


STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: November 3, 2017

AGENCY: Erie  
FH #: 7643665Y

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the Erie County	:
Department of Social Services	:

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on December 6, 2017, in Erie County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Leslie Ashinoss, DDS, Fair Hearing Representative


**ISSUE**

Was the Agency determination to deny prior authorization for a periodontal consultation because the services were not rendered by a periodontal specialist?

Was the Agency determination to deny the Appellant's dentist's prior approval request because the services rendered were not by a dentist who participates in the Medicaid plan correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, , has been in receipt of a Medical Assistance authorization and chosen Centers Plan for Healthy Living as his Medicaid Managed Care Organization.

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Centers Plan has contracted with HealthPlex (hereinafter, Agency) to provide dental benefits authorized through the Medicaid program.

2. On September 14, 2017, the Agency received an electronic claim from [REDACTED] for a periodontal consultation for the Appellant.
3. On October 24, 2017, the Agency denied the Appellant's dentist's prior approval request because the services were not rendered by a periodontal specialist.
4. On October 16, 2017, the Agency received an electronic claim from [REDACTED] for a periodontal consultation for the Appellant.
5. On October 24, 2017, the Agency determined to deny the Appellant's dentist's prior approval request because the services were not rendered by a Medicaid provider.
6. On November 3, 2017, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Section 365-a of the Social Services Law provides in part:

2. "Medical Assistance" shall mean payment of part or all of the cost of medically necessary medical, dental and remedial care, services and supplies, as authorized by this title or the regulations..., which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title and the regulations...

Section 364.2 of the Social Services Law provides in part, as follows:

The Department of Health shall be responsible for . . .

- (b) establishing and maintaining standards for all non-institutional health care and services rendered pursuant to this title, . . .

\* \* \*

Pursuant to regulations at 18 NYCRR 513.0, where prior approval of medical, dental and remedial care, services or supplies is required under the MA program, such prior approval will be granted when the medical, dental and remedial care, services or supplies are shown to be medically necessary to prevent, diagnose, correct or cure a condition of the recipient which: (1) causes acute suffering; (2) endangers life; (3) results in illness or infirmity; (4) interferes with the capacity for normal activity; or (5) threatens to cause a significant handicap. Pursuant to 18 NYCRR 513.6, the determination to grant, modify or deny a request initially must be made by

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qualified Department of Health professional staff exercising professional judgment based upon objective criteria and the written guidelines of the Department of Health and regulations, and commonly accepted medical practice.

Section 506.2(a) of 18 NYCRR provides that dental care in the Medical Assistance program shall include only preventive, prophylactic and other routine dental care, services and supplies, and dental prosthetic and orthodontic appliances required to alleviate a serious health condition including one which affects employability.

Section 506.3(b) of the Regulations requires prior approval for all dental prosthetic appliances which shall be furnished only if required to alleviate a serious health condition including one which affects employability.

#### Section I - Requirements for Participation in Medicaid

Dental providers must be licensed and currently registered by the New York State Education Department (NYSED), or, if in practice in another state, by the appropriate agency of that state, and must be enrolled as providers in the New York State Medicaid program.

No provider who has been excluded from the Medicaid program may receive reimbursement by the Medicaid program, either directly or indirectly, while such sanctions are in effect.

#### Qualifications of Specialists

A specialist is one who:

- ☐ Is a diplomate of the appropriate American Board; or,
- ☐ Is listed as a specialist in the American Dental Directory of the American Dental Association section on "character of practice"; or,
- ☐ Is listed as a specialist on the roster of approved dental specialists of the New York State Department of Health (DOH).

All dental providers enrolled in the Medicaid program are eligible for reimbursement for all types of services except for orthodontic care, dental anesthesia and those procedures where a specialty is indicated. There is no differential in levels of reimbursement between general practitioners and specialists.

☐ Orthodontic care is reimbursable only when provided by a board certified or board eligible orthodontist or an Article 28 facility which have met the qualifications of the DOH and are enrolled with the appropriate specialty code.

☐ General anesthesia and parenteral conscious sedation are reimbursable only when provided by a qualified dental provider who has the appropriate level of certification in dental anesthesia by the NYSED. The NYSED issues certificates in three titles:

- i. Dental General Anesthesia, which authorizes a licensed dentist to employ general anesthesia, deep sedation, or conscious sedation (parenteral or enteral route with or without inhalation agents); and
- ii. Dental Parenteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (parenteral or enteral route with or without inhalation agents); and

iii. Dental Enteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (enteral route only with or without inhalation agents).

Additional information is located on the New York State Education Department website (NYSED.gov):

<http://www.op.nysed.gov/prof/dent/dentanesthes.htm> Dental Policy and Procedure Code Manual Version 2017 (effective 1/1/2017) Page 5 of 73

#### Group Providers

A group of practitioners is defined in 18 NYCRR 502.2 as:

“...two or more health care practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment).”

Regardless of the arrangement among practitioners (associates, employer-employee, principal-independent contractor), practitioners who practice in a group setting are required to enroll as a group and to comply with the requirements associated with group practices.

Regardless of the nature of the practice (group, employer-employee, associate, etc.), the name, NPI and other required information of the dentist actually providing the service or treatment must be entered in the “Servicing Provider” or “Treating Dentist” field on all claims and prior approval requests.

#### Application of Free Choice

A Medicaid member is guaranteed free choice of a dental provider in obtaining the dental care available under the New York State Medicaid program.

#### Credential Verification Reviews

Credential Verification Reviews (CVRs) are periodic onsite visits of a provider’s place of business to ensure overall compliance with Medicaid regulations. These visits are conducted by the Medicaid program and the Office of the Medicaid Inspector General (OMIG), and assess such areas as:

- ☐ provider and staff identification and credentialing
- ☐ physical attributes of the place of business
- ☐ recordkeeping protocols and procedures regarding Medicaid claiming.

CVRs are conducted for such sites as:

- ☐ medical and dental offices
- ☐ pharmacies
- ☐ durable medical equipment retailers, and
- ☐ part time clinics.

CVRs are not performed at hospitals, nursing homes, etc.

Every effort is made to conduct these visits in a professional and non-obtrusive manner.

Investigators conducting these reviews will have a letter of introduction signed by the Office of the Medicaid Inspector General and a photo identification card.

(continued on next page) Dental Policy and Procedure Code Manual  
Version

## **DISCUSSION**

The Agency determination to deny prior authorization for a periodontal consultation because the services were not rendered by a periodontal specialist was correct. The Agency determination to deny the Appellant's dentist's prior approval request because the services rendered were not by a dentist who participates in the Medicaid plan was correct.

It is noted at the outset, that the Appellant is not medically homebound, but chose to appear only through his attorney-in-fact. The uncontroverted evidence at the hearing established that the Appellant, [REDACTED], has been in receipt of a Medical Assistance authorization and chosen Centers Plan for Healthy Living as his Medicaid Managed Care Organization. Centers Plan has contracted with HealthPlex (hereinafter, Agency) to provide dental benefits authorized through the Medicaid program. The record showed that on September 14, 2017, the Agency received an electronic claim from [REDACTED] for a periodontal consultation for the Appellant. On October 24, 2017, the Agency denied the Appellant's dentist's prior approval request because the services were not rendered by a periodontal specialist.

Pursuant to the Dental Policy and Procedure Code Manual issued by the New York Department of Health (hereinafter Dental Manual), page 4, a specialist is one who is a diplomate of the appropriate American Board; or, is listed as a specialist in the American Dental Directory of the American Dental Association section on "character of practice"; or, is listed as a specialist on the roster of approved dental specialists of the New York State Department of Health (DOH). It was undisputed that the dentist who submitted the claim for the periodontal consultation did not meet the criteria as a periodontal consultation and therefore was not eligible for Medicaid reimbursement of a periodontal consultation. The Dental Manual provides on page 70 that a consulted provider must be enrolled in one of the dental specialty areas recognized by the NYS Medicaid program. Here, it was undisputed that the requesting dentist was not a recognized periodontal specialist and was therefore not eligible for Medicaid payment. Accordingly, the Agency determination to deny prior authorization for a periodontal consultation because the services were not rendered by a periodontal specialist was correct.

The record showed that on October 16, 2017, the Agency received an electronic claim from [REDACTED] for a periodontal consultation for the Appellant. On October 24, 2017, the Agency determined to deny the Appellant's dentist's prior approval request because the services rendered were not by a dentist who participates in the Medicaid plan. Pursuant to the Dental Manual, page 4, dental providers must be licensed and currently registered by the New York State Education Department (NYSED), or, if in practice in another state, by the appropriate agency of that state, and *must be enrolled as providers in the New York State Medicaid program* (emphasis added). Here, it was undisputed that the dentist who submitted the prior authorization claim was not enrolled in the New York State Medicaid program. Accordingly, the Agency determination to deny the Appellant's dentist's prior approval request because the services rendered were not by a dentist who participates in the Medicaid plan was correct.

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**DECISION**

The Agency determination to deny prior authorization for a periodontal consultation because the services were not rendered by a periodontal specialist was correct.

The Agency determination to deny the Appellant's dentist's prior approval request because the services rendered were not by a dentist who participates in the Medicaid plan was correct.

DATED: Albany, New York  
01/09/2018

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to be 'C. N. M.', written in a cursive style.

Commissioner's Designee