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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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



APPEAL NO. 15F-06672

PETITIONER,
Vs.

CASE NO.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter telephonically on September 21, 2015, at 3:30 p.m.

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner

For the Respondent:

Linda Latson, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the respondent incorrectly denied his request for a referral to a periodontist?

PRELIMINARY STATEMENT

[REDACTED] ("petitioner"), the petitioner, appeared on his own behalf. [REDACTED]

[REDACTED] Interpreter [REDACTED] with Language Service Associates, provided Creole-English translation for the hearing.

Linda Latson, R.N., Registered Nurse Specialist with the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency: Mindy Aikman, Grievance and Appeals Specialist with Humana; Jackelyn Salcedo, Complaints and Grievances Specialist with DentaQuest; and Susan Hudson, D.M.D., Dental Consultant with DentaQuest.

The respondent introduced Exhibits "1" through "5", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The hearing record was left open until the close of business on September 28, 2015 for the respondent to provide additional documents. Once received, this information was accepted into evidence and marked as respondent's Composite Exhibit "6". The hearing record was then closed.

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 58-year-old male.
2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.

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3. The petitioner is enrolled in Humana Florida Medicaid Plan. Humana is a health maintenance organization ("HMO") which is contracted by the Agency for Health Care Administration, the respondent, to provide services to certain Medicaid eligible persons in the State of Florida.

4. The petitioner was enrolled in Humana effective July 1, 2015.

5. Humana has contracted DentaQuest to review prior authorization requests for dental services.

6. On or about July 7, 2015, the petitioner's dental provider submitted a prior authorization request to DentaQuest for a referral to a periodontist. The dental office submitted the request through the DentaQuest web-based portal.

7. The referral stated there was mobility on Teeth 25 and 26 and petitioner needed to see a periodontist as soon as possible; however, the referral contained no additional information explaining the need for a referral to a specialist. The petitioner's dentist did not provide a narrative along with the prior authorization request detailing the need for a referral, nor did the dentist provide radiographs or photographs of the affected areas.

8. The petitioner stated at the hearing the referral was for gum treatment but could provide no further information.

9. On July 23, 2015, DentaQuest sent a letter to the petitioner's dentist advising the referral was denied because it did not meet guidelines. The letter further stated the services should be completed by a general dentist.

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10. Also on July 23, 2015, DentaQuest forwarded a Notice of Action to the petitioner explaining his request was denied. The Notice of Action states "The requested service is not a covered benefit" and goes on to explain:

The facts that we used to make our decision are:

You do not need to see a specialist because your services can be performed by a general dentist. Please talk to your primary care dentist about your dental care needs. We have told your dentist this also.

11. DentaQuest completed an internal review of its decision to deny the petitioner's request for a referral to a periodontist on August 20, 2015. The notes of the Dental Consultant who reviewed and upheld the initial decision state as follows:

Appeal reviewed and upheld denial. At this point in time we cannot approve referral to the periodontist. Provider did not provide radiographs, proper narratives, reasons or a diagnosis that would lead us to refer to Periodontist. Swollen and pain are not sufficient for referral. It could be an Endodontic problem or a periodontal problem. We would need more information to determine proper course of treatment. Provider (GP) should have prescribed antibiotics and if there is that much mobility and bone loss then also it could lead to possible extraction.

12. DentaQuest contacted the petitioner's dental office after July 23, 2015 to request additional information that would clarify why the petitioner was being referred to a specialist. DentaQuest informed the dentist's office it would require a periodontal chart if the petitioner needed a deep cleaning. The dental office informed DentaQuest it does not perform deep cleanings. DentaQuest also inquired that, if the petitioner did require a deep cleaning, then why wasn't he referred to a different general dentist who does perform such cleanings.

13. At the time of the aforementioned conversation, the petitioner's dental office informed DentaQuest it would contact the petitioner to schedule an appointment

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for him to have a periodontal chart completed and to provide him with information regarding a different general dentist.

14. The petitioner testified that, as of the date of the hearing in this matter, his dentist's office had not contacted him to schedule an appointment for the completion of a periodontal chart.

CONCLUSIONS OF LAW

15. 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.

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

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

18. The petitioner in the instant matter is requesting a new service. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

19. 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.).

20. 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.

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21. Fla. Admin. Code R. 59G-1.010(166) explains that medical or allied care, goods, or services furnished or ordered must meet the definition of medically necessary or medical necessity, and defines medical necessity as:

- (a) "Medical necessary" or "medical necessity" means that medical or allied care, goods or services furnished or ordered must 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 defined by the Medicaid program and not be experimental or investigational;
 4. Be reflective of the level of service that can safely be furnished, 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.

22. The Florida Medicaid Provider General Handbook – July 2012 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.

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Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

23. Pages 1-28 and 1-29 of the Florida Medicaid Provider General Handbook provide a list of HMO covered services.

24. Page 1-30 of the Florida Medicaid Provider General Handbook, Optional Services, explains: "Other services that plans may provide include dental services, transportation, nursing facility and home and community-based services. Plans may also provide services under their contracts that Medicaid does not cover, such as over-the-counter drugs."

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

26. The Dental Services Coverage and Limitations Handbook – November 2011 is incorporated by reference into the Medicaid Service Rules by Rule 59G-4.060, Florida Administrative Code.

27. The Dental Services Coverage and Limitations Handbook describes Periodontal Services on Page 2-24. It states, in part:

Periodontal services may be reimbursed only for eligible recipients under 21 years of age who exhibit generalized periodontal pockets in excess of the 4-5 mm range. The fee for the service includes postoperative care. The nature of any condition must be documented on the periodontal chart (Appendix E) of the dental record.

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28. Periodontal services are not available to individuals 21 years of age and older through the Agency for Health Care Administration. For those under age 21, a periodontal chart must be completed detailing the nature of the condition.

29. The DentaQuest Complaints and Grievances Specialist testifying for the respondent explained DentaQuest may approve periodontal services but that it requires a periodontal chart before a member may be considered for such services.

30. Humana dental policy with respect to periodontal services is not more restrictive than that of the Agency for Health Care Administration.

31. Page 1-30 of the Florida Medicaid Provider General Handbook addresses Exemptions from HMO Authorization and explains "All services may be prior authorized by the HMO plan except for the following...." Dental services do not appear on the list of services which do not require prior authorization.

32. The Humana Member Handbook addresses services which are available without a referral and prior authorization. Periodontal services are absent from the list of services that do not require prior authorization.

33. In the present case, the petitioner's dentist did not provide DentaQuest with a narrative detailing the petitioner's need for a referral to a periodontist, nor did he provide radiographs, photographs, or a periodontal chart. The petitioner's dentist did not provide DentaQuest with the pertinent information it needed to make a decision, nor was this information provided to the hearing officer. Therefore, there is no evidence to support a conclusion that DentaQuest improperly denied the request.

34. Pursuant to the above, the petitioner has not met his burden of proof to show the respondent improperly denied his request for a referral to a periodontist.

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DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal 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 2nd day of November, 2015,

in Tallahassee, Florida.


Peter J. Tsamis
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Copies Furnished To: [REDACTED] Petitioner
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