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

[redacted]

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 06 Pinellas
UNIT: AHCA

RESPONDENT.
_____/

APPEAL NO. 15F-09146

CASE NO.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above referenced matter telephonically on January 5, 2016, at 10:45 a.m.

APPEARANCES

For the petitioner: [redacted]
Petitioner's Mother

For the respondent: Stephanie Lang, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly denied her request for orthodontic treatment in the form of braces?

PRELIMINARY STATEMENT

[redacted] the petitioner's mother, appeared on behalf of the petitioner, [redacted] ("petitioner"), who was not present. [redacted] may sometimes hereinafter be referred to as the petitioner's "representative".

Stephanie Lang, R.N., Registered Nurse Specialist and Fair Hearing Coordinator with the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency: Carlene Brock, L.P.N., Quality Operations Nurse with Amerigroup Florida; Jackelyn Salcedo, Complaints and Grievances Specialist with DentaQuest; and Susan Hudson, D.M.D., Dental Consultant with DentaQuest.

The respondent introduced Exhibits "1" through "12", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The petitioner did not introduce any evidence.

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 a 13-year-old female.

2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.

3. Petitioner is an enrolled member of Amerigroup Florida ("Amerigroup"). Amerigroup is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. Amerigroup provides certain dental and orthodontic benefits to its members. Amerigroup has contracted DentaQuest to review prior authorization requests for dental and orthodontic services.

5. On or about October 8, 2015, petitioner's orthodontist submitted a prior authorization request for a pre-orthodontic treatment examination to monitor growth and development, comprehensive orthodontic treatment of the adolescent dentition (braces), fixed appliance therapy, and subsequent periodic orthodontic treatment visits.

6. In a Notice of Action dated October 12, 2015, DentaQuest informed the petitioner it denied her request for orthodontic treatment. The Notice of Action states, in part:

> We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: *(See Rule 59G-1.010)*
>
> X Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
> X Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.
> X Must meet accepted medical standards and not be experimental or investigational.

7. Both the Agency for Health Care Administration and DentaQuest use the Medicaid Orthodontic Initial Assessment Form (IAF) to evaluate an individual's need for orthodontic treatment.

8. To be considered for orthodontic treatment by the Agency for Health Care Administration or DentaQuest, an individual must attain a score of at least 26 on the Initial Assessment Form.

9. The petitioner's orthodontist completed an Initial Assessment Form on the petitioner and submitted this information to DentaQuest. The Initial Assessment Form submitted by the petitioner's orthodontist has a score of 27 at the bottom.

10. The petitioner's orthodontist did not complete the Initial Assessment Form correctly. He did not complete and score the individual sections of the form; he simply listed a total score of 27 at the bottom.

11. The narrative submitted by the petitioner's orthodontist along with the request for services states the petitioner has an [redacted]

12. The respondent's dentist testified that the documentation submitted by the petitioner's orthodontist does not reveal an [redacted]

13. The petitioner has pain and overcrowding in her mouth. Pain alone is not a sufficient justification for the approval of braces.

14. Based on the information submitted to it by the petitioner's orthodontist, DentaQuest completed its own Initial Assessment Form on the petitioner. DentaQuest arrived at a score of 18 when it completed the form.

15. On November 12, 2015, DentaQuest re-reviewed the petitioner's request for orthodontic treatment. DentaQuest upheld the denial at that time.

CONCLUSIONS OF LAW

16. 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 Chapter 120.80, Fla. Stat.

17. This is a final order pursuant to § 120.569 and § 120.57, Fla. Stat.

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

19. In the present case, the petitioner is requesting an additional service. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

20. The standard of proof in an administrative hearing is 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.).

21. The Florida Medicaid program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid program is administered by respondent.

22. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

> Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law…

23. The definition of medically necessary is found in the 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.

24. Since petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) 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, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

25. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Chapter 59G-4. In accordance with the above Statute, the Handbook states on page 1-27:

> Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

> Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.
>
> Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

26. Page 1-28 of the Florida Medicaid Provider General Handbook provides a list of HMO covered services. Page 1-30 of the Handbook explains "Other services that plans may provide include dental services, transportation, nursing facility and home and community-based services."

27. Page 1-30 of the Florida Medicaid Provider General Handbook states: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

28. Rule 59G-4.060, Florida Administrative Code, 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), …

29. The Dental Services Coverage and Limitations Handbook, on Page 2-17, discusses the Initial Assessment Form. It states, in part:

> 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 the Medicaid's orthodontic consultant all the distinctive details pertaining to an individual's case.

30. Page 2-18 of the Dental Services Coverage and Limitations Handbook discusses the index score attained on an Initial Assessment Form and states, in part:

> 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. Amerigroup's rules governing the approval of orthodontic services for children under age 21 are similar to those of the Agency for Health Care Administration.

32. In the present case, the Initial Assessment Form submitted by petitioner's orthodontist was not completed properly. The orthodontist did not score the individual sections of the form; he only listed a total score of 27 at the bottom. Additionally, the documentation submitted along with the form does not show an [redacted]

[redacted] The Initial Assessment Form completed by DentaQuest pursuant to the information submitted by the petitioner's orthodontist reflects a score of 18, which is insufficient to support approval of orthodontic treatment. Furthermore, overcrowding and pain alone are not sufficient to demonstrate the necessity of orthodontic treatment.

33. Pursuant to the above, the petitioner has not met her burden of proof to show the respondent incorrectly denied her request for orthodontic treatment.

34. Should the petitioner's situation worsen, or should the petitioner be able to secure additional documentation from her dental provider tending to show orthodontic treatment is medically necessary, the petitioner is encouraged to re-submit her request to DentaQuest for further evaluation.

DECISION

The petitioner's appeal is hereby 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 25 day of January, 2016,

in Tallahassee, Florida.

Peter J. Tsamis

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