

FILED

Dec 30, 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-07370

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 13 Hillsborough
UNIT: AHCA

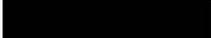
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 4, 2015, at approximately 9:07 a.m.

APPEARANCES

For Petitioner:  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 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 Dr. John Nackashi (Medical Director, Ped-I-Care), Dr. Shelley Collins (Assistant Medical Director, Ped-I-Care), Holly Estep (Assistant Director of Utilization Review, Ped-I-Care), and Dr. Dolce (Orthodontic Consultant, Ped-I-Care).

Petitioner submitted one exhibit, marked and entered as Petitioner's Exhibit 1. Respondent submitted six exhibits into evidence, which were marked and entered as Respondent's Exhibits 1 through 6. 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. His orthodontist referred him for orthodontic treatment due to a crossbite of his right posterior side. The treatment goal is to avoid developing problems later.
2. On or about July 23, 2015, Petitioner's orthodontist submitted a prior authorization request to Petitioner's Medicaid plan, Ped-I-Care. Medicaid requires prior authorization for orthodontic treatment for children under 21.
3. Petitioner's orthodontist completed the Medicaid Orthodontic Initial Assessment form (IAF) and submitted it with the request. The IAF indicated Petitioner has an

overjet, an overbite, and a posterior unilateral crossbite. He indicated a total score of 13 on this assessment.

4. Ped-I-Care denied Petitioner's request for braces by notice dated July 30, 2015. The notice indicated the request was denied because Petitioner did not show medical necessity for the service.

5. The Ped-I-Care reviewer indicated that the models, x-rays, and photos do not meet Medicaid's requirements for orthodontic care.

6. Petitioner is concerned that he will develop problems without the treatment. He argues that since his dentist recommended this, there is a problem that needs to be addressed. Respondent contends that although Petitioner may benefit from orthodontic treatment, the request does not currently meet Medicaid's requirements for coverage. Respondent suggested the dentist monitor the teeth going forward and resubmit the request if there is a change.

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. 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.

13. 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.

14. 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...

15. 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.

16. 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.

17. 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."

18. Petitioner alleges crossbite and future damage if left untreated. He does not allege any of the criteria for approval such as cleft lip or orthognatic surgery.

Petitioner's orthodontist gave Petitioner a score of 13 on the assessment he completed.

19. Petitioner argues that greater weight should be given to his treating provider's recommendations. Petitioner's treating providers were not present at the hearing. The letter is considered hearsay, which can bolster other evidence but cannot be a finding of fact on its own. Regardless, 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.”

20. Respondent agrees that Petitioner may need orthodontic care. However, his needs do not rise to the level necessary (determined by the assessment) for Medicaid to cover the service. Petitioner has not shown that he meets Medicaid’s requirements for general orthodontic treatment at the present time.

21. 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 30 day of December, 2015,

in Tallahassee, Florida.



Danielle Murray
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Copies Furnished To: [REDACTED] Petitioner
Don Fuller, Area 6, AHCA Field Office Manager