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

[redacted]

APPEAL NO. 15F-03262

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.

_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 2, 2015 at 2:06pm.

APPEARANCES

For the Petitioner: [redacted]

For the Respondent: Cindy Henline, Medical Health Care Analyst,

STATEMENT OF ISSUE

At issue is respondent's March 11, 2015 decision to deny the March 6, 2015 pre-authorization request for dental services. The petitioner's concern is who will be responsible for paying for the follow-up treatment that Medicaid denied. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

Appearing as a witness for the Agency from Prestige Health Care was Esther Pierre-Louis, Supervisor of Grievance and Appeals. Appearing as witnesses for the Agency from MCNADental were Jessica Cruz, Appeals Team Leader, and Dr. Ronald Ruth, Chief Dental Officer.

The respondent submitted evidence prior to the hearing. The evidence is in two distinct parts. Part one is from the respondent and was entered as Respondent Exhibit 1. Part two was prepared by Prestige Health Choice/MCNADental and was entered as Respondent Exhibit 2.

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 three year old Medicaid recipient enrolled with Prestige Health Choice, LLC beginning May 1, 2014. At all times relevant to this proceeding, petitioner was eligible to receive Medicaid services.

2. Prestige Health Choice is a Health Maintenance Organization (HMO) which is contracted by the respondent to provide services to certain Medicaid recipients in Florida. Prestige Health Choice contracts with MCNADental to provide dental coverage for their customers.

3. The petitioner received dental services on June 10, 2014 at A+ Smiles Children's Dentistry performed by [redacted]. The services were nitrous oxide and resin-based composite for surfaces M and F of teeth E, F, and G.

4. The petitioner explained the end of the procedure performed on June 10, 2014 was rushed as the child had been on nitrous oxide for nearly 30 minutes. As a result of the rush to complete the procedure, the resin did not cling to the tooth properly.

5. The petitioner went for a follow up visit on December 16, 2014. During that visit it was found that the treatment was not successful. The nurse and petitioner's parents could see the surface had turned yellow following the cleaning. During the visit it was learned that the cavity had spread due to food bits getting under the resin. As a result of this failed treatment, the treatment needed to be completed again.

6. A+ Smiles submitted an authorization request to MCNADental on March 6, 2015 for the petitioner to receive nitrous oxide, and have resin-based composite on surfaces M, F, and L of the teeth E, F, and G.

7. MCNADental approved the nitrous oxide and the resin based composite for teeth E, F, and G on surface L of each tooth (one surface) on March 11, 2015. MCNADental denied the request for resin based composite of three surfaces MFL on each of the teeth listed above as surfaces M and F received the same treatment on June 10, 2014.

8. The petitioner received the follow-up treatment on March 13, 2015 on surfaces M, F, and L for teeth E, F, and G.

9. Dr. Ruth confirmed the services received on June 10, 2014 were paid by MCNADental.

10. Dr. Ruth explained the services requested are only available once every three years per tooth number or letter per surface according to the Medicaid Handbook.

11. Dr. Ruth explained this case is not a case regarding medical necessity, but rather the services received being completed properly.

12. Dr. Ruth opined that when a treatment fails due to provider error or rushing, which is the situation in this case, the dentist must make the correction at no cost to MCNA or the petitioner. He explained that a provider should not be paid twice for the same service when the original service was not performed correctly.

13. Ms. Cruz reported there is a quality assurance program at MCNADental. They will contact the provider regarding this situation. The petitioner may also contact MCNA for additional assistance if he receives bills for the services that were not covered by MCNADental.

14. AHCA reported the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) policy does include dental services for children under age 20.

PRINCIPLES OF LAW AND ANALYSIS

15. 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.

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

17. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

19. Federal Medicaid Regulations at 42 C.F.R. § 431.220 states in relevant part, "(a) The State agency must grant an opportunity for a hearing to the following: (1)

Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness (2) Any recipient who requests it because he or she believes the agency has taken an action erroneously..."

20. The CMS State Medicaid Manual, published by the Centers for Medicare and Medicaid Services, Chapter 2 states in part:

> 2900 Fair Hearings and Appeals
> Section 1902(a)(3) of the Social Security Act requires that States "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness." Regulations implementing this section of law are found at 42 CFR 431 Subpart E. In addition, certain court decisions further amplify and modify the law and regulations governing the provision of notices and hearings to Medicaid applicants and recipients. Where appropriate, those decisions are cited.
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> 2900.1 Basic Responsibility (42 CFR 431.200 and 431.205).--Establish policies and procedures for assuring a system of fair hearings that meet all the requirements of the regulations and instructions.
> Notify and make available to the applicant or recipient the hearing procedures required by regulations and these instructions, if any of the following events occur:
> - denial of eligibility,
> - the claim is not acted upon with reasonable promptness,
> - termination of eligibility or covered services,
> - suspension of eligibility or covered services, or
> - reduction of eligibility or covered service

21. The above federal authority explains that an opportunity for a hearing must be granted when a Medicaid claim for service has been denied or when a recipient believes the agency has taken an action erroneously. The State Medicaid Manual further explains the recipient's right to a hearing when either Medicaid eligibility or a claim for a service under Medicaid is denied, terminated, reduced or delayed. The issue under appeal is the agency's denial of a Medicaid provider's prior authorization for payment of a service that was received on March 13, 2015. The Medicaid recipient has

no substantial interest in whether Medicaid pays for the service. This office conducts hearings for the Medicaid applicant or recipient when there has been a denial of Medicaid eligibility or a denial of a service; not a denial of payment to the provider of the service. See Fla. Admin. Code § 65-2.042, 65-2.043, 65-2.044.

22. The appeal is hereby dismissed as non-jurisdictional as petitioner has received the service. The only outstanding issue is the payment.

DECISION

Based upon the foregoing Findings of Fact and Principles of Law and Analysis, the appeal is dismissed.

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 26th day of June, 2015,

in Tallahassee, Florida.

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Copies Furnished To: [redacted] Petitioner
Marshall Wallace, Area 2, AHCA Field Office Manager