


STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: June 6, 2019

AGENCY: MAP
FH #: 7973779H

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the New York City	:
Department of Social Services	:

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 July 9, 2019, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Agency appearance waived by the Office of Administrative Hearings

For the Managed Long Term Care Plan (Centers Plan)

On papers only - Centers Plan appearance waived by the Office of Administrative Hearings

ISSUE

Was the determination by Centers Plan to deny the Appellant's dentist's request for prior authorization for osseous surgery (code D4260) for the Appellant, 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 (age 54) has been in receipt of Medical Assistance through Centers Plan for Healthy Living (Centers Plan) Managed Long Term Care Plan.
2. The Appellant's dentist requested prior authorization from Centers Plan for osseous surgery (code D4260) and for periodontal maintenance, scaling and root planing for the Appellant. Centers Plan approved the Appellant's dentist's request for periodontal maintenance, scaling and root planing for the Appellant, and Centers Plan's determination to approve periodontal maintenance, scaling and root planing for the Appellant was not an issue at the hearing.
3. On May 3, 2019, Centers Plan through its dental subcontractor Healthplex, denied the dentist's request for prior authorization for osseous surgery (code D4260) because service is not a covered service under Medical Assistance.
4. The Appellant requested an internal appeal, and by a Notice of Final Adverse Determination dated June 3, 2019, Centers Plan informed the Appellant of its determination to deny the Appellant's internal appeal.
5. On June 6, 2019, 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 of....

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 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.

The New York State Medicaid Management Information System (MMIS) Dental Provider Manual provides, in pertinent part, as follows:

Section II - Dental Services

Dental Care in the Medicaid program shall include only **ESSENTIAL SERVICES** rather than comprehensive care. The provider should use this Manual to determine when the Medicaid program considers dental services "essential". The application of standards related to individual services is made by the DOH when reviewing individual cases.

Services Not Within the Scope of the Medicaid Program

These services include but are not limited to:

- Fixed bridgework, except for cleft palate stabilization, or when a removable prosthesis would be contraindicated;
- Immediate full or partial dentures;
- Molar root canal therapy for members 21 years of age and over, except when extraction would be medically contraindicated or the tooth is a critical abutment for an existing serviceable prosthesis;
- Crown lengthening;
- Replacement of partial or full dentures prior to required time periods unless appropriately documented and justified as stated in the Manual;
- Dental work for cosmetic reasons or because of the personal preference of the member or provider;
- Periodontal surgery, except when associated with implants or implant related services;
- Gingivectomy or gingivoplasty, except for the sole correction of severe hyperplasia or hypertrophy associated with drug therapy, hormonal disturbances or congenital defects;

- Adult orthodontics, except in conjunction with, or as a result of, approved orthognathic surgery necessary in conjunction with an approved course of orthodontic treatment or the on-going treatment of clefts;
- Placement of sealants for members under 5 or over 15 years of age;
- Improper usage of panoramic images (D0330) along with intraoral complete series of images (D0210).

Section 358-5.9 of the Regulations provides in part:

(a) At a fair hearing concerning the denial of an application for or the adequacy of public assistance, medical assistance, HEAP, SNAP benefits or services, the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or benefits.

DISCUSSION

The record of the hearing reveals that the Appellant's dentist requested prior authorization from the Appellant's Managed Long Term Care Plan, Centers Plan, for osseous surgery (code D4260) for the Appellant. On May 3, 2019, Centers Plan through its dental subcontractor Healthplex, denied the dentist's request for prior authorization for osseous surgery (code D4260) because service is not a covered service under Medical Assistance.

As per the above cited law and regulation, periodontal surgery is not a covered benefit under the Medical Assistance program, except when in connection with dental implants or implant related services. There was no evidence at the hearing to suggest that the Appellant's dentist's request for this surgery was in any way related to dental implants or implant related services. It is also noted that the dental procedure code used by the Appellant's dentist begins with D4, which designates periodontal procedures (in contrast with codes which begin with D7, designating oral or maxillofacial surgery).

At the hearing, the Appellant did not submit any evidence to support the Appellant's case or to dispute Centers Plan's contention that the requested service is not covered under the Medical Assistance program. The Appellant specifically declined an offer of an adjournment to obtain additional evidence to support the Appellant's case.

Per the above cited law and regulations, the Appellant bears the burden of proof in this matter. The Appellant failed to establish that the determination of the Appellant's Managed Long Term Care Plan, Centers Plan, to deny the Appellant's dentist's prior approval request for osseous surgery (code D4260) for the Appellant was not correct. Therefore, the determination of the Appellant's Managed Long Term Care Plan, Centers Plan, to deny the Appellant's dentist's prior approval request for osseous surgery (code D4260) was correct and must be sustained.

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DECISION

The determination by Centers Plan to deny the Appellant's dentist's request for prior authorization for osseous surgery (code D4260) was correct.

DATED: Albany, New York
07/12/2019

NEW YORK STATE
DEPARTMENT OF HEALTH

By

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Commissioner's Designee