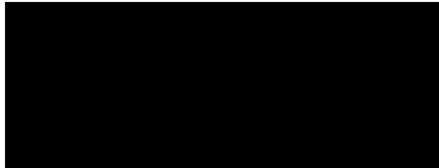
FILED
Feb 03, 2016
Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-09557

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

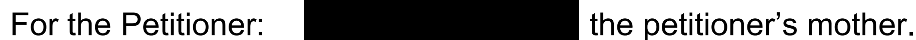
RESPONDENT.

_________________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 26, 2016, at 10:30 a.m.

APPEARANCES



For the Petitioner: [redacted] the petitioner's mother.

For the Respondent: Linda Latson, Registered Nurse Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is whether the Agency's denial of a dental procedure was correct. The petitioner carries the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were Mindy Aikman, Grievance and Appeals Coordinator and Stacey Larson, Clinical Guidance Analyst, both with Humana;

Jacqueline Salcedo, Complaints and Grievances Representative with DentaQuest; and Dr. Susan Hudson, Dental Director with DentaQuest.

The respondent submitted into evidence Respondent Exhibit 1 and 2.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner is sixteen years of age and is a Medicaid recipient living in Broward County, Florida. She is enrolled in the Medicaid MMA (Managed Medical Assistance) Program with Humana. Humana is a Managed Care Organization that has been authorized by AHCA to make prior service authorization decisions for individuals enrolled in the Medicaid MMA Program. DentaQuest is contracted by Amerigroup to provide dental services and perform prior authorization reviews.

2. DentaQuest received a prior service authorization request from the petitioner's treating dental surgeon on October 26, 2015 for the removal of her four wisdom teeth, tooth numbers 1, 16, 17 and 32. DentaQuest reviewed this request and provided an Authorization Determination notice to the petitioner's dental provider on October 27, 2015. Tooth numbers 17 and 32 removal were approved (lower quadrant). Tooth numbers 1 and 16 were denied.

3. The above referenced notice indicated that the request for procedure code D7240 was denied for the two upper quadrant teeth. The determination reason provided indicated "there is no sign of infection or other medical reasons for tooth removal."

4. DentaQuest sent the petitioner a Notice of Action on October 27, 2015 regarding the above noted decision which states in part:

> We made this decision because:
>
> Must be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
>
> Must 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
>
> Must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;

5. The respondent's dental physician witness indicated DentaQuest had several dentist review the information presented by the petitioner's treating dental surgeon, that included the X rays, and found no evidence of infection, pathology or enough space between the teeth that would meet the criteria for the service request to be approved. She reiterated that the removal of the wisdom teeth (upper quadrant) does not meet the medical necessity criteria to be approved.

6. The petitioner's representative argued that the petitioner has complained to her of pain in her entire mouth and that she has a hard time eating. She also indicated that she gives the petitioner over the counter Tylenol for the pain. Despite the pain, the petitioner has not removed the wisdom teeth in the lower quadrant. She indicated that she was aware of the approval of the lower quadrant teeth being removed, but wanted to wait for an approval of all of the wisdom teeth removal so the removals could occur at one time.

7. The respondent witness, dental physician, indicated that the information provided shows the upper quadrant teeth have not broken through the skin and do not meet the criteria as noted above for removal.

CONCLUSIONS OF LAW

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

10. In accordance with Fla. Admin. Code R. 65-2.060 (1), the party having the burden shall establish his/her position by a preponderance of the evidence, to the satisfaction of the hearing officer.

11. The Dental Services Coverage and Limitations Handbook, dated November 2011, has been incorporated by reference into Chapter 59G-4**,** Fla. Admin. Code and states on page 2-15:

> Extractions of all erupted teeth or exposed roots within a quadrant, same recipient and same date of service, are reimbursable with procedure code D7140, using D7140's reimbursement rate for each applicable extraction. This rule does not apply if an extraction within the quadrant is a surgical removal of an erupted tooth or the removal of an impacted tooth, which will be identified by the appropriate extraction procedure code.

12. Fla. Admin. Code R. 59G-1.010 states in part:

> (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;

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.

13. Since the Petitioner is under twenty-one years of age, a broader definition of medical necessity applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Fla. Stat. § 409.905, 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.

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

15. 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 my present its own evidence of medical necessity in disputes between the state and Medicaid patients. (see (citations omitted)).

16. Consistent with these requirements, the state is obligated to provide services to recipients under twenty-one 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.

17. As shown in the Findings of Fact, DentaQuest denied the petitioner's request for dental procedure code D7240, which is oral surgery to remove or extract two wisdom teeth, tooth numbers 1 and 16, upper quadrant.

18. For the case at hand, the respondent argued that after review of the information submitted for the request, including the X rays, DentaQuest found no evidence of infection, pathology or enough space between the teeth that would meet the criteria for the service request to be approved; therefore, the removal of the wisdom teeth (upper quadrant) does not meet the medical necessity criteria to be approved. The hearing officer agrees with the respondent's arguments.

19. After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the petitioner has not met her burden of proof and the Agency's action denying the petitioner's request for the dental procedures is correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action 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 03 day of February, 2016,

in Tallahassee, Florida.

Robert Akel

Robert Akel
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [redacted], Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager
Ysabel Rodriguez