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

[redacted]

APPEAL NO. 14F-02385

PETITIONER,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 1, 2014 at approximately 11:31 a.m. All parties and witnesses appeared by telephone.

APPEARANCES

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

For the Respondent: Mara Perez, senior human services program specialist, Agency for Health Care Administration (Medicaid).

STATEMENT OF ISSUE

At issue is whether respondent's decision to partially deny petitioner's request for extraction of her impacted wisdom teeth was proper.

PRELIMINARY STATEMENT

The minor petitioner was not present but was represented by her mother, [redacted] Appearing for the respondent was Dr. Ronald Ruth, chief medical officer for Managed Care of North America (MCNA) and Marianna Acevedo, grievance

and appeals manager. Respondent entered a 34 page document into the record which was marked respondent's exhibit 1.

FINDINGS OF FACT

1. Petitioner is a 17-year old female, born June 7, 1996. At all times relevant to this hearing, petitioner has been eligible for and receiving Medicaid.

2. MCNA Dental (MCNA) is contracted by the Agency for Healthcare Administration (AHCA) as its prior service authorization organization (PRO). The PRO reviews dental procedures requested by Medicaid plan members under the age of 21, to determine if the services requested are medically necessary.

3. On 10/3/2013, MCNA sent the petitioner a notice that a request received on 10/2/2013 from Jerome Bistritz, DDS and that the following services were approved:

Tooth	Code	Description
17	7240	Removal of impacted tooth, completely bony
32	7240	Removal of impacted tooth, completely bony

It also advised that the following were NOT APPROVED...

Tooth	Code	Description
1	7240	Removal of impacted tooth, completely bony
16	7240	Removal of impacted tooth, completely bony
	9241	Intravenous Conscious Sedation/Analgesia-First 30 minutes
	9242	Intravenous Conscious Sedation/Analgesia-each additional 15 minutes
	9242	Intravenous Conscious Sedation/Analgesia-each additional 15 minutes

4. MCNA's notice also provided the basis for the denied services, noting:

The dental service(s) that you or your dentist asked for are being *Not Approved* because the Clinical Reviewer has determined that the requested service(s) will not correct or improve your condition. Your condition does not meet MCNA's Criteria for **Oral Surgery** [emphasis added] as stated in MCNA's Utilization Review Guidelines. The information we received does not show that:

- Have a tooth that is broken below the bone level.
- Have extra (more than 32) teeth.
- Have a cyst around the tooth.
- Have bad gum disease.
- Have a disease around the tooth that is not treatable.
- Have inflammation and/or infection involving your gums around the tooth.
- Have a bad cavity in your tooth that cannot be filled.
- Have pain and swelling because the tissue is preventing your tooth from coming through your gum.
- Have a tooth that needs to be pulled as part of an approved orthodontic treatment plan.
- Have a baby tooth that will not fall out naturally.
- Need this service on a wisdom tooth that has fully formed.
- Have a physical problem that stops you from using local anesthesia.
- Have a mental or developmental disability.
- Have a physical disability.
- Have uncontrollable behavior.
- Have a history of having problems with surgical procedures.
- Have a problem that causes local anesthesia to not work for you.
- Have a complex medical history.
- Have a severe infection
- Have an approved treatment that requires sedation.

The Clinical Reviewer has determined that your tooth/teeth do not need to be pulled. The services you asked for are not medically necessary.

5. At the hearing, [redacted] stated that her daughter has problems swallowing and that the pain she is having with her upper wisdom teeth are making it hard for her daughter to chew. She explained that she does not have the money to pay for the anesthesia, but if she can get approval to have teeth #1 and #16 (upper wisdom teeth) removed, she would pay for a local anesthesia.

6. Dr. Ruth of MCNA explained that the panoramic x-ray provided with the prior authorization clearly showed that tooth #17 and #32 were pathologically horizontally impacted and should be removed but no such evidence of pathology showed for tooth #1 and #16, and thus, did not meet criteria for removal.

CONCLUSIONS OF LAW

7. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

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

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

10. The burden of proof was assigned to the petitioner, per Fla. Admin. Code R. 65-2.060(1).

11. The standard of proof is "preponderance of the evidence," as provided by Fla. Admin. Code R. 65-2.060(1).

12. Florida Statutes § 409.912 notes that AHCA shall purchase goods and services for Medicaid recipients in the most cost-effective manner possible, consistent with the delivery of quality medical care. The statutes further provide that AHCA shall contract on a prepaid or fixed-sum basis with appropriately licensed prepaid dental health plans to provide dental services.

13. The Florida Medicaid Provider General Handbook (Provider Handbook) – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin.

Code R. 59G-4. In accordance with the Florida law, the Handbook discusses HMO Coverage, stating 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.

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

15. The Florida Medicaid Dental Services Coverage and Limitations Handbook (Dental Handbook) – November 2011 is incorporated by reference into Fla. Admin. Code R. 59G-4.060. On page 2-3 of the Dental Handbook it states:

> Covered Child Services (Ages under 21):
>
> The Medicaid children's dental services program may provide reimbursement for diagnostic services, preventive treatment, restorative, endodontic, periodontal, surgical procedures and extractions, orthodontic treatment, and full and partial dentures (fixed and removable) for recipients under age 21.
>
> Note: See the Florida Medicaid Provider Reimbursement Schedule for information on which dental procedure codes apply to recipients under age 21.

16. Page 2-3 of the Dental Handbook also states, in relevant part:

> Prior Authorization

> A number of services must be authorized before providing them to the recipient. All requests for prior authorization (PA) of dental procedures must be submitted on the dental "Prior Authorization Request for Treatment Authorization" form (DPA 1041).
>
> Note: See the Florida Medicaid Provider Reimbursement Schedule for dental procedure codes requiring prior authorization. These are identified in the "Spec" column of the fee schedule.

17. The Florida Medicaid Provider Reimbursement Schedule for dental procedures, specifically, the Dental General Fee Schedule[1], effective January 1, 2014, has been promulgated into law and incorporated by reference at Fla. Admin. Code R. 59G-4.002.

18. Pages 4 and 5 of the Dental Fee Schedule provide descriptions and limitations for various procedure codes. The fee schedule indicates the procedures code "D7240," described as "Removal Of Impacted Tooth-Completely Bony," procedure code "D9241 Intravenous Conscious Sedation/Analgesia – First 30 Minutes," and code "D9242 "Intravenous Conscious Sedation/Analgesia – Each Additional 15 Minutes" do not require prior authorization in order that the services be provided to recipient.

19. In careful review of the above-cited authorities and evidence, the undersigned concludes that although petitioner bears the burden of proof, the respondent improperly denied petitioner's request for the extraction of wisdom teeth numbered 1 and 16 and for the anesthesia associated with their removal. Respondent's denial was improper as the requested services do not require prior authorization per the Dental General Fee Schedule and MCNA's services cannot be more restrictive than fee-for service.

DECISION

[1] While MCNA used their "Oral Surgery" criteria in making their determination (see paragraph 4 in the order), the procedures codes under appeal do not appear in Medicaid's Oral Surgery Fee Schedule but only in the Dental General Fee Schedule.

Petitioner's appeal is GRANTED. The respondent is ORDERED to approve the extraction (7240) of tooth # 1 and #16 (of petitioner's upper wisdom teeth), as well as the intravenous sedations/analgesia (9241 and 9242, 9242) required for this procedure.

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 12th day of June, 2014,

in Tallahassee, Florida.

Warren Hunter

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Copies Furnished To: [redacted] Petitioner
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