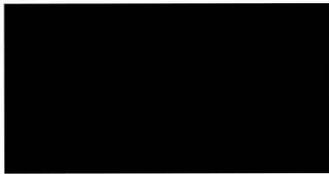


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

NOV 10 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-06746

PETITIONER,

Vs.

CASE NO.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 6, 2015, at 10:45 a.m., in Fort Lauderdale, Florida.

APPEARANCES

For the Petitioner:



Petitioner's mother

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 Agency for Health Care Administration incorrectly denied her request to remove her wisdom teeth?

PRELIMINARY STATEMENT

██████████ the petitioner's mother, appeared on behalf of the petitioner, ██████████ ("petitioner"), who was not present. ██████████ may sometimes hereinafter be referred to as the petitioner's "representative".

Linda Latson, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following appeared as witnesses on behalf of the Agency: Vincent Pantone, M.D., Chief Medical Officer of Better Health; Diana Anda, Grievance and Appeals Supervisor at Better Health; Susan Hudson, D.M.D., Dental Consultant with DentaQuest; and Haydee Penaranda, Complaints and Grievances Specialist with DentaQuest.

The respondent introduced respondent's Exhibits "1" through "3", inclusive, at the hearing, which were accepted into evidence and marked accordingly. The hearing record in this matter was left open until the close of business on October 13, 2015 for the petitioner to provide medical documentation supporting the need for the removal of the petitioner's wisdom teeth and the respondent to provide a copy of the Better Health Member Handbook. Once received, the petitioner's information was accepted into evidence and marked as petitioner's Exhibit "1". Although the respondent attempted to transmit the Better Health Member Handbook after the hearing, what was received by the Office of Appeal Hearings was an email attachment consisting of 46 blank pages. Since the respondent's witness proffered testimony at the hearing concerning the Better Health and DentaQuest criteria for the removal of wisdom teeth, the absence of the Better Health Member Handbook was not detrimental to arriving at a decision in this

matter. Therefore, the hearing record was closed on October 13, 2015 as set forth at the hearing with the absence of the Better Health Member Handbook.

At the respondent's request, the hearing officer took administrative notice of the Dental Services Coverage and Limitations Handbook.

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 16-year-old female.
2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.
3. The petitioner is an enrolled member of Better Health. Better Health is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.
4. The petitioner's effective date of enrollment with Better Health was July 1, 2014.
5. Better Health provides certain dental benefits to its members. With regard to its members under age 21, these benefits include the surgical extraction of wisdom teeth when such medical intervention is determined to be medically necessary.
6. Better Health has contracted DentaQuest to complete prior authorization reviews of requests for dental services by its members.
7. On or about August 3, 2015, the petitioner's dental provider submitted a prior authorization request to DentaQuest for the following services:
 - general anesthetic – first 30 minutes

- extraction of impacted tooth covered by bone Tooth 17
- extraction of impacted tooth covered by bone Tooth 32
- extraction of impacted tooth covered by bone Tooth 1
- extraction of impacted tooth covered by bone Tooth 16
- general anesthesia – each additional 15 minutes
- general anesthesia – each additional 15 minutes

8. In a Notice of Action dated August 4, 2015, DentaQuest informed the petitioner it denied her request for the removal of her wisdom teeth. The Notice of Action (*Resp. Exhibit 1*) states, in part:

We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (*See Rule 59G-1.010*)

X Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

X Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

X Must meet accepted medical standards and not be experimental or investigational.

X The requested **service is not a covered benefit**.

9. The Notice of Action (*Resp. Exhibit 1*) goes on to explain:

The facts that we used to make our decision are:

- We cannot approve anesthesia, because the main treatment was denied. Please follow up with your dentist.
- The information your dentist sent shows your tooth does not need to be removed. Your tooth has no sign of infection and your dentist has not told us that you are in pain. Please follow up with your dentist.
- The information your dentist sent shows your tooth does not need to be removed. Your tooth has no sign of infection and your dentist has not told us that you are in pain. Please follow up with your dentist.
- The information your dentist sent shows your tooth does not need to be removed. Your tooth has no sign of infection and your dentist has not told us that you are in pain. Please follow up with your dentist.
- The information your dentist sent shows your tooth does not need to be removed. Your tooth has no sign of infection and your dentist has not told us that you are in pain. Please follow up with your dentist.
- We cannot approve anesthesia, because the main treatment was

denied. Please follow up with your dentist.

- We cannot approve anesthesia, because the main treatment was denied. Please follow up with your dentist.

10. Each of the lines in Paragraph 9 corresponds with the matching line in Paragraph 7.

11. DentaQuest completed an internal reconsideration of its decision to deny the petitioner's request on or about September 10, 2015. The Dental Consultant notes associated with that review (*Resp. Exhibit 2*) state as follows:

Denial upheld. We received and reviewed all submitted documentation (radiographs, ADA form, Narrative, notes, etc.) for our final determination. No sign of infection or other medical reason for removal. No submitted narrative.

12. The note from the petitioner's dentist (*Pet. Exhibit 1*) provided by the petitioner's representative after the hearing explains as follows: "The patient presents with a history of pain and discomfort from the above listed teeth. These teeth are unable to erupt normally and surgical removal is indicated. The upper wisdom teeth are affecting the periodontal health of the surrounding dentition necessitating their removal." The note goes on to list the wisdom teeth, Teeth 1, 16, 17, and 32.

13. The dentist appearing for the respondent testified DentaQuest will approve the removal of a wisdom tooth if the tooth exhibits signs of infection or pathology, or if the individual is experiencing pain due to malpositioning of the tooth.

14. The note from the petitioner's dentist (*Pet. Exhibit 1*) does not indicate the presence of an infection associated with any of the wisdom teeth.

15. Pathology refers to a disease, such as when a cyst or tumor is associated with the wisdom tooth.

16. The note from the petitioner's dentist (*Pet. Exhibit 1*) does not indicate the presence of pathology associated with any of the wisdom teeth.

17. The dentist appearing for the respondent testified in order for DentaQuest to approve the extraction of a wisdom tooth due to malpositioning, at least one-half of the tooth's root must have formed. The reason for this is because the formation of the root may push the tooth into position.

18. The petitioner's wisdom teeth do not yet have the requisite root formation.

19. The petitioner's representative testified at the hearing that the petitioner is in severe pain and is prescribed pain medication; the petitioner's gums are swollen; the petitioner is sometimes unable to have dinner because of the pain in her mouth; and the petitioner is missing school due to pain associated with her wisdom teeth.

20. The dentist appearing for the respondent testified that some pain is normal with the formation and eruption of wisdom teeth. The pain that needs to be addressed is severe pain that lasts for an extended length of time.

21. The note from the petitioner's dentist (*Pet. Exhibit 1*) lists the medications the petitioner is presently taking as magnesium and propranolol. The note does not indicate the petitioner is currently prescribed or taking any pain medication.

22. The note from the petitioner's dentist (*Pet. Exhibit 1*) does not indicate the petitioner's gums are swollen. It documents no inflammation surrounding any of the petitioner's wisdom teeth.

23. The note from the petitioner's dentist (*Pet. Exhibit 1*) does not state the petitioner is unable to eat because of pain associated with her wisdom teeth.

24. The note from the petitioner's dentist (*Pet. Exhibit 1*) does not indicate the petitioner is missing school due to pain associated with her wisdom teeth.

CONCLUSIONS OF LAW

25. 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, Fla. Stat.

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

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

28. In the present case, the petitioner is requesting an additional service. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

29. The standard of proof in an administrative hearing is 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.).

30. The Florida Medicaid program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid program is administered by respondent.

31. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

32. The definition of medically necessary is found in the Fla. Admin Code. R.

59G-1.010, which 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.

33. 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.

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

34. Page 1-28 of the Florida Medicaid Provider General Handbook provides a list of HMO covered services. Page 1-30 of the Handbook explains "Other services that plans may provide include dental services, transportation, nursing facility and home and community-based services."

35. 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."

36. The Dental Services Coverage and Limitations Handbook – November 2011 is incorporated by reference in the Medicaid Service Rules by Fla. Admin. Code Rule 59G-4.060.

37. The Dental Services Coverage and Limitations Handbook addresses Covered Child Services (Ages under 21) on Page 2-3 and states as follows:

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.

The removal of wisdom teeth falls under the category of surgical procedures and extractions.

38. The respondent's witnesses testified that Better Health and DentaQuest will also approve the surgical extraction of wisdom teeth if certain criteria are met. Therefore, Better Health dental policy is not more restrictive than that of the Agency for Health Care Administration.

39. In the present case, the petitioner did not provide any specific information documenting the need for the removal of any of her four wisdom teeth. The information contained in the note from the petitioner's dentist (*Pet. Exhibit 1*) is general in nature and does not indicate the presence of an infection or pathology associated with any of the petitioner's wisdom teeth. There is no mention of any inflammation. It also does not document the presence of severe pain that is being treated with pain medication, nor does it state the petitioner is unable to eat and is missing school due to pain associated with her wisdom teeth.

40. Pursuant to the above, the petitioner has not shown by a preponderance of the evidence that the respondent incorrectly denied her request for the removal of her wisdom teeth.

41. Should the petitioner be able to secure more specific information from her dentist documenting the need for the removal of each of her four wisdom teeth, she may resubmit this information to Better Health and DentaQuest along with a new request to have her wisdom teeth extracted.

DECISION

The petitioner's appeal is hereby 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

FINAL ORDER (Cont.)

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funds to assist in this review.

DONE and ORDERED this 10th day of November, 2015,

in Tallahassee, Florida.



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