



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 31, 2024
MOAHR Docket No.: 24-006708
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for hearing.

After due notice, a telephone hearing was held on July 25, 2024. [REDACTED], the minor Petitioner's grandmother, appeared and testified on Petitioner's behalf. Austin Moag, Assistant General Counsel, appeared and testified on behalf of the Respondent Delta Dental Plan of Michigan, Inc. (Respondent). Dr. Tracy Dantzler, Director of Utilization Management, also testified as a witness for Respondent.

During the hearing, Petitioner's request for hearing was admitted into the record as Exhibit #1, pages 1-17. Respondent also submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-83.

ISSUE

Did the Department properly deny Petitioner's request for extraction of third molars?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a [REDACTED] enrollee in the Healthy Kids Dental (HKD) Program. (Exhibit A, page 11; Testimony of Respondent's representative).
2. In January of 2024, Petitioner's dental provider submitted a request for Pre-treatment Estimate on Petitioner's behalf to Respondent regarding the proposed extraction of Petitioner's third molars, with accompanying deep sedation. (Exhibit A, pages 10-14).

3. The documentation included a Dental Claim form requesting the removal of impacted teeth and a History and Exam form stating that Petitioner was interested in Invisalign and had been diagnosed with "Maxillary Crowding/Mandibular Crowding/Disturbance in eruption". (Exhibit A, pages 10-11).
4. On February 1, 2024, Respondent issued a Pre-treatment Estimate indicating that the extraction of asymptomatic third molars, as Respondent had determined to be the request here, are not covered by the HKD program. (Exhibit A, pages 1-5).
5. That same day, Respondent also sent Petitioner a Notice of Adverse Benefit Determination stating in part:

This is to tell you that the following action has been taken: the following benefit(s) requested are not covered under the Delta Dental program:

D7240- EXTRACTION - AP12013,EL72003

D9222- ANESTHESIA - AP17011

D9223- ANESTHESIA - AP17011

D9612- DRUGS - EL00061

This action is based on the following:

AP12013 - THE BENEFIT WAS DETERMINED BY CONSULTANT REVIEW.

EL72003 - THIS DENTAL PROGRAM DOES NOT COVER THE EXTRACTION OF ASYMPTOMATIC THIRD MOLARS. DUE TO FEDERAL REQUIREMENTS, ENROLLEES ARE NOT LIABLE FOR PAYMENT FOR NON-COVERED SERVICES UNLESS THEY AGREE TO ACCEPT LIABILITY IN ADVANCE OF TREATMENT.

AP17011 - THE CLIENT'S CONTRACT DOES NOT COVER GENERAL ANESTHESIA AND/OR INTRAVENOUS SEDATION WHEN THERE ARE NO OTHER QUALIFYING SERVICES PAYABLE BY THE PLAN. DUE TO FEDERAL REQUIREMENTS, ENROLLEES ARE NOT LIABLE FOR PAYMENT FOR NON-COVERED SERVICES UNLESS THEY AGREE TO ACCEPT LIABILITY IN ADVANCE OF TREATMENT.

EL00061 - THIS PROCEDURE IS NOT A BENEFIT UNDER THE DENTAL PLAN.

You can share a copy of this letter with your provider so you can talk about your

next steps. If your provider asked for this coverage for you, we have already sent

them a copy of this decision.

If you don't agree with our action, you have the right to an Internal Appeal

Exhibit A, page 6

6. Petitioner then filed an Internal Appeal with Respondent. (Exhibit A, page 14; Testimony of Respondent's representative).
7. On February 13, 2024, Respondent sent Petitioner a Notice of Internal Appeal Decision – Denial stating that her Internal Appeal had been denied. (Exhibit A, pages 72-83).
8. With respect to the reason for the denial, the notice stated in part:

Your appeal was reviewed by a Research Specialist and a Licensed Oral Surgeon in our Focused Review Department. The wisdom teeth remain denied because Healthy Kids Dental does not cover the removal of healthy wisdom teeth. All dental benefit plans have exclusions. They are created when the plan is made. Delta Dental cannot change those exclusions. The exclusion that applies to this claim is noted in your Healthy Kids Dental Handbook. It says on page 9:

“Some services NOT covered are:

- **Removal of healthy third molars (wisdom teeth)”**

The sedation remains denied. Your plan does not cover general anesthesia and/or intravenous sedation when there are no other qualifying services payable by the plan; therefore, this service is only covered when medically necessary. Your appeal was reviewed by a Licensed Oral Surgeon.

He determined that it was not medically necessary to have the wisdom teeth removed. There are no other qualifying services payable by the plan on the pre-treatment estimate.

Exhibit A, page 72

9. On June 10, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding that denial. (Exhibit #1, pages 1-17).

CONCLUSIONS OF LAW

The Medical Assistance Program was established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM) and, with respect to the requirement to dental services, the applicable version of the MPM states in part:

SECTION 1 – GENERAL INFORMATION

This chapter applies to dental providers and dental clinics.

Throughout this chapter, the term Medicaid refers to all programs administered by Michigan Department of Health and Human Services (MDHHS), including Healthy Michigan Plan (HMP), **Healthy Kids Dental** (HKD), MICHild, and other programs, unless specifically stated otherwise. The primary objective of Medicaid is to ensure that essential health care services are made available to those individuals who would not otherwise have the financial resources to purchase them. Policies are aimed at maximizing medically necessary health care services available to eligible Medicaid beneficiaries.

Dental services may be provided by Medicaid-enrolled providers when performed by properly credentialed/licensed professionals acting within their scope of practice as defined in State law, including any applicable supervision requirements. Dental services that may be provided to Medicaid beneficiaries include emergency, diagnostic, preventive, and therapeutic services for dental disease which, if left untreated, would become acute dental problems

or cause irreversible damage to teeth or supportive structures. Determination of medical necessity and appropriateness of services is the responsibility of the dental provider within the scope of current accepted dental practice and the limitations of Medicaid policy.

* * *

1.1.D. HEALTHY KIDS DENTAL BENEFIT

MDHHS contracts with dental health plans (DHPs) for the administration of dental services for HKD beneficiaries. Providers must contact the DHP for specific information about covered HKD benefits. (Refer to the **Healthy Kids Dental** section of this chapter for additional program information.)

* * *

SECTION 3 – PRIOR AUTHORIZATION

Prior authorization (PA) is required for services identified in this chapter and the Medicaid Code and Rate Reference tool. For questions about medically necessary dental services beyond those described in this chapter, providers should contact the MDHHS Program Review Division (PRD). (Refer to the Directory Appendix for website and contact information.)

* * *

SECTION 7 – COVERED SERVICES

This section provides information on Medicaid covered services and is divided into subsections that correspond to the categories of services in the CDT published by the ADA:

- Diagnostic Services
- Preventive Services
- Restorative Treatment
- Endodontics
- Periodontics
- Prosthodontics (Removable)
- Oral Surgery
- Adjunctive General Services

Providers must use the current CDT procedure codes when completing both the claim form and MSA-1680-B. Resources are available to assist the provider in determining coverage and coding of specific services, including the Medicaid Code and Rate Reference tool via the external link in CHAMPS and the MDHHS Dental Fee Schedule located on the MDHHS website. (Refer to the Additional Code/Coverage Resource Materials subsection of the General Information for Providers chapter of this manual for additional information on code/coverage parameters and the Directory Appendix for website information. Billing information can be found in the Billing & Reimbursement for Dental Providers chapter of this manual.)

* * *

7.7 ORAL SURGERY

Oral surgical procedures are benefits for all beneficiaries. Detailed operative notes or narrative describing the surgical procedure must be retained in the beneficiary's dental record for all surgical procedures, including surgical extractions. Reimbursement for operative or surgical procedures includes local anesthesia, analgesia, and routine postoperative care. Surgical procedures involving the jaw or facial bones are considered a medical benefit, not a dental benefit. (Refer to the Practitioner chapter of this manual for additional information.)

The extraction of teeth for prophylactic or orthodontic purposes is not a covered benefit. Dental providers providing enhanced dental services to CSHCS program beneficiaries should refer to the Children's Special Health Care Services Dental Benefits section of this chapter. (Refer to the Additional Code/Coverage Resource Materials subsection of the General Information for Providers chapter of this manual for additional information regarding coverage parameters.)

7.7.A. EXTRACTIONS

Extractions are covered for Medicaid beneficiaries of all ages. The extraction procedure code submitted for reimbursement must follow the CDT guidelines and is not based on the amount of time required, the difficulty of the extraction, or any special circumstances.

A simple extraction of an erupted tooth includes elevation and/or forceps removal. It includes minor contouring of the bone and closure if needed. An extraction is not a covered benefit if exfoliation is imminent.

A surgical extraction requires the removal of bone and/or sectioning of a tooth and may require the elevation of the mucoperiosteal flap. Minor contouring of the bone and closure of the tissue is included. Multiple extractions in the same quadrant for preparation of complete dentures are not considered surgical extractions unless guidelines for surgical extractions are met. The extraction of an impacted tooth is not covered for prophylactic removal of an asymptomatic tooth that does not exhibit pathology.

*MPM, January 1, 2024 version
Dental Chapter, pages 1, 3, 5, 12, 27-28*

Additionally, consistent with the MPM, the HKD Handbook also provides in part:

Some services are NOT covered.

Excluded services are:

- **Full mouth or panoramic X-rays age 4 and under**
- **Bite guards**
- **Removal of healthy third molars (wisdom teeth)**

Exhibit A, page 20

Here, as discussed above, the Department denied a request for the extraction of third molars, with accompanying deep sedation, pursuant to the above policies and on the basis that the requested extraction of asymptomatic, healthy, third molars is not covered.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of evidence that Respondent erred in denying the prior authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has failed to meet that burden of proof, and the Department's decision must, therefore, be affirmed.

As provided in the above policies, the extraction of asymptomatic, healthy, third molars is not covered through Medicaid generally or the HKD program specifically; that was what was requested here; and, consequently, the denial was proper.

At most, the documentation submitted by Petitioner's provider indicated that Petitioner has been diagnosed with "Maxillary Crowding/Mandibular Crowding/Disturbance in eruption". However, it also failed to support that diagnosis or explain what symptoms require extraction, with the exam form instead just indicating that Petitioner was interested in Invisalign. Respondent's Director of Utilization Management also credibly testified that Petitioner's third molars are asymptomatic.

Similarly, while the documentation also identified the teeth in question as impacted, the MPM also specifically provides in Section 7.7.A. that the "extraction of an impacted tooth is not covered for prophylactic removal of an asymptomatic tooth that does not exhibit pathology", and there is no such pathology here and the removal would be prophylactic.

Moreover, while Petitioner's representative argues that it will be safer, and cheaper in the long run, to remove Petitioner's third molars right now instead of later, that argument wrongfully assumes that the teeth will have to be extracted in the future and, regardless, contradicts the clear, binding policy in this case.

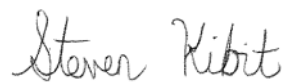
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly denied Petitioner's request for extraction of third molars.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sj



Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

