FILED
Dec 28, 2015
Office of Appeal Hearings
Dept. of Children and Families

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

APPEAL NO. 15F-08203

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 07 St. Johns
UNIT: AHCA

RESPONDENT.
_______________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 23, 2015 at 10:07a.m.

APPEARANCES

For the Petitioner: pro se

For the Respondent: Sheila Broderick, registered nurse specialist

STATEMENT OF ISSUE

Whether the petitioner is eligible to receive dental services through Medicaid. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (Agency or AHCA or respondent) administers the Florida Medicaid Program. Medicaid rules require that most recipients receive their Medicaid services through the Managed Care Plan. The Agency contracts

with numerous health care organizations to provide medical services to its program participants. United Healthcare (United) is the contracted health care organization in the instant case.

By notice dated September 8, 2015, United informed the petitioner that her request for multiple tooth extractions, bone surgery, and general anesthesia was denied in-part. United approved the tooth extractions and general anesthesia related to those extractions. United denied the bone surgery and the general anesthesia related to the bone surgery. The notice explained that bone surgery is not a covered dental benefit. In addition, the clinical information submitted was insufficient to prove that bone surgery was medically necessary.

The petitioner timely requested a hearing to challenge the denial decision on September 28, 2015.

There were no additional witnesses for the petitioner. The petitioner did not submit exhibits.

Present as witnesses for the respondent were Christian Laos, senior compliance analyst with United and Dr. Miguel Fernandez, chief medical officer with United. Respondent's Composite Exhibit 1 was admitted into evidence.

The record was held open until close of business on November 25, 2015 for the submission of additional evidence. No additional evidence was received from either party. There was no communication from either party requesting a deadline extension. The record was 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 (age 57) is a Florida Medicaid recipient. The petitioner is enrolled with United HMO.

2. The petitioner's oral surgeon, [redacted] requested prior authorization from United to extract her remaining four teeth (procedure code D7210) and remove two prominent boney ridges, called tori (procedure code D7473), on the roof of her mouth in order to prepare her for a full set of dentures. [redacted] also requested general anesthesia related to the extractions and surgery (procedure codes D9220 and D9221).

3. United approved the extractions and the general anesthesia related to the extractions. United denied the bone surgery as a non-covered dental benefit. The general anesthesia related to the bone surgery was also denied.

4. The oral surgeon has performed the extractions. All of the petitioner's teeth have been removed. The boney rides have not been removed due to the denial decision. The boney ridges are large; they prevent the petitioner from being able to chew solid foods. She is limited to a soft food diet. The ridges are shredding the surrounding gum tissue; this causes the petitioner a great deal of pain.

5. Dr. Miguel Fernandez, chief medical officer with United, testified that removal of tori, in order to fit patients with dentures, is a common practice. Tori are considered part of the jaw bone, not part of the mouth. Tori removal surgery is not a covered dental benefit because the procedure cannot be performed by a general dentist. The surgery

is considered a medical benefit because the procedure must be performed by an oral surgeon. The petitioner's oral surgeon included a dental procedure code on the prior authorization request form instead of a medical procedure code. The request was denied because the provider used the wrong procedure code.

6. Dr. Fernandez testified that the bone surgery would most likely have been approved if the provider has used the correct procedure code. Dr. Fernandez noted, however, that he could not make a conclusive determination because he had not reviewed the petitioner's clinical records, nor was he involved in the initial determination.

7. Sheila Broderick, representative for the respondent, testified that AHCA's core contract with United requires that the company facilitate the coordination of medical services. Ms. Broderick asked United to describe the assistance it provided to resolve the medical versus dental procedure code issue with the petitioner.

8. United acknowledged that it had not communicated with the dental provider regarding this matter. Christian Laos, senior compliance analyst with United agreed to reach out to the oral surgeon, [redacted] after the hearing to educate him about proper procedure codes and help facilitate a new prior service authorization request. Mr. Laos was to provide a status update to the petitioner at the conclusion of his contact with the dental provider. The petitioner was to inform the hearing officer if the matter had been resolved to her satisfaction. There was no additional communication from either party.

9. The hearing record was also held open for United to provide the authorities which define its adult dental service coverage and limitations. United did not provide any additional evidence to the hearing officer.

CONCLUSIONS OF LAW

10. By agreement between the 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.

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

12. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner. The standard of proof in an administrative hearing is by a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

13. All Medicaid services must be medically necessary. The definition of medical necessity is found in the Fla. Admin Code. R. 59G-1.010 and states:

> (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.

14. Fla. Admin. Code R. 59G-4.060 addresses dental services and states, in part:

> (2) All dental services providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Dental Services Coverage and Limitations Handbook, November 2011, ... and the Florida Medicaid Provider Reimbursement Handbook, ADA Dental Claim Form, July 2008, which are incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated by reference in Rule 59G-4.001, F.A.C. ...

15. The Florida Medicaid Dental Handbook (Dental Handbook) is incorporated by reference into Fla. Admin. Code R. 59G-4.060 and addresses covered adult services, ages 21 and over, on page 2-3:

> 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.

16. The Dental Handbook defines oral surgery on page 2-13 and expounds on covered adult services:

> Oral surgery services include extractions as well as surgical and adjunctive treatment of diseases, injuries, deformities, and defects of the oral and maxillofacial [face or jaw bone] regions.
>
> For recipients 21 years and older, Medicaid covers extractions and other surgical procedures essential to the preparation of the mouth for dentures.

17. The cited authorities explain that surgery needed to prepare a patient for dentures is a covered service in the adult dental program.

18. The petitioner's oral surgeon requested authorization to extract her remaining teeth and surgically remove large bony ridges (tori) in her mouth in order to prepare her for dentures. The respondent denied the bone surgery as a non-covered dental benefit.

19. The controlling legal authorities state that oral surgery, including surgery to the face or jaw bone, required to prepare a patient for dentures is a covered service in the Medicaid adult dental program.

20. After carefully reviewing the evidence and the controlling legal authorities, the undersigned concludes that the respondent's decision in this matter was incorrect.

DECISION

The appeal is GRANTED. The respondent is ordered to approve the bone surgery, as well as the anesthesia required for the 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 28 day of December, 2015,

in Tallahassee, Florida.

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Copies Furnished To: [redacted] Petitioner
Debbie Stokes, Area 4, AHCA Field Office Manager