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

[redacted]

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 06 Pinellas
UNIT: AHCA

RESPONDENT.
_____/

APPEAL NO. 15F-07555

CASE NO.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 22, 2015, at approximately 11:21 a.m.

APPEARANCES

For Petitioner: [redacted] Petitioner's Mother

For Respondent: Stephanie Lang, R.N. Specialist/Fair Hearing Coordinator
Agency for Healthcare Administration

STATEMENT OF ISSUE

Whether the Agency was correct in denying Petitioner's request for orthodontic treatment including braces, fixed appliance therapy, and monthly treatment visits. Petitioner holds the burden of proof on this issue by a preponderance of the evidence.

PRELIMINARY STATEMENT

Appearing as witnesses for Respondent were Carlene Brock (Quality Operations Nurse with Amerigroup), Jacqueline Salcedo (Complaints and Grievance Specialist with DentaQuest), and Dr. Susan Hudson (Dental Consultant with DentaQuest).

Respondent admitted twelve exhibits into evidence, which were marked and entered as Respondent's Exhibits 1 through 12. Petitioner submitted no exhibits into evidence. Administrative notice was taken of Florida Statutes 409.910, 409.962 through 409.965, 409.973, Florida Administrative Code Rules 59G-1.001, 59G-1.010, 59G-4.060, as well as the Medicaid Dental Services Coverage and Limitations Handbook (November 2011).

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the fair hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner is a Medicaid recipient under 21 years of age. Her orthodontist suggested treatment and explained to Petitioner's mother that Petitioner's spacing issues could cause problems, and her crossbite means her teeth will come in at an angle.

2. On or about August 24, 2015, Petitioner's orthodontist submitted a prior authorization request to Petitioner's Medicaid managed care plan, Amerigroup. DentaQuest handles the prior authorization reviews for Amerigroup members. Amerigroup requires prior authorization for orthodontic treatment for children under 21.

3. Petitioner's orthodontist noted that she had an anterior crossbite/traumatic occlusion, generalized spacing, and "bimax protrusion." He completed the Medicaid

Orthodontic Initial Assessment form (IAF) and submitted it with the request. The IAF indicated Petitioner has a crossbite of individual anterior teeth with destruction of soft tissue. He indicated a total score of 27 on this assessment.

4. DentaQuest received the prior authorization request on August 24, 2015. Amerigroup denied Petitioner's request for braces based on DentaQuest's recommendations by notice dated August 26, 2015. The notice indicated the request was denied because Petitioner did not show medical necessity by scoring 26 or more points on the IAF. The appliances were denied because Petitioner didn't show any bad habits which would require appliance therapy.

5. Petitioner scored a 12 on the initial assessment that DentaQuest's dental reviewer completed based on the submitted information. DentaQuest found that Petitioner has labio-lingual spread and an overjet, but not an anterior crossbite of individual teeth with tissue damage.

6. The difference in scoring on the initial assessment is the result of two different reviewers. The DentaQuest reviewer indicated that the models, x-rays, and photos do not meet Medicaid's requirements for anterior crossbite.

CONCLUSIONS OF LAW

7. 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 Chapter 120.80, Florida Statutes.

8. This is a final order pursuant to Sections 120.569 and 120.57, Florida Statutes.

9. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

10. In accordance with Florida Administrative Code Rule 65-2.060(1), the burden of proof was assigned to the Petitioner. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

11. Section 409.912, Florida Statutes, 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.

12. The Florida Medicaid Provider General Handbook (Provider Handbook) – July 2012 is incorporated by reference in Florida Administrative Code Rule 59G-5.020(1). In accordance with the Florida law, the Provider Handbook discusses managed care 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.

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

14. All Medicaid services must be medically necessary, including dental. Florida Administrative Code, 59G-1.010(166), defines medical necessity, as follows:

> "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.

15. The Medicaid Dental Services Coverage and Limitations Handbook, November 2011 (Dental Handbook) is promulgated into law by Rule 59G-4.060(2), Florida Administrative Code. Rule 59G-4.060(3), Florida Administrative Code specifically promulgates by incorporation the forms included in the Dental Handbook, including the Medicaid Orthodontic Initial Assessment Form (IAF). Page 2-2 of the Dental Handbook states that all dental services must meet the definition of medical necessity as set forth above.

16. As the petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services

(EPSDT) requirements. 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…

17. The Dental Handbook states on page 1-2: "The children's dental program provides full dental services for all Medicaid eligible children age 20 and below." Page 2-3 states that this includes medically necessary orthodontic treatment.

18. Orthodontic treatment is covered under the above authorities for a child under 21 if it is a medically necessary service. Page 2-15 of the Dental Handbook states as follows:

> 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 malpositions of the teeth.
>
> Treatment is routinely accomplished through fixed appliance therapy and monthly maintenance visits. Removable (D8210) or fixed (D8220) appliance therapy may be reimbursed, but is dependent upon individual case circumstances. If requesting a removable (D8210) or fixed (D8220) appliance for thumb sucking or other habit, clinical photos must be submitted with the prior authorization request for the determination of medical necessity. (emphasis added)

Page 2-16 explains further how this is determined:

> 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) AHCA-Med Serv Form 013;
- 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
- Orthognatic surgery, to include extractions, required or provided in conjunction with the application of braces.

19. Regarding scoring the IAF, the Dental Handbook explains on page 2-18 that a score of less than 26 "...does not say that [the case does] 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."

20. Petitioner alleges handicapping malocclusion, which is measured by the IAF. She does not allege any of the criteria for approval such as cleft lip or orthognatic surgery. Petitioner's orthodontist noted she had an anterior crossbite, which the form instructed to mark an X and score no further. He gave Petitioner a score of 27 on the assessment he completed. There is no information as to how he obtained this specific number. To meet Medicaid's guidelines for an anterior crossbite as described on page A-4 of the Dental Handbook, "destruction of soft tissue must be clearly visible in the mouth and reproducible and visible on the study models. A minimum of 1.5mm of tissue recession must be evident to qualify as soft tissue destruction in anterior crossbite cases."

21. DentaQuest's dental consultant appeared at the hearing, and stated Petitioner's orthodontist did not score the IAF according to Medicaid rules. DentaQuest's multiple reviewers did not find evidence of the anterior crossbite with tissue damage that Petitioner's orthodontist indicated was present. In the absence of contrary testimony,

Petitioner was unable to meet her burden of proof. As Petitioner has not shown that she meets Medicaid's requirements for general orthodontic treatment, it is unnecessary to determine whether she requires fixed appliance therapies as part of that care.

22. Petitioner is going by her treating provider's recommendations. Petitioner's treating orthodontist was not present at the hearing. Based on the Agency's definition of medical necessity excerpted above, "[t]he fact that a provider has…recommended…services does not, in itself, make such…services medically necessary or a medical necessity or a covered service."

23. After careful review of the relevant authorities, the testimony and the evidence in this matter, the hearing officer concludes that the Agency properly denied Petitioner's request for orthodontic treatment.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is DENIED, and the Agency'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 17 day of December, 2015, in Tallahassee, Florida.

Danielle Murray
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Copies Furnished To: [redacted] Petitioner
Don Fuller, Area 5, AHCA Field Office Manager