioner.

ISSUE

At issue is the Agency's action of July 31, 2009, to deny the petitioner's request for orthodontic treatment because it did not meet the criteria for medical necessity. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a fifteen years old beneficiary of the Florida Medicaid Program.
2. On July 21, 2009, the petitioner's orthodontic provider, Benjamin F. Mancia DDS, PA, filed a request for orthodontic treatment. This request was reviewed by ADI, an organization under contract with AHCA that conducts medical reviews for Medicaid prior authorizations, for dental services for Medicaid recipients in the state of Florida. This review is for determining medical necessity under the terms of the Florida Medicaid Program.
3. On July 31, 2009, ADI denied the above request for the prior service authorization, as the request did not meet the plan criteria for orthodontic coverage.
4. On August 19, 2009, the petitioner's representative, after receiving a notice from ADI denying the request for services, requested a Medicaid Fair Hearing.
5. The respondent submitted into evidence, Respondent Composite Exhibit 1, which contains copies of notices, medical information and copies of

parts of the Agency's Dental Services Coverage and Limitation Handbook to support the Agency's action.

6. The respondent explains that the orthodontic treatment was denied because it did not meet the criteria for medical necessity. The respondent notes that the petitioner scored a 9 in her Initial Assessment Form (IAF). The respondent quoted information from the Florida Medicaid Dental Services Coverage and Limitations Handbook, which set forth that a score of less than 26 indicates that treatment of the recipient's condition may not qualify for Medicaid reimbursement and that a request for prior authorization would probably be denied.

7. The petitioner's representative explains that her daughter was in the intellectually disabled and speech impaired program at [redacted], but the speech pathologist took her out of the program because she was not making progress due to her dental problems. The pathologist determined that due to the misalignment of her teeth, the sounds were not properly emitted.

8. The petitioner's representative explains that the therapy would be resumed after the problem is corrected.

9. The respondent's witness explains that ADI did not receive a pathologist report from the petitioner's speech and language therapist. The respondent's witness stipulated that ADI was willing to re-review the case and make a new determination. They will request Dr. Mancina to submit the new

information together with the petitioner's medical record that was returned to him, as an additional request.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. ch. 120.80.

Fla. Admin. Code 59G-1.010 *Definitions* states in part:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. 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; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(c) 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.

Initial Assessment Form

The Initial Assessment Form (IAF) is to be completed by the orthodontic provider at the initial evaluation of the recipient.

The IAF is:

- Designed for use as a guide by the provider in the office to determine whether a prior authorization (PA) request should be sent to the Medicaid orthodontic consultant;
- A means by which the orthodontic provider may communicate to Medicaid's orthodontic consultant all the distinctive details pertaining to an individual case; and
- To be sent to Medicaid's orthodontic consultant in borderline situations with diagnostic photographs and a prior authorization form (DPA 1041) to determine if the provider should proceed with a full diagnostic work-up.

As shown in the Findings of Fact, on July 31, 2009, the respondent denied the petitioner's request for orthodontic services in the way of braces for her teeth, based on the lack of medical necessity for this service.

The petitioner's representative argued that [redacted] was in the intellectually disabled and speech impaired program at [redacted], but because she was not making progress due to her dental problem, the speech pathologist discharged her from the program; thus she is in need of the braces.

The respondent argued that they were not aware of this situation as ADI never received a pathologist report. The respondent stipulated that due to the new information provided by the petitioner's representative at the hearing, they would be willing to re-review the case.

Based on this, the hearing officer remands this case back to the Agency to make another determination.

DECISION

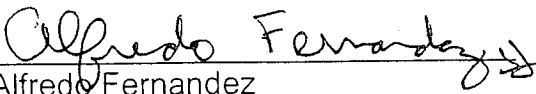
This appeal is neither granted nor denied, but remanded back to the Agency as stated in the Conclusions of Law.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of November, 2009,

in Tallahassee, Florida.


Alfredo Fernandez
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To:

Rhea Gray, Medicaid Area 11 Field Office Manager
Hazel Greenberg