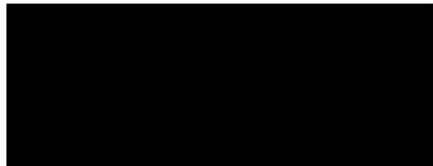


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

Dec 16, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07496

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-styled matter on November 5, 2015 at approximately 10:30 a.m.

APPEARANCES

For the Petitioner:

Petitioner's mother

For the Respondent:

Stephanie Lang
Registered Nurse Specialist, Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is Respondent's denial of Petitioner's request for extraction of four (4) wisdom teeth, as well as I.V. sedation. The burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

The following individuals were present as witnesses for Respondent:

- Carlene Brock – Quality Operations Nurse - Amerigroup
- Dr. Susan Hudson – Dental Consultant - DentaQuest

- Jackelyn Salcedo – Complaints & Grievances Specialist - DentaQuest

Petitioner's mother gave oral testimony, but did not move any exhibits into evidence. Respondent moved Exhibits 1 through 8 into evidence at the hearing. The record was held open until November 6, 2015 for Respondent to submit additional evidence. Respondent submitted additional evidence, entered as Exhibit 9.

The undersigned took administrative notice of the following:

- Florida Statutes §§ 409.910, 409.962, 409.963, 409.964, 409.965, and 409.973.
- Florida Administrative Code Rules 59G-1.001, 59G-1.010, and 59G-4.060

FINDINGS OF FACT

1. Petitioner is a 15-year-old female. At all times relevant to this proceeding, Petitioner was eligible to receive Medicaid services.
2. Petitioner is enrolled with Amerigroup as her Managed Medical Assistance (MMA) plan.
3. DentaQuest is Amerigroup's dental vendor for prior authorization determinations.
4. On August 11, 2015, Petitioner's dentist submitted to DentaQuest a prior authorization request for removal of all four (4) of her wisdom teeth.
5. The American Dental Association procedure code used for tooth # 1 and tooth # 16 was D7220. Procedure code D7220 is for "removal of impacted tooth – soft tissue: Occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation." (Respondent's Exhibit 9).
6. The procedure code used for tooth # 17 and tooth # 32 was D7230. Procedure code D7230 is for "removal of impacted tooth – partially bony: Part of crown

covered by bone; requires mucoperiosteal flap elevation and bone removal.”

(Respondent’s Exhibit 9).

7. The request also included procedure codes D9241, I.V. sedation for first 30 minutes, and D9242, I.V. sedation for each additional 15 minutes.
8. On August 13, 2015, DentaQuest issued an Authorization Determination that the extractions of all four (4) teeth should be denied, as well as the I.V. sedation. A copy was sent to Petitioner’s dentist. Regarding the extractions, it stated: “Per Dental Director review the x-rays do not support the code requested. A less severe extraction code would be considered. Please review the ADA code you requested and resubmit with the appropriate extraction code.” (Respondent’s Exhibit 7). Regarding the I.V. sedation, it stated: “Anesthetic services are only covered when the associated services are approved.”
9. Regarding the teeth, the Notice of Action, dated August 13, 2015, states: “Our dentist looked at the information your dentist sent. The information sent by your dentist, shows the tooth removal is not as bad as what your dentist says. Your dentist needs to resend the information to show where the tooth is located in the bone. We have also told your dentist. Please talk to your dentist.”
(Respondent’s Composite Exhibit 8).
10. Regarding the I.V. sedation, the Notice of Action states: “Your dentist has asked for anesthesia (a medicine to make you sleep) for a service that has been denied. The request to make you sleep is also denied. We have also told your dentist. Please talk to your dentist.” Dr. Hudson testified that the I.V. sedation is automatically denied if the extraction procedure is denied.

11. An appeal review was requested. On September 10, 2015, DentaQuest upheld the denial.

12. Petitioner's mother said she spoke to someone at the dentist's office after receiving the denial, although she did not speak directly with the dentist. She also said she tried to seek assistance from Amerigroup, but was unsuccessful in resolving the problem.

13. Petitioner's mother testified that some of the problems her daughter has are pain when she eats, swollen gums, pain with touching her gums, and has had pain so severe that she was unable to sleep. These problems persisted for about four (4) months prior to the extraction request.

14. There is no dispute that the teeth need to be extracted. The dispute regards the proper procedure codes that should be submitted for prior authorization.

15. Dr. Hudson testified that Petitioner's wisdom teeth appear to have already erupted and that removing them should be a simple extraction, although you can never be sure until the procedure is actually performed. She said Petitioner's dentist should resubmit the request with the appropriate procedure codes and it should be approved. The I.V. sedation would be considered for approval if the extractions were approved.

16. When asked what procedure code would be correct, Dr. Hudson stated D7140 would be used if it is just a simple extraction. She said she had not personally evaluated Petitioner, but if the procedure turned out to be an uncomplicated surgical extraction, it would be code D7210. The codes that were requested

would require a lot of surgery into the bone or soft tissue and that doesn't seem to be needed in Petitioner's case.

17. Ms. Salcedo said she would reach out to Petitioner's dentist in order to assist in getting the proper procedure codes submitted for authorization.

CONCLUSIONS OF LAW

18. By agreement between the Agency for Healthcare Administration ("AHCA" or "Agency") and the Department of Children and Families ("DCF"), the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Section 120.80, Fla. Stat.

19. The hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

20. This is a Final Order, pursuant to Sections 120.569 and 120.57, Fla. Stat.

21. The standard of proof in an administrative hearing is a preponderance of the evidence. Fla. Admin. Code R.65-2.060(1). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

22. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. AHCA is the single state agency that administers the Medicaid Program.

23. The Florida Medicaid Dental Services Covered and Limitations Handbook, November 2011 ("Dental Handbook"), is promulgated into law by Chapter 59G of the Florida Administrative Code.

24. Page 2-14 of the Dental Handbook defines a "Simple Extraction" as:

A simple extraction is the removal of a permanent or deciduous tooth by the closed method using the elevation and forceps removal technique in which a flap is not retracted.

The incidental removal of cyst or lesions attached to the root(s) of an extraction is considered part of the extraction or surgical fee and should not be billed as a separate procedure.

25. Page 2-14 of the Dental Handbook defines a "Surgical Extraction" as:

A surgical extraction is the removal of any erupted or unerupted tooth by the open method that includes the retraction of a mucoperiosteal flap and the removal of alveolar bone in order to extract or section a tooth.

26. Dr. Hudson stated either procedure code D7140 for a simple extraction or D7210

for an uncomplicated surgical extraction would be sufficient to address

Petitioner's needs. D7140 is "extraction, erupted tooth or exposed root (elevation and/or forceps removal): Includes routine removal of tooth structure, minor smoothing of socket bone, and closure, as necessary." (Respondent's Exhibit 9).

D7210 is "surgical removal of erupted tooth requiring removal of bone and/or suctioning of tooth, and including elevation of mucoperiosteal flap if indicated:

Includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone and closure." Dr. Hudson stated the requested, more severe codes are not medically necessary.

27. The definition of medically necessary is found in Fla. Admin. Code R.59G-1.010,

which 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. Since the Petitioner is under 21 years of age, a broader definition of medical necessity applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. § 409.905, Fla. Stat., Mandatory Medicaid services, provides that Medicaid services for children 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, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

29. Under the above statute, the Agency offers dental services as an EPSDT service to Medicaid-eligible recipients less than 21 years of age.

30. The United States Court of Appeals for the Eleventh Circuit clarified the states' obligation for the provision of EPSDT services to Medicaid-eligible children in *Moore v. Reese*, 637 F.3d 1220, 1255 (11th Cir. 2011). The Court provided the

following guiding principles in its opinion, which involved a dispute over private duty nursing:

(1) [A state] is required to provide private duty nursing services to [a child Medicaid recipient] who meets the EPSDT eligibility requirements, when such services are medically necessary to correct or ameliorate [his or her] illness and condition.

(2) A state Medicaid plan must include "reasonable standards ... for determining eligibility for and the extent of medical assistance" ... and such standards must be "consistent with the objectives of" the Medicaid Act, specifically its EPSDT program.

(3) A state may adopt a definition of medical necessity that places limits on a physician's discretion. A state may also limit required Medicaid services based upon its judgment of degree of medical necessity so long as such limitations do not discriminate on the basis of the kind of medical condition. Furthermore, "a state may establish standards for individual physicians to use in determining what services are appropriate in a particular case" and a treating physician is "required to operate within such reasonable limitations as the state may impose."

(4) The treating physician assumes "the primary responsibility of determining what treatment should be made available to his patients." Both the treating physician and the state have roles to play, however, and "[a] private physician's word on medical necessity is not dispositive."

(5) A state may establish the amount, duration, and scope of private duty nursing services provided under the required EPSDT benefit. **The state is not required to provide medically unnecessary, albeit desirable, EPSDT services.** However, a state's provision of a required EPSDT benefit, such as private duty nursing services, "must be sufficient in amount, duration, and scope to reasonably achieve its purpose."

(6) A state "may place appropriate limits on a service based on such criteria as medical necessity." In so doing, a state "can review the medical necessity of treatment prescribed by a doctor on a case-by-case basis" and may present its own evidence of medical necessity in disputes between the state and Medicaid patients. (see (citations omitted)) (emphasis added).

31. Consistent with these requirements, the state is obligated to provide services to recipients under 21 years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state and the state is authorized to establish the amount, duration, and scope of such services.

32. Dr. Hudson gave credible testimony that Petitioner's wisdom teeth can be extracted under a less severe procedure code. The undersigned notes that she does not dispute the removal of the wisdom teeth, only the severity of the method used. Because a less severe procedure is appropriate in Petitioner's case, the requested procedure codes are in excess of her needs.
33. The undersigned has reviewed all pertinent rules and regulations, including EPSDT requirements. Petitioner has not met her burden to show, by the greater weight of the evidence, that the more severe extraction procedures are medically necessary
34. Petitioner and her mother are encouraged to work with Ms. Salcedo, DentaQuest, and Amerigroup, as well as her dentist, in order to ensure the proper request is submitted so that Petitioner can have her wisdom teeth removed.

DECISION

Based upon the foregoing, Petitioner's appeal is DENIED and the Agency's action is AFFIRMED.

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 16 day of December, 2015,

in Tallahassee, Florida.



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