

**FILED**

**JUN 10 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

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



APPEAL NO. 14F-02306

PETITIONER,

Vs.

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

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 22, 2014, at 10:34 a.m.

**APPEARANCES**

For the Petitioner:



For the Respondent:

Dave King, Management Analyst  
Agency for Health Care Administration (AHCA)

**ISSUE**

At issue is the respondent's action denying petitioner's request for a partial lower denture.

**PRELIMINARY STATEMENT**

The petitioner represented himself. Petitioner's exhibit "1" was accepted into evidence.

Dave King appeared as both the representative and witness for the respondent.

Present for respondent from Molina Healthcare of Florida was Gladys Medrano, Government Contracts Specialist. Present from DentaQuest were Jackelyn Salcedo, Appeals and Grievances Specialist and Dr. Susan Hudson, Dental Director.

Respondent's exhibit "1" was accepted and entered into evidence. The record was held open for a notice sent by Molina on December 26, 2013. The notice was timely received and marked as respondent's exhibit "2".

An Order to Reopen Record was issued by the undersigned on April 23, 2014. The notice submitted by the respondent post hearing references "chart notes" submitted by petitioner's dentist. The chart notes were not part of respondent's submitted exhibits. The chart notes and any other information provided as part of the prior authorization process were to be submitted by the close of business on May 3, 2013. The information was timely received and entered as respondent's exhibit "3". Petitioner was allowed through May 13 to submit, if desired, a written response. A response was not received.

On May 15, 2013 the undersigned then issued an Order for Response regarding jurisdictional concerns. A timely response was received from both parties and entered as petitioner's exhibit "2" and respondent's exhibit "4"

#### **FINDINGS OF FACT**

1. Petitioner is a 64 year old male with a birth date of January 17, 1950. At all times relevant to this proceeding, petitioner was eligible to receive Medicaid services.
2. The petitioner is enrolled in Molina Healthcare of Florida (Molina). Molina is a Health Maintenance Organization (HMO) which is contracted by the respondent to

provide services, including adult dental services, to certain Medicaid recipients in Florida.

3. DentaQuest administers Molina's dental program. When a Molina enrollee requests a dental procedure, staff at DentaQuest determines if the service is medically necessary.

4. Both Molina and DentaQuest must be in compliance with the Florida Medicaid Dental Services Coverage and Limitations Handbook.

5. On October 16, 2013 DentaQuest received from petitioner's dentist, Yves Semeah, a prior authorization request for a partial lower denture.

6. On October 23, 2013, a denial letter was sent to the petitioner. The correspondence stated, in part:

We were asked to approve a request for the following service(s):

- Partial lower denture

This request has been **denied** because:

Your dentist has asked to replace some of your missing teeth. The x-rays must show that the teeth still in your mouth needed for this service are healthy. Your remaining teeth are not healthy because they have large cavities or not enough bone support so this services is not medically necessary. We have told your dentist this. Please talk to your dentist about other treatment choices.

Upon review of the request by the DentaQuest Dental Director, there is no evidence to support the medical necessity of this service.

7. In regard to the above decision, the notice of October 23, 2013 also stated, in part:

If you don't agree, you may ask that we change our finding. This is called an appeal. You may also provide any additional comments, documents,

or other information important to your appeal. Our appeal must be received within 30 calendar days from this notice.

...

You also have the right to request a Medicaid Fair Hearing, or a Beneficiary Assistance Program (BAP) hearing. To request a Fair Hearing contact the Florida Department of Children and Families at 1-850-488-1429.

8. On November 14, 2013 petitioner completed Molina's Member Grievance/Appeal Request Form (Petitioner's Exhibit "1"). Petitioner wrote, in part: "I recently had a root canal done so it would be able to support a partial. I had build up and crown put on all in hopes of having good support for new partial which was achieved."
9. At the bottom of the above form there is a handwritten note from a Dr. D. Green which states: "[REDACTED] has adequate support for a lower partial denture and should begin impressions ASAP. His ability to eat and socialize is greatly impacted by this delay."
10. Upon re-review of petitioner's request, Molina issued a denial letter on December 26, 2013. The notice stated, in part:

We have completed the review of your appeal received on 11/19/13. It was reviewed and the decision was made by the DentaQuest Dental Director, a Doctor of Dental Medicine. Our decision is to deny your request for a Lower Partial Denture.

The reason for our decision was based on the Florida Medicaid Dental Services Coverage and Limitations Handbook. Criteria for Full and Partial Dentures, which states partial dentures are covered only for recipients with good oral health and hygiene, good periodontal health, and a favorable prognosis where continuous deterioration is not expected. In addition, radiographs must show no untreated cavities or active periodontal disease in the abutment teeth, and abutments must be at least 50% supported in bone are required in order to meet medical necessity.

Your chart notes from Dr. Yves Semeah indicate that the teeth needed for this service are not healthy and cannot be saved because of large areas

of decay or poor bone support; therefore, do not meet the criteria for partial lower dentures. For this reason, your request for partial lower dentures is denied.

You also have the right to ask for a Medicaid Fair Hearing. You must do this within ninety (90) days from the date of our first decision. To ask for a Medicaid Fair Hearing call the Florida Department of Children and Families at 1-850-488-149 or mail your request to: ...

11. On March 20, 2014 petitioner contacted the Office of Appeal Hearings and requested a Fair Hearing.
12. The Order for Response dated May 15, 2014, allowed the parties to respond or submit a memorandum of law regarding the timeliness of petitioner's fair hearing request. In particular, whether the 90 days petitioner had to request a fair hearing should be extended to the notice of December 26, 2013. Both parties responded. Respondent asserted the hearing request was not timely and should be dismissed. A specific authority, however, was not provided as to why hearing rights should not also be extended to the notice of December 26, 2013.
13. As such, the hearing officer finds that petitioner's hearing request was timely.
14. Petitioner states he had a root canal and crown so there would be proper support of the lower partial denture. When this work was completed, the prior authorization for the partial denture was sent to DentaQuest.
15. Petitioner's exhibit "1" includes a letter from Dr. D. Green dated, April 8, 2014 and addressed to Molina. The letter states, in part:

██████████ has been a patient of mine since 7/25/13 and a patient of this practice since 11/2/12. It was determined that his mandibular teeth had at least 2/3 of their length in bone and showed no mobility, thus they would be adequate support for a lower removable partial denture. A current panoramic radiograph has been enclosed. In August of this year, root canal therapy was performed on #22 and a crown was placed. It was

fabricated both in order to fit the partial he already has and in anticipation of the new partial that he needs. His current partial cannot be retrofitted to meet his current needs and is impacting not only his ability to eat, but his ability to socialize as well.

16. In a post hearing submission, petitioner states "The X-RAYS that they made their decision on were out of date and not what should have been used for a decision."

17. Respondent asserts submitted radiographs show the tooth with a root canal and crown has 50% bone loss and would not be effective in supporting a partial denture.

Additionally, the remaining teeth also have 50% bone loss. Consequently, the effectiveness of a partial denture was not demonstrated. As such, medical necessity for the partial denture was not established.

#### **CONCLUSIONS OF LAW**

18. By agreement between the Agency for Health Care Administration 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.

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

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

21. The burden of proof is assigned to the petitioner. 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, 7<sup>th</sup> Ed.).

22. The Florida Medicaid program is authorized by Fla. Stat. ch 409 and Fla. Admin. Code R. 59G. The Medicaid program is administered by the respondent.

23. Section 409.912, Fla. Stat. states, in relevant parts:

Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care ...

(3) The agency may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients. This subsection expires October 1, 2014.

24. The Florida Medicaid Provider Handbook (Provider Handbook) 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.

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

26. The Florida Medicaid Provider Dental Services Coverage and Limitations Handbook (Dental Handbook) – November 2011 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code R. 59G-4.060.

27. The Dental Handbook states "Medicaid reimburses for services that are determined medically necessary ..."

28. The definition of "medically necessary" is found in the Fla. Admin. Code R. 59G-1.010, which 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; 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.

29. The Dental Handbook states on page 2-3:

Covered Adult Services (Ages 21 and over):

The adult dental program provides for the reimbursement of full and removable partial dentures. Extractions and other surgical procedures essential to the preparation of the mouth for dentures are reimbursable if the patient is to receive dentures. Procedures relating to dentures such as repairs, relines and adjustments are reimbursable.

Medicaid will reimburse for medically-necessary emergency dental procedures to alleviate pain and or infection for eligible adult Medicaid recipients 21 years of age or older. Emergency dental care shall be limited to emergency problem-focused evaluations, necessary radiographs to make a diagnosis, extraction, and incision and drainage of abscess.

30. Petitioner's current dental status does not rise to the above definition of emergency dental care.

31. In regard to a partial denture, on pages 2-30 through 2-31 the Dental Handbook states, in part:



For all eligible Medicaid recipients, Medicaid may reimburse for the fabrication of full and removable partial dentures ...

The standard for all dentures, whether seated immediately after extractions or following alveolar healing, is that the denture be fully functional.

...

Partial dentures refer to the prosthetic appliance that replaces missing teeth and is on a framework that is removed by the patient. Prior authorization is required for reimbursement of removable partial dentures and must be submitted to the dental consultant for determination of medically necessity prior to the procedure being performed.

32. Petitioner has presented a statement from a Dr. D. Green that sufficient support exists for the partial denture. It is noted, however, that Dr. Green did not appear at the hearing nor are his/her credentials known.

33. Dr. Green also wrote "current panoramic radiograph has been enclosed." It is noted that petitioner believes the appropriate radiographs may not have been provided to DentaQuest.

34. Dental professionals from DentaQuest state that, due to petitioner's existing dental status, a partial denture would not be functional.

35. The burden of proof in this matter is vested with the petitioner. Petitioner must establish, by the required evidentiary standard, that the partial denture is medically necessary. To do so, each condition of medical necessity must be satisfied.

36. A hearing officer must consider all evidence; judge the credibility of witnesses; draw permissible inferences from the evidence; and reach findings of fact based on competent substantial evidence. After reviewing evidence and testimony on a

comprehensive basis, petitioner has not demonstrated the partial denture is medically necessary. The following conditions of medical necessity have not been satisfied:

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;

37. Should the petitioner desire, a new prior authorization can be submitted to the respondent for review. The prior authorization should contain those radiographs believed to be the most current. If dissatisfied with any future decision, petitioner can pursue hearing rights associated with that decision.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is DENIED and respondent'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 10<sup>th</sup> day of June, 2014,

in Tallahassee, Florida.



Frank Houston  
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Copies Furnished To:

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