

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

FILED

Dec 10, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-08621

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing in the above referenced matter was convened on November 24, 2015 at 8:40 a.m.

APPEARANCES

For the Petitioner:


Petitioner's Mother

For the Respondent:

Lisa Sanchez
Senior Human Services Program Specialist

ISSUE

At issue is whether respondent's denial of petitioner's request for the following dental procedures was correct:

- D8070: Full braces
- D8220: Harmful habit appliance
- D8670: Monthly brace adjustments

The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

Petitioner was not present but represented by his mother. No exhibits were entered into evidence.

Ms. Sanchez appeared as both the representative and witness for the respondent. Present from Sunshine Health was Jennifer Arteaga, Grievance and Appeals Coordinator. Present from Dental Health and Wellness (DHW) was Dr. Kimberly Anderson, Dental Consultant. Respondent's exhibits "1" and "2" were accepted into evidence. Administrative notice was taken of the Florida Medicaid Provider General 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's date of birth is [REDACTED]
2. Petitioner's Medicaid services are provided through the Statewide Medicaid Managed Care Program. Since August 1, 2014 his Medicaid services have been provided by Sunshine Health.
3. On October 9, 2015 petitioner's orthodontist submitted a prior authorization request for braces; orthodontic treatments; and a harmful habit appliance. The request was submitted to Sunshine Health's dental vendor, DHW.
4. Orthodontic procedures, when medically necessary, are available to Florida Medicaid recipients who are under the age of 21.

5. A harmful habit appliance is used to prevent thumb sucking or tongue thrusting. When medically necessary, the appliance can also be approved for Medicaid recipients under the age of 21.

6. In support of the request, petitioner's orthodontist submitted an Initial Assessment Form (IAF) and dental x-rays.

7. The IAF is used to determine the severity of dental conditions, including the malocclusion of teeth. Scoring is assigned by both diagnostic observation and dental measurement.

8. An IAF score of "26" or more may indicate braces are medically necessary.

9. The treating orthodontist is not required to provide IAF scoring when one of the following conditions exist:

- Cleft palate deformities
- Deep impinging overbite. When lower incisors are destroying the soft tissue (more than an indentation)
- Crossbite of individual anterior teeth. When destruction of soft tissue is present
- Severe traumatic deviations
- Overjet greater than 9mm with incompetent lips or reverse overjet greater than 3.5 mm with reported masticatory and speech difficulties

10. For each of the above, the IAF directs the treating dentist to "Indicate an 'X' if present and score no further". When present, these conditions are indicative of a need for orthodontic treatment.

11. As petitioner's orthodontist did not identify any of the above dental conditions, the remainder of the IAF was scored.

12. The orthodontist identified:

- Anterior crowding. The scoring was "5".
- Overjet in mm: The scoring was "1"

- Overbite in mm: The scoring was "1"
- Labio-lingual spread in mm: The scoring was "2"

13. Petitioner's total IAF scoring was "9".

14. Other than the IAF and x-rays, no additional information was submitted regarding the need for a harmful habit appliance.

15. A licensed DHW dentist thereafter reviewed all submitted information. On October 15, 2015 a Notice of Action was issued to the petitioner denying braces; orthodontic treatment; and the harmful habit appliance. The notice stated, in part:

The request for braces is denied. Braces are medically necessary if there is information showing severe orthodontic abnormality resulting in a HLD Index score of 26 or greater. The information sent by your dentist did not show this condition [*Sic*].

The request for habit appliance is denied. Habit appliance is medically necessary if documentation describes a condition of thumb sucking or tongue thrusting. Information sent by your dentist did not show one of these conditions.

The request for periodic orthodontic treatment is denied. Periodic orthodontic treatment is medically necessary when there is documentation of an active orthodontic case and the date of the retention visit.

16. Petitioner's mother thereafter contacted the Office of Appeal Hearings and timely requested a fair hearing.

17. Upon receipt of the request for a hearing, a second DHW licensed dentist reviewed all submitted information. On November 5, 2015 petitioner was notified the original decision was upheld.

18. Petitioner has not experienced a head injury which contributed to the need for braces.

19. Petitioner does not have a speech problem due to the malposition of teeth.

20. Petitioner's mother argues braces will allow his teeth to be properly aligned.

Concern was specifically addressed to lateral and central incisor teeth.

21. Respondent agrees petitioner's teeth are misaligned. The severity of the misalignment, however, does not meet Medicaid requirement for braces. Additionally, no information was presented which documented the need for a harmful habit appliance.

CONCLUSIONS OF LAW

22. 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 § 120.80, Fla. Stat.

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

24. 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.

(3) The following forms that are included in the Florida Medicaid Dental Services Coverage and Limitations Handbook are incorporated by reference: Medicaid Orthodontic Initial Assessment Form (IAF), ...

25. The Florida Medicaid Dental Services Coverage and Limitations Handbook (Dental Handbook) states, on page 2-2, "Medicaid reimburses for services that are determined medically necessary ..."

26. In regard to medical necessity, the definition is found in 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.

27. As the petitioner is under 21 years of age, Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the petitioner's eligibility for orthodontic services. 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 ...

28. In regard to EPSDT requirements, The State Medicaid Manual, published by the Centers for Medicare and Medicaid Services states, in part:

5110. Basic Requirements...

...Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. **Appropriate limits may be placed on EPSDT services based on medical necessity** [Emphasis Added].

29. The Findings of Fact establish, when medically necessary, orthodontic procedures and harmful habit appliances are allowed for Medicaid recipients under the age of 21. The issue before the undersigned, therefore, focuses upon whether the requested orthodontic services and appliance meet medical necessity criteria.

30. Regarding braces and follow up treatment, analysis is directed to the Dental Handbook. Page 2-15 states:

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 malposition of the teeth.

31. Pages 2-16 through 2-18 continues by stating:

Orthodontic procedures are limited to recipients under age 21 whose handicapping malocclusion creates a disability and impairment to their physical development.

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) ...
- 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

- Orthognathic surgery, to include extractions, required or provided in conjunction with the application of braces.

...

The Medicaid Orthodontic Initial Assessment Form (IAF) is to be completed by the orthodontic provider at the initial evaluation of the recipient.

The IAF is:

- Designed for use as a guide by the provider in the office to determine whether a prior authorization (PA) request should be sent to the Medicaid orthodontic consultant; and
- A means by which the orthodontic provider may communicate to Medicaid's orthodontic consultant all the distinctive details pertaining to an individual case. ...

...

A score of 26 or greater may indicate that treatment of the recipient's condition could qualify for Medicaid reimbursement, and the orthodontic provider should submit a prior authorization request to Medicaid for consideration of orthodontic services. A score of 26 or greater on the IAF is not a guarantee of approval. It is used by the provider to determine whether diagnostic records should or should not be sent to the orthodontic consultant.

...

A score of less than 26 indicates that treatment of the recipient's condition may not qualify for Medicaid reimbursement, and the request for prior authorization may be denied.

This does not say that such cases do 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.

32. The Findings of Fact establish petitioner's orthodontist completed an IAF with a score total of "9".

33. The IAF did not established the petitioner has a cleft palate; deep impinging overbite; crossbite of anterior teeth; severe traumatic deviations; or overjet greater than 9mm.

34. The IAF did not establish petitioner met the requirements of the Medicaid Program for braces.

35. It is not disputed the petitioner has a misalignment of teeth. The greater weight of evidence does not establish petitioner's orthodontic status rises to the stringent requirement of a "most handicapping malocclusion" as defined the Dental Handbook.

36. As the medical necessity for braces has not been established, the need for periodic adjustments is moot.

37. Petitioner's orthodontist provided no information specific to why a harmful habit appliance was needed. The existing conditions which necessitate the need for an appliance are not known. Without this information, a thorough medical necessity review cannot be completed. As such, respondent's action in this matter was not improper.

38. The petitioner's request for braces and a harmful habit appliance have not satisfied the following condition of medical necessity:

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 ...

39. The undersigned has reviewed EPSDT and medical necessity requirements and applied such to the totality of the evidence. The petitioner has not established, by the greater weight of the evidence, that respondent's actions in this matter were incorrect.

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 10 day of December, 2015,

in Tallahassee, Florida.

Frank Houston

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Copies Furnished To:

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Judy Jacobs, Area 7, AHCA Field Office