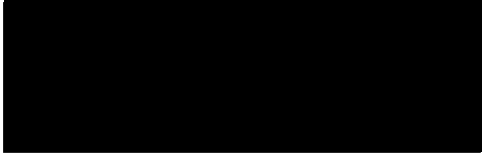


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

**MAR 09 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10184

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION (AHCA)  
CIRCUIT: 07 Putnam  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on January 7, 2015 at 3:1 p.m.

**APPEARANCES**

For the Petitioner:  mother

For the Respondent: Carole Meszlenyi, senior human services program specialist with AHCA

**STATEMENT OF ISSUE**

At issue is the respondent's partial denial of dental services requested by the petitioner.

**PRELIMINARY STATEMENT**

AHCA administers the Florida Medicaid Program. AHCA contracts with Health Plans to provide medical services to its program participants. Prestige Health (Prestige) is the contracted health plan in the instant case. Prestige subcontracts with Managed Care of North America (MCNA) to provide its dental services.

By notice dated November 11, 2014, MCNA informed the petitioner that her request for removal of four side teeth (20, 29, 12, 5) and four wisdom teeth (1, 16, 17, 32) with deep sedation (intravenous sedation/ IV drip) was approved in part and denied in part. MCNA approved removal of the four side teeth (20, 29, 12, 5). MCNA denied removal of the wisdom teeth (1, 16, 17, 32) and all the deep sedation (IV drip). The notice reads in relevant part:

[t]he dental service(s) that you or your dentist asked for are not approved because the Clinical Reviewer has determined that the requested services will not correct or improve your condition. Your condition does not meet MCNA's Criteria for Sedation as stated in MCNA's Utilization Review Guidelines. ...

On November 15, 2014, the petitioner timely requested a hearing to challenge the partial denial decision.

There were no additional witnesses for the petitioner. Petitioner's Composite Exhibit 1 was admitted into evidence.

Present as witnesses for the respondent were Marianna Acevedo, MCNA grievance and appeals manager; Dr. Ronald Ruth, MCNA chief dental officer; Dr. Erick

Stump, Prestige medical director and; Dr. Malcolm Meister, MCNA dental consultant.

Respondent's Composite Exhibit 2 was admitted into evidence.

The record was held open until close of business of January 19, 2015 for the submission of additional evidence. Evidence was timely received from the respondent and admitted as Respondent's Composite Exhibit 3. (Respondent's Composite Ex 1 was assigned in the case of the petitioner's twin sister 14F-10183. The hearings were held together. The orders have been bifurcated due to continuity issues.)

#### **FINDINGS OF FACT**

1. The petitioner (age 14) is a Florida Medicaid recipient. She is enrolled with Prestige HMO. Prestige subcontracts with MCNA to provide dental services to its enrollees.

2. All Medicaid services must be medically necessary. Medicaid will not reimburse for medical services that are not medically necessary.

3. The petitioner's dentist, [REDACTED], requested prior authorization from MCNA to remove the petitioner's four wisdom teeth and four side teeth, with deep sedation (intravenous drip/IV drip). The doctor cites dental crowding and orthodontia work (braces) as the reasons for the request.

4. MCNA approved extraction of the four side teeth and denied all of the other requested services.

5. Dr. Ronald Ruth, MCNA chief dental officer, explained that removal of the four side teeth will allow sufficient space for the orthodontic work (braces) needed to shift

and straighten the petitioner's overlapping front teeth. The petitioner's x-rays show her four wisdom teeth are straight and not impacted. They will come through naturally and not affect the teeth in front or the orthodontia work. It is not medically necessary that the wisdom teeth be removed.

6. Regarding the IV sedation, Dr. Ruth explained that removal of the four side teeth is routine and can be performed with local anesthesia, i.e., nova cane. IV sedation is in excess of the patient's needs.

7. Dr. Malcolm Meister, MCNA dental consultant, concurred with Dr. Ruth's opinions. Dr. Meister explained that as the wisdom teeth come through the petitioner may experience some tissue irritation for a time. Her gums will be temporarily sore and painful. Wisdom teeth do not cause overcrowding of the front teeth. Removal of the side teeth will allow the space needed to straighten the petitioner's front teeth with braces.

8. The petitioner's mother asserts that all of the requested services should be approved due to dental crowding which causes the petitioner considerable pain. There is insufficient room in the petitioner's mouth to shift and straighten her overlapping front teeth (with braces) unless the four wisdom teeth are removed.

9. Regarding the use of an IV drip, the petitioner's mother asserts that the dentist recommends this method of sedation to avoid any movement by the petitioner which may cause permanent nerve damage.

### CONCLUSIONS OF LAW

10. 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.

11. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

12. 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, 7<sup>th</sup> Ed.). In the instant case, such means the petitioner must establish that orthodontic services were incorrectly denied by the respondent.

13. All Medicaid services must be medically necessary. The definition of medical necessity is found in the 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.

14. 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.

(3) The following forms that are included in the Florida Medicaid Dental Services Coverage and Limitations Handbook are incorporated by reference: Medicaid Orthodontic Initial Assessment Form (IAF), ...

15. As the petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. 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 ...

16. The Florida Medicaid Dental Handbook states on page 1-2: The children's dental program provides full dental services for all Medicaid eligible children age 20 and below.

17. The Florida Medicaid Dental Handbook states on page 2-2: Medicaid reimburses for services that are determined medically necessary...

18. The Florida Medicaid Dental Handbook states on page 2-3:  
Covered Child Services (Ages under 21):

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.

Note: See the Florida Medicaid Provider Reimbursement Schedule for information on which dental procedure codes apply to recipients under age 21.

19. The Florida Medicaid Dental Handbook addresses deep sedation/analgesia on page 2-5: "Analgesia may be reimbursed only when the recipient has a severe physical or mental disability, or is difficult to manage. ..."

20. The petitioner's dentist requested prior authorization to remove four side teeth and four wisdom teeth with deep sedation (IV drip). The request form cites dental crowding and orthodontia work (braces to straighten the petitioner's front teeth) as the reasons for the requested services. The petitioner's dentist did not appear as a witness during the hearing.

21. The respondent approved removal of the four side teeth. Two expert witnesses testified that removal of these teeth will allow sufficient space to shift and

straighten the petitioner's crowded front teeth. The side teeth can be removed with local anesthesia, deep sedation/ IV drip is not medically necessary. The witnesses opined further that the petitioner's wisdom teeth are not impacted and will come through naturally, with some temporary discomfort. Removing the petitioner's wisdom teeth will not affect the proposed orthodontia work.

22. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes that the petitioner did not meet her burden of proof in this matter. The petitioner did not prove by a preponderance of the evidence that the denied services are medically necessary.

### **DECISION**

Petitioner's 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.



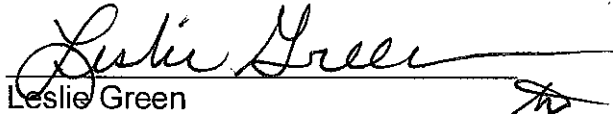
FINAL ORDER (Cont.)

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DONE and ORDERED this 9<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.



Leslie Green

Hearing Officer

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Copies Furnished To: [REDACTED], Petitioner  
Marilyn Schlott, Area 3, AHCA Field Office Manager