

FILED

Feb 04, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



PETITIONER,
Vs.

APPEAL NO. 15F-09775: [REDACTED]
15F-09922: [REDACTED]

CASE NO. [REDACTED]

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above matters on January 7, 2016 at 10:16 a.m.

APPEARANCES

For the Petitioners:



Mother of each petitioner

For the Respondent:

Lisa Sanchez
Senior Human Services Program Analyst

STATEMENT OF ISSUE

Whether respondent's denial of orthodontic treatment (braces) for each petitioner was proper. The burden of proof was assigned to each petitioner.

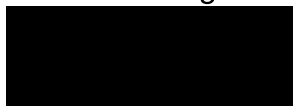
PRELIMINARY STATEMENT

Petitioners were not present. Their representative entered no exhibits into evidence.

Petitioner's representative did not receive respondent's proposed evidence. The representative selected to proceed with the hearing. The evidence was to be overnighted to the representative. The record was held open through January 14, 2016 for the representative to provide, if desired, a written response to respondent's documentary exhibits. A response was not received.

Ms. Sanchez appeared both as a witness and representative for the respondent. Present as witnesses for each petitioner from Molina Healthcare were: Natalie Fernandez, Government Contract Specialist; Carlos Galvez, Government Contract Specialist; Vanessa Martinez, Government Contract Specialist; and Alice Quiros, ABP of Government Contracts. Present from DentaQuest were Jacelyn Salcedo, Appeals and Grievance Specialist and Dr. Susan Hudson, Dental Consultant.

The following exhibits were accepted into evidence:



Respondent's exhibits "1" – "2"
Respondent's exhibits "1" – "2"

Administrative notice was taken of the Florida Medicaid Provider General Handbook.

The record was held open through January 11, 2016 for respondent to provide a Medicaid Orthodontic Initial Assessment Form completed for Trinity Gonzales. Information was timely received and entered as respondent's exhibit "3".

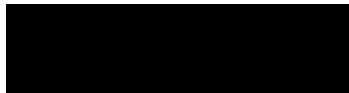
SHARED FINDINGS OF FACT

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 for both petitioners:

1. Petitioners are twins with a birth date of [REDACTED] At all times relevant to this proceeding each was Medicaid eligible.
2. Medicaid services for the petitioners are provided through respondent's Statewide Medicaid Managed Care Program. Since August 1, 2014 Medicaid services have been provided by Molina Healthcare.
3. DentaQuest is the dental vendor for Molina Healthcare. A DentaQuest dentist reviews information submitted for requested dental procedures and issues a determination.
4. All DentaQuest reviewers are licensed dentists and must pass quarterly reliability exams.
5. DentaQuest must be in compliance with relevant Florida Medicaid Coverage and Limitations Handbooks. This includes the Florida Medicaid Provider General Handbook and the Florida Medicaid Dental Services Coverage and Limitations Handbook.
6. Orthodontic treatment, when medically necessary, is available to Florida Medicaid recipients who are under the age of 21.
7. For each petitioner, the treating orthodontist submitted to DentaQuest an Initial Assessment Form (IAF).
8. The IAF is used to determine the severity of dental conditions, including the malocclusion of teeth. Scoring is assigned by both diagnostic observation and dental measurement.
9. An IAF score of "26" or more may indicate braces are medically necessary.
10. The treating orthodontist 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 indentation)
- 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

11. For each of the above, the IAF directs the treating dentist to “Indicate an ‘X’ if present and score no further”. When present, these conditions can be considered as an “auto-qualifier” for braces.



12. On October 13, 2015 a request for braces and monthly orthodontic visits was received by DentaQuest. The submission included an IAF and facial photographs. A written justification did not accompany the submission.

13. Petitioner’s treating orthodontist did not indicate an auto qualifier for braces. As such, the orthodontist proceeded with IAF scoring.

14. The orthodontist identified both an overjet and overbite.

15. An overjet is the extent of horizontal overlap between the upper and lower front teeth. The orthodontist’s scoring for petitioner’s overjet was “6”.

16. An overbite is the extent of vertical overlap between the front upper and lower teeth. The orthodontist’s scoring for petitioner’s overbite was “6”.

17. Regarding ectopic eruption and anterior crowding, the IAF directs: “If both anterior crowding and ectopic eruption are present in the anterior portion of the mouth, score only the most severe conditions. Do not score both conditions.

18. Petitioner's orthodontist scored ectopic eruption as "6" and anterior crowding as a "10".

19. The total IAF score submitted to DentaQuest was "28".

20. A DentaQuest dentist thereafter reviewed petitioner's x-rays.

21. Based on submitted information, the DentaQuest reviewer completed an IAF.

The reviewer scored overjet as "2" and overbite as "4".

22. Because both ectopic eruption and anterior crowding were present in the anterior portion of the mouth, the DentaQuest reviewer only scored the most severe condition.

A score of "10" was given for anterior crowding. No scoring was given for ectopic eruption.

23. The total score given by the DentaQuest reviewer was "16".

24. On October 15 2015 DentaQuest notified the petitioner that the request for orthodontic treatment was denied. The notice stated, in part:

To qualify for braces you need to get 26 points on a test. The test gives points for crowded, missing, and rotated teeth as well as spacing. Our Dental Director scored your teeth. You do not qualify for braces. We have told your dentist. Please talk to your dentist. You reached a score of 20 points¹.

25. Petitioner thereafter requested an internal appeal.

26. A second DentaQuest dentist then reviewed all submitted information. On November 11, 2015 correspondence was issued upholding the original denial.

27. On November 24, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

¹ The reference to an IAF score of 20 is incorrect. Petitioner's IAF score, as scored by DentaQuest reviewers, was 16.

28. Petitioner's representative argues her son's dental condition causes him to bite onto his jaw. He demonstrates language problems and receives speech therapy from the school system. His dental condition has had a negative impact on his self-esteem.

29. Respondent asserts the level of misalignment of petitioner's teeth is not severe enough to meet Medicaid criteria for braces. Such has been determined by two DentaQuest reviewers. Additionally, Dr. Hudson concurs with their determination.



30. On October 13, 2015 a request for braces and monthly orthodontic visits was received by DentaQuest. The submission included an IAF; x-rays; and facial photographs. No narrative was included with the submission.

31. The orthodontist checked: "Overjet greater than 9mm with incompetent lips or reverse overjet greater than 3.5 mm with reported masticatory and speech difficulties." Although this is considered an auto-qualifier for braces, the orthodontist continued to score the IAF. A "10" was given for both overjet and anterior crowding.

32. A DentaQuest dentist thereafter reviewed the submission.

33. Using submitted information, the DentaQuest reviewer completed an IAF. The reviewer identified no auto-qualifier for braces. A "5" was given for overjet "3" for overbite; and "2" for labio-lingual spread. The total IAF score was "10".

34. On October 15, 2015 Molina Healthcare issued a Notice of Action which denied the requested orthodontic treatment. The notice stated, in part:

To qualify for braces you need to get 26 points on a test. The test gives points for crowded, missing, and rotated teeth as well as spacing. Our Dental Director scored your teeth. You do not qualify for braces. We have told your dentist. Please talk to your dentist. You reached a score of 10 points.

35. On November 24, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

36. Petitioner's representative asserts her daughter has a large overbite and can barely close her mouth. This has impacted her speech. She receives speech therapy through the school system.

37. Dr. Hudson argues the review completed by DentaQuest did not demonstrate a overjet greater than 9 mm with incompetent lips or reverse overjet greater than 3.5 mm accompanied with both chewing and speech difficulties. Although a misalignment of teeth exists, petitioner's dental status does not yet meet Medicaid criteria for braces.

CONCLUSIONS OF LAW

38. 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.

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

40. The standard of proof in an administrative hearing is by a preponderance of the evidence. (See Fla. Admin. Code R. 65-2060(1).) The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

41. 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), ...

42. 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 ..."

43. 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.

44. As the petitioners are under 21 years of age, Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the

petitioner's eligibility for orthodontic services. 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 ...

45. 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].

46. The Findings of Fact establish orthodontic procedures are allowed for Medicaid recipients under the age of 21 to ameliorate a dental condition. The Findings of Fact also establish each petitioner is under the age of 21. The issues before the undersigned, therefore, focus upon whether the requested orthodontic services meet Florida's medical necessity criteria.

47. When considering whether the requested orthodontic services are 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 malposition of the teeth.

48. Pages 2-16 through 2-18 of the Dental Handbook continue 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 or 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.



49. A conflict exists between the IAF completed by petitioner's orthodontist and those completed by DentaQuest reviewers. Petitioner's orthodontist scored the IAF at 28. DentaQuest scored the IAF at 16.

50. Additional IAF information is found in respondent's Dental Handbook on page A-1. The IAF states: "If both anterior crowding and ectopic eruption are present in the anterior portion of the mouth, score only the most severe condition. Do not score both conditions."

51. The Findings of Fact establish petitioner's orthodontist scored anterior crowding as 10 and ectopic eruption 6. The Dental Handbook directs that only the higher of the two should be scored.

52. When backing out the IAF score assigned for ectopic eruption, the IAF submitted by petitioner's orthodontist would be "22" as opposed to "28".

53. The DentaQuest reviewers agreed with the referring orthodontist when scoring anterior crowding as 10. Differences existed, however, when scoring overjet and overbite. Regardless, even when only evaluating the correctly scored IAF from the referring orthodontist, the score remains less than 26.

54. Page 2-18 of the Dental Handbook addressed borderline assessments. When an orthodontist believes a borderline assessment exists, the Dental Handbook requires

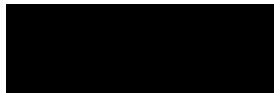
study models be presented for evaluation. No evidence was presented that study models were submitted by the treating orthodontist.

55. Evidence does not establish petitioner's speech issues are solely caused by his dental condition.

56. A hearing officer must consider all evidence; judge the credibility of witnesses; and draw permissible inferences from the evidence.

57. Compelling evidence was not presented to refute the IAF score of "16" as determined by DentaQuest reviewers.

58. Petitioner has not established, by the required evidentiary standard, that respondent's action in this matter was improper.



59. A conflict exists between the IAF completed by petitioner's orthodontist and that completed by a DentaQuest reviewer. The IAF completed by the referring orthodontist showed an "auto-qualifier" for braces. This was refuted by DentaQuest. The total IAF score computed by DentaQuest was "10".

60. Petitioner's orthodontist identified no other auto-qualifier for braces other than that related to overjet greater than 9mm.

61. It is noted that DentaQuest scored the overjet to be 5mm. Page A-3 of the Dental Handbook states "score the case exactly as measured, then subtract 2mm (considered the norm) and enter the difference as the score." As such, the petitioner's overjet is 7mm. This is still less than the 9mm required for the overjet to meet the criteria for an auto qualifier.

62. Petitioner's orthodontist provided no written justification for the IAF scoring.

63. Evidence does not establish petitioner's speech issues are solely caused by her dental condition.

64. Compelling evidence was not presented to refute the IAF findings of DentaQuest. As such, considerable weight is given to the testimony of Dr. Hudson.

65. Petitioner has not established, by the required evidentiary standard, that respondent's action in this matter was improper.

66. It is not disputed that both petitioners have a misalignment of teeth. The greater weight of evidence, however, does not establish their orthodontic status rises to the stringent requirement of a "most handicapping malocclusion" as defined by the Dental Handbook.

67. The request for braces by each petitioner have not satisfied the following condition of medical necessity:

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

68. The undersigned has reviewed EPSDT and medical necessity requirements and applied such to the totality of the evidence. The petitioners have not established that respondent's denial of braces was incorrect.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal for [REDACTED] is denied. The appeal for [REDACTED] 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 04 day of February, 2016,

in Tallahassee, Florida.

Frank Houston

Frank Houston
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