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FEB 04 2015

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09528

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing in the above-referenced matter convened on December 22, 2014 at 8:37a.m.

APPEARANCES

For the Petitioner:

Petitioner's Mother

For the Respondent:

Carol King
Registered Nurse Specialist

ISSUE

At issue is whether respondent's denial of the following dental procedures was proper:

- Procedure D7293: surgical placement – temporary anchorage device –flap
- Procedure D9230: Inhalation of nitrous oxide/analgesia, anxiolysis
- Procedure D9630: Other drugs and/or medicaments, by report Upper and lower right and left quadrants

PRELIMINARY STATEMENT

Petitioner was not present but represented by his mother. At the time of hearing, petitioner entered no exhibits into evidence. The record was held open through December 31, 2014 for petitioner to provide information regarding the medical necessity of the services at issue. Information was timely received and entered as petitioner's exhibits "1" and "2".

Ms. King appeared as a representative and witness for the respondent. Present from Molina Healthcare (Molina) were Alice Quiros, ABP of Government Contracts and Natalie Fernandez, Government Contract Specialist. Present from DentaQuest were Jackelyn Salcedo, Appeals and Grievance Specialist and Dr. Daniel Dorrego, Dental Director. Respondent's exhibit "1" was entered into evidence. The record was held open through January 7, 2015 for respondent to provide information regarding a prior dental authorization by MCNA dental and to respond to petitioner's post hearing submission. Information was received and entered as respondent's exhibit "2".

Post hearing, respondent submitted a determination by DentaQuest dated December 30, 2014. The authorization was in regard to teeth #17 and #32. The document was entered as respondent's exhibit "3".

A summary memorandum pertaining to Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) was entered as respondent's exhibit "4".

Petitioner's hearing request, which included notices from MCNA dental, was entered into evidence as Hearing Officer's Exhibit "1".

Administrative notice was taken of the Florida Medicaid Dental Services Coverage and Limitations Handbook; the Florida Medicaid Provider General Handbook;

Fla. Admin. Code Rules 59G-1.010 and 59G-4.060; Florida Statutes §409.971; §409.972; and §409.973; and the 2014 Dental General Fee Schedule.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner is 15 years of age with a birth date of [REDACTED]
2. Petitioner has been Medicaid eligible at all times relevant to this proceeding.
3. Through July 31, 2014, petitioner's Medicaid dental services were provided by MCNA Dental.
4. On April 4, 2014, MCNA approved extraction of wisdom teeth number #32 and #17 along with "analgesia, anxiolysis, inhalation of nitrous oxide". Extraction of wisdom teeth #1 and #16 was not approved.
5. At the time of this proceeding, the authorization issued by MCNA had not been exercised by the petitioner.
6. On April 10, 2014, MCNA denied requests for procedure 7293 "surgical placement: Temporary anchorage device requiring surgical flap".
7. On August 1, 2014 petitioner transitioned to the Statewide Medicaid Managed Care Program, specifically, the Managed Medical Assistance Program. Since that date, Medicaid services have been provided by Molina.
8. On September 15, 2014 petitioner's dentist submitted a treatment request to Molina's dental vendor, DentaQuest. The requested services were:

Procedure:	Description:
D7240	Extraction of tooth #1 and #16 (wisdom teeth)
D7293	Surgical placement of anchorage devices/flaps
D9230	Inhalation of nitrous oxide/analgesia, anxiolysis
D9241	Intravenous conscious sedation/analgesia – first 30 minutes
D9242	Intravenous conscious sedation/analgesia – each additional 15 minutes x2
D9630	Other drugs and/or medicaments - upper and lower right and left quadrants

9. If medically necessary, procedure codes D7240; D9230; D9241; and D9242 are covered by the Florida Medicaid Program.
10. Procedure codes D7293 and D9630 are not covered by the Florida Medicaid Program.
11. The anchorage devices/flaps prevent movement of teeth. Petitioner currently has braces. When the wisdom teeth are removed, movement of other teeth could occur. Such would negatively impact the orthodontic treatment thus far received. The requested devices are also known as TADs (Temporary Anchorage Devices).
12. The drugs/medicaments would be placed in the extraction sites to facilitate healing.
13. A DentaQuest dentist reviewed submitted information. Petitioner's dentist was thereafter notified that the request for extraction of wisdom teeth #1 and #16 was approved. Additionally, "intravenous conscious sedation/analgesia" for approximately 60 minutes was approved (procedure D9241).
14. On September 15, 2014 a denial was sent to the petitioner for the following procedures: surgical flaps; relaxation gas; drugs or medicines for the upper and lower right and left quadrants.

15. Reconsideration of the decision was thereafter requested. A second dentist reviewed all submitted information. On October 22, 2014 a notice was sent to the petitioner upholding the original decision. The notice stated, in part:

We reviewed your appeal we got on 10/09/14. Your request was for approval of denied dental services. It was reviewed and the decision was made by the DentaQuest of Florida Dental Director, a Doctor of Dental Medicine. Our decision is to deny your request.

The reason for our decision was based on the Florida Medicaid Dental Services Coverage and Limitations Handbook which indicates that the service codes requested "D7293 ... and D9630 ... are not covered under your dental plan. Therefore, your request for a surgical placement of temporary anchorage device flap and other drugs and/or medicaments, by report is denied.

Also, according to the Florida Medicaid Dental Services Coverage and Limitations Handbook, code "D9230 ..." is not allowed with D9241 and D9242; therefore your request for code D9230 is denied.

16. On November 6, 2015 petitioner's request for Medicaid Fair Hearing was timely received by the Office of Appeal Hearings.

17. On December 23, 2014 petitioner's dentist submitted a request to DentaQuest to have wisdom teeth #17 and #32 extracted. On January 16, 2015 respondent submitted an approval document from DentaQuest for the extractions.

18. Respondent argues the anchor devices are related to orthodontic treatment versus extraction of wisdom teeth. The initial orthodontic treatment was not authorized by DentaQuest. Additionally, and analgesia was approved in conjunction with the extractions.

19. Petitioner asserts the anchor devices are medically necessary and provided a statement from [REDACTED], DDS which stated, in part: "I am recommending the extractions of [REDACTED] third molars and the placement of buccal shelf TADS to control

and change the skeletal disharmony. This is a medical necessity to create health in the neuromuscular complex and temporomandibular joints.”

CONCLUSIONS OF LAW

20. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.
21. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.
22. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner. The standard of proof in an administrative hearing is by 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.).
23. Fla. Admin. Code R. 59G-4.060 addresses dental services and states, in part:
- (2) All dental services providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Dental Services Coverage and Limitations Handbook, November 2011, ... and the Florida Medicaid Provider Reimbursement Handbook, ADA Dental Claim Form, July 2008, which are incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated by reference in Rule 59G-4.001, F.A.C.
24. Respondent’s Florida Medicaid Dental Services Coverage and Limitations Handbook (Dental Handbook) states:
- Page 1-2:
- The children’s dental program provides full dental services for all Medicaid eligible children age 20 and below.

Page 2-3:

The Medicaid children's dental services program may provide reimbursement for diagnostic services, preventive treatment, restorative, endodontic, periodontal, surgical procedures and extractions, orthodontic treatment, and full and partial dentures (fixed and removable) for recipients under age 21.

25. The Findings of Fact establish petitioner is 15 years of age.
26. The Dental Handbook continues to state on page 2-2, "Medicaid reimburses for services that are determined medically necessary ..."
27. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and states:

(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.

28. As the petitioner is less than 21 years of age, Early Periodic Screening, Diagnosis, and Treatment (EPSDT) policy must also be considered.

29. Section 409.905, Fla. Stat., Mandatory Medicaid services, defines Medicaid services for children to include:

(2) **EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.**--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 provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, ...

30. Centers for Medicare and Medicaid Services (CMS), State Medicaid Manual makes available to all State Medicaid agencies informational and procedural material needed by the States to administer the Medicaid program. It is the method by which CMS issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies.

31. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

5010. Overview

A. **Early and Periodic Screening, Diagnostic and Treatment Benefit.**--Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...

5110. Basic Requirements

OBRA 89 amended §§1902(a)(43) and 1905(a)(4)(B) and created §1905(r) of the Social Security Act (the Act) which set forth the basic requirements for the program. Under the EPSDT benefit, you¹ must provide for screening, vision, hearing and dental services at intervals which meet reasonable standards of medical and dental practice established after consultation with recognized medical and dental organizations involved in child health care. You must also provide for medically necessary screening, vision, hearing and dental services

¹ "You" in this context of the manual refers to the state Medicaid agency.

regardless of whether such services coincide with your established periodicity schedules for these services. Additionally, the Act requires that any service which you are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, must be provided to EPSDT participants regardless of whether the service or item is otherwise included in your Medicaid plan.

...

... Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. Appropriate limits may be placed on EPSDT services based on medical necessity.

5122. EPSDT Service Requirements

F. Limitation of Services.--The services available in subsection E are not limited to those included in your State plan.

Under subsection E, the services must be "necessary . . . to correct or ameliorate defects and physical or mental illnesses or conditions . . ." and the defects, illnesses and conditions must have been discovered or shown to have increased in severity by the screening services. You make the determination as to whether the service is necessary. You are not required to provide any items or services which you determine are not safe and effective or which are considered experimental.

5124. Diagnosis and Treatment

B. Treatment.—

1. General. - You must make available health care, treatment or other measures to correct or ameliorate defects and physical and mental illnesses or conditions discovered by the screening services. Treatment services may be limited as described in §5122 F.

32. It is noted that respondent provided a "Summary Memorandum: Medical Necessity as a Limitation on Medical Services, Including EPSDT". This memorandum explains respondent's position regarding EPSDT. The memorandum states, in part:

3. Federal EPSDT Requirements

Under federal Medicaid law, states must provide EPSDT services for qualified children under age 21 when requested under the Medicaid state plan ...

EPSDT services include periodic and age-appropriate health screenings (i.e. comprehensive health and developmental history, physical examinations, appropriate immunizations, laboratory tests, and health education), vision, dental, and hearing screenings, and appropriate follow-up treatment whenever a screening shows a follow-up treatment to be medically necessary. 42 U.S.C. §§ 1396d(r)(1)-(4). They also include:

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 screening services, whether or not such services are covered under the state plan.

33. The Findings of Fact establish procedure codes D7293 (Anchorage Devices) and D9630 (other drugs/medicines) are not covered services. Based on the above authorities, however, this exclusion does not automatically allow respondent to deny these procedures. If the procedures treat or ameliorate a condition identified by a medical screening, the service must be provided to an individual under the age of 21 regardless of whether the service is included in Florida's Medicaid plan.
34. Based on medical necessity, limits can be placed on EPSDT services. Accordingly, further analysis is directed to whether procedures D7293 and D9630 are medically necessary.
35. The term medical necessity in this instant appeal is defined by Fla. Admin Code. R. 59G-1.010 (166).
36. The statement from Dr. K [REDACTED] references the anchorage devices. The content of this statement, however, does not rise to the level necessary for petitioner to meet the evidentiary burden. Other than Dr. K [REDACTED]'s brief statement, no meaningful documentary

evidence was submitted establishing the anchorage devices are medically necessary.

37. It is noted that Fla. Admin Code. R. 59G-1.010 (166) states a recommendation in itself does not necessarily make a procedure medically necessary.

38. Regarding procedure D9630 (drugs/other medicaments), no compelling evidence or testimony was provided which established the procedure is medically necessary.

39. Petitioner has not demonstrated by the greater weight of the evidence that either procedure D7293 or D9630 is medically necessary.

40. Regarding the denial for inhalation of nitrous oxide/analgesia, anxiolysis (D9630). It is noted that an intravenous conscious sedation/analgesia was approved. Compelling evidence was not presented as to why the nitrous oxide is also medically necessary.

41. A hearing officer must consider all evidence; judge the creditability of witnesses; draw permissible inferences from the evidence; and reach findings of fact based on competent substantial evidence. After reviewing the documentary evidence; testimony; EPSDT policy; and medical necessity criteria, the petitioner has not satisfied the required evidentiary standard in this matter.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 4th day of FEB, 2015,

in Tallahassee, Florida.



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