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

[redacted]

APPEAL NO. 14F-10191

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 19 Martin
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing in the above referenced matter was convened on January 14, 2015 at 8:38 a.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Mother

For the Respondent: Carol King, Registered Nurse Specialist

ISSUE

At issue is whether respondent's denial of petitioner's request for orthodontic services (braces) was correct.

PRELIMINARY STATEMENT

Petitioner was not present but represented by his mother. No exhibits were entered into evidence.

Ms. King appeared as a representative and witness for the respondent. Present

from Prestige Health Choice were Laurie George, Compliance Officer; Jane Lawrence, Director of Quality Improvement; and Dr. Eric Stumpf, M.D. Present from MCNA Dental were Marianna Acevedo, Grievance and Appeals Manager and Dr. Malcom Meister, Orthodontic Consultant. Respondent's exhibits "1" and "2" were accepted into evidence.

Hearing Officer's exhibit "1" was also entered into evidence.

Administrative notice was taken of the Dental Services Coverage and Limitations Handbook; the Florida Medicaid Provider General Handbook; Fla. Admin. Code Rules 59G-1.010; 59G-4.060; 59G-4.4002; 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 12 years of age with a birth date of [redacted] He has been Medicaid eligible at all times relevant to this proceeding.

2. Orthodontic procedures are available to Florida Medicaid recipients who are under the age of 21.

3. On August 1, 2014 petitioner transitioned to the Statewide Medicaid Managed Care Program. Since that date, his Medicaid services have been provided by Prestige Health Choice (Prestige).

4. On September 24, 2014 petitioner's dentist [redacted] submitted a prior authorization request for braces and orthodontic treatment. The request was submitted to Prestige's dental vendor, MCNA Dental.

5. Dr. [redacted] submission included an Initial Assessment Form (IAF); dental x-rays; and photographs.

6. The IAF is used to determine the severity of dental conditions, including the malocclusion of teeth.

7. An IAF score of "26" or more may be indicative of the need for orthodontic treatment.

8. The treating dentist is not required to provide IAF scoring when one of the following conditions exist:

- Cleft palate deformities
- Deep impinging overbite. When lower incisors are destroying the soft tissue (more than an indention)
- Crossbite of individual anterior teeth. When destruction of soft tissue is present
- Severe traumatic deviations
- Overjet greater than 9mm with incompetent lips or reverse overjet greater than 3.5 mm with reported masticatory and speech difficulties

9. For each of the above, the IAF directs the treating dentist to "Indicate an 'X' if present and score no further". These conditions can be considered as an "auto qualifier" for braces.

10. Dr. [redacted] placed an "X" next to deep impinging overbite and completed no further scoring.

11. Dr. [redacted] did not identify a cleft palate deformity; crossbite of individual anterior teeth; severe traumatic deviations; or an overjet greater than 9mm.

12. An MCNA Dental orthodontist thereafter reviewed all submitted information. On October 1, 2014 a notice was issued to the petitioner denying the request for orthodontic treatment. The notice stated, in part: "You can ask for a written copy of the

reasons why we came to this decision by calling 1-800-274-5038. Your dentist can call MCNA's Dental Director at 1-800-494-6262 ... to talk about the reasons used to make this decision."

13. Petitioner thereafter requested an internal appeal. A second MCNA dental reviewer reviewed all submitted information. On November 3, 2014 and November 13, 2014, correspondence was issued which upheld the original decision. The correspondence of November 13, 2014 stated, in part: "The dental clinical information provided is insufficient to establish that the dental conditions are significant enough to meet the AHCA Medicaid medical necessity criteria for orthodontic treatment."

14. On November 17, 2014 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

15. Petitioner does not have:

- Significant difficulties performing dental hygiene
- Difficulty chewing food
- Any known periodontal disease
- Dental cavities
- Speech problems due to the malposition of teeth
- A head injury which has impacted his current dental status

16. Petitioner does grind his teeth and has third molars (wisdom teeth) that may never become fully exposed.

17. Petitioner argues an orthodontist has recommended braces due to an impinging overbite. As such braces are medically necessary.

18. Respondent asserts a malocclusion does exist but, at this time, not severe enough to meet Medicaid criteria for braces. Additionally, the submitted information does not demonstrate petitioner's lower incisors are destroying soft tissue. To approve

braces due to an impinging overbite, the Florida Medicaid Program requires this condition to exist.

CONCLUSIONS OF LAW

19. 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.

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

21. 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.).

22. 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), ...

23. The Florida Medicaid Dental Services Coverage and Limitations Handbook (Dental Handbook) states, on page 2-2, "Medicaid reimburses for services that are determined medically necessary ..."

24. Page 2-15 of the Dental Handbook continues by stating, "Orthodontic procedures may be reimbursed for Medicaid recipients under age 21."

25. In regard to medical necessity for Medicaid funded services, the definition 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.

26. As the petitioner is under 21 years of age, Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the petitioner's eligibility for or amount of this service. 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, ...

27. In regard to EPSDT requirements, The State Medicaid Manual, published by the Centers for Medicare and Medicaid Services states, in part:

> 5110. Basic Requirements...
> ...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** [Emphasis Added].

28. The Findings of Fact establish orthodontic procedures are allowed for Medicaid recipients under the age of 21 to ameliorate a dental condition. The issue before the undersigned, therefore, focuses upon whether the requested orthodontic services meets medical necessity criteria.

29. When considering whether the requested orthodontic service is medically necessary, analysis is further directed to the Dental Handbook. Page 2-15 states:

> Prior authorization is required for all orthodontic services. Orthodontic services are limited to those recipients with the most handicapping malocclusion. A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility of dental caries, and impaired speech due to malpositions of the teeth.

30. Pages 2-16 through 2-18 of continues by stating:

> Orthodontic procedures are limited to recipients under age 21 whose handicapping malocclusion creates a disability and impairment to their physical development.
>
> Criteria for approval is limited to one of the following conditions:

- Correction of severe handicapping malocclusion as measured in the Medicaid Orthodontic Initial Assessment Form (IAF) ...
- Syndromes involving the head and maxillary or mandible jaws such as cleft lip of cleft palate
- Cross-bite therapy, with the exception of one posterior tooth that is causing no occlusal interferences;
- Head injury involving traumatic deviation; or
- Orthognathic surgery, to include extractions, required or provided in conjunction with the application of braces.

...

The Medicaid Orthodontic 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; and
- A means by which the orthodontic provider may communicate to Medicaid's orthodontic consultant all the distinctive details pertaining to an individual case. ...

...

A score of 26 or greater may indicate that treatment of the recipient's condition could qualify for Medicaid reimbursement, and the orthodontic provider should submit a prior authorization request to Medicaid for consideration of orthodontic services. A score of 26 or greater on the IAF is not a guarantee of approval. It is used by the provider to determine whether diagnostic records should or should not be sent to the orthodontic consultant.

...

A score of less than 26 indicates that treatment of the recipient's condition may not qualify for Medicaid reimbursement, and the request for prior authorization may be denied.

This does not say that such cases do not represent some degree of malocclusion, but simply that the severity of the malocclusion does not qualify for coverage under the Florida Medicaid Orthodontic Program.

31. The IAF completed by petitioner's orthodontist states a deep impinging overbite exists. The Findings of Fact establish a deep impinging overbite is considered an auto qualifier for braces.

32. To be diagnosed with a deep impinging overbite, the IAF states the lower incisors must be destroying soft tissue. An orthodontist at MCNA Dental reviewed the submitted x-rays and failed to see tissue damage.

33. Conflicting information exists as to whether a deep impinging overbite exists. As such, a hearing officer must consider all evidence; judge the credibility of witnesses; and draw permissible inferences from the evidence.

34. Damage to soft tissue must exist in conjunction with the overbite. Although an overbite exists, the undersigned was not able to make a Finding of Fact that the overbite was deep enough to cause tissue damage.

35. It is not disputed the petitioner has a misalignment of teeth. Additionally, petitioner might benefit from braces. To establish the need for braces, however, petitioner must establish braces are medical necessity as defined by the Medicaid Program.

36. The petitioner's request for braces has not satisfied the following condition of medical necessity:

> 3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, ...

37. The undersigned has reviewed EPSDT and medical necessity requirements and applied such to the totality of the evidence. The petitioner has not established, by the greater weight of the evidence, that respondent's action in this matter was incorrect.

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 12 day of Feb, 2015,

in Tallahassee, Florida.

Frank Houston
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