

FILED

JUL 31 2014

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

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-04807

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION (AHCA)
CIRCUIT: 09 Orange
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on July 8, 2014 at 3:25 p.m.

APPEARANCES

For the Petitioner:  mother

For the Respondent: Lisa Sanchez, 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. Managed Care of North America (MNCA) is a contracted dental service provider.

By notice dated May 21, 2014, MCNA dental informed the petitioner that her request for removal of her four wisdom teeth with deep sedation was approved in part and denied in part. MCNA approved removal of the two lower teeth and denied removal of the upper two teeth. MCNA also denied the request for deep sedation. 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 June 3, 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; Jessica Rivera, MCNA grievance and appeals manger; Dr. Ronald Ruth, MCNA chief dental officer. Respondent's Composite Exhibit 1 was admitted into evidence.

The record was held open until close of business of July 11, 2014 for the submission of additional evidence. Evidence was timely received from the respondent and admitted as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. The petitioner (age 18) is a Florida Medicaid recipient. She is enrolled with MCNA prepaid dental plan.

2. On May 8, 2014, the petitioner's dentist, Dr. [REDACTED] requested prior authorization from MCNA to remove the petitioner's four wisdom teeth with deep sedation (intravenous drip/IV drip). The request reads in relevant part:

[REDACTED] is a 17 year [sic] who is complaining of severe pain with all 4 of her third molars. She has intermittent swelling along the gingival tissue surrounding teeth #1, 16, 17, 32. These teeth are severely impacted and are pushing the teeth anteriorly causing severe pain and infection. ...

3. MCNA approved extraction of the lower wisdom teeth and denied extraction of the upper wisdom teeth (#1, 16 – procedure code D7240 and deep sedation- procedure codes 9220/30 min and 9221-15 min).

4. The petitioner requested that MCNA reconsider its decision. The reconsideration request reads in relevant part:

[R]esubmitting for approval pt was approved for ext of #17 and 32 and biopsy.. [REDACTED] is asking you to reevaluate [REDACTED]'s case. She was denied removal of tooth #1 and 16 and sedation. She is complaining of pain with these teeth. Her identical twin has the same issue and was approved for removal of all 4 wisdom teeth under sedation. Please re-evaluate [REDACTED]'s case for approval.

5. MCNA upheld its initial decision. The petitioner appealed the decision and is seeking to have it reversed.

6. The petitioner's mother argues that all of the requested services should be approved for the petitioner because the services were approved for her twin sister. She

asserts that their symptoms are the same; the petitioner's symptoms may in fact be worse.

7. The mother asserts that the petitioner's four wisdom teeth are pushing against the teeth in front, causing great pain and causing teeth, previously straightened by braces, to shift.

8. The respondent explained that all Medicaid services must be medically necessary. Services cannot be provided in excess of a patient's needs. The medical option chosen must be the most effective, least costly option available.

9. Dr. Ronald Ruth, dental director of MCNA, explained that MCNA relied on the medical records submitted by the petitioner's treating dentist. The petitioner's dental x-rays show that her bottom two wisdom teeth are tipped (not straight) and will likely never come through because of their position. They are pressing against the teeth in front, causing the petitioner pain. Dr. Ruth testified that removal of the petitioner's bottom wisdom teeth is medically necessary.

10. The petitioner's dental x-rays show that her top two wisdom teeth are straight, not tipped or impacted. There is no evidence of decay or infection. The teeth are crowding other teeth. Dr. Ruth testified that there is nothing preventing the petitioner's top wisdom teeth from coming through naturally. The petitioner should experience the normal discomfort related to teeth coming through. Dr. Ruth asserts that the removal of the petitioner's top wisdom teeth is not medically necessary.

11. Regarding the request for deep sedation (IV drip) versus general anesthesia, the petitioner's mother explained that the petitioner has a phobia about all medical

procedures. The petitioner fainted when she observed her mother changing her sister's gauze after her wisdom teeth were removed; this was an isolated incident. The petitioner's most frequent symptom is heightened fear. Her treating dentist concluded that deep sedation was necessary.

12. Dr. Ruth explained that general anesthesia is prescribed for most extractions. Medicaid rules limit deep sedation (IV drip) to cases that involve special physical and mental needs; behavior which is out of control and; cases in which there have been problems with past surgery. Dr. Ruth testified that it is not medically necessary for the petitioner to undergo deep sedation (IV drip). None of the exceptions are applicable in the instant case. Most people fear going to the dentist. The petitioner's fear and isolated fainting incident do not rise to the level of special physical and mental needs. There is no evidence of problems with past surgeries or out of control behavior.

13. Dr. Ruth explained that each prior service authorization is based on the merits of the individual case. He is not familiar with the twin sister's circumstances and dismisses the idea of automatically approving services for the petitioner because the same services were approved for her twin. Dr. Ruth testified that other than sharing certain genetic similarities, twins do not all experience the same health and medical issues. Again, each case must be based on the evidence.

CONCLUSIONS OF LAW

14. 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.

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

16. 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.).

In the instant case, such means the petitioner must establish that orthodontic services were incorrectly denied by the respondent.

17. 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.

18. 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), ...

19. 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, ...

20. 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.

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

22. 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.

23. The Florida Medicaid Dental Handbook addresses 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. ...

24. The petitioner requested extraction of all four wisdom teeth and deep sedation (IV drip). The respondent approved extraction of the lower two wisdom teeth and denied the other services as not medically necessary.

25. The thrust of the petitioner's argument was that the petitioner and her twin sister have similar symptoms and the denied services were approved for the sister.

26. The respondent argued that each decision is based on the clinical records of the individual case. Dr. Ruth, the only dentist who appeared at the hearing, testified that the petitioner's top wisdom teeth are straight, not tipped or impacted. There is no evidence of decay or infection. The teeth are not pressing against any other teeth. It is not medically necessary to extract the upper wisdom teeth. Regarding the denial of deep sedation (IV drip), Dr. Ruth testified that deep sedation (IV drip), by rule, is limited to cases that involve special physical and mental needs; behavior which is out of control and; cases in which there have been problems with past surgery. None of the exceptions are applicable in the instant case.

27. 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.

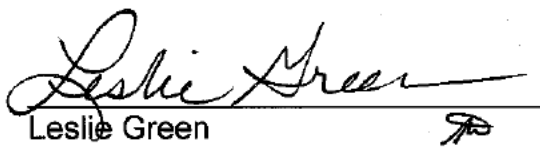
DECISION

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.

DONE and ORDERED this 31st day of July, 2014,
in Tallahassee, Florida.



Leslie Green
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [Redacted] Petitioner
Judy Jacobs, Area 7, AHCA Field Office