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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
)
) OHA Case No. 08-FH-75
Claimant.) Division Case No. [REDACTED]
)
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is a Medicaid recipient. On December 12, 2007, the Division of Health Care Services (Division) received her request that the Medicaid program preapprove payment for her to receive “removable appliance therapy,” procedure/drug code 8210. (Ex. E, p. 1) The Division denied the Claimant’s request on December 14, 2007. (Ex. E, p. 1) The Claimant requested a Fair Hearing on February 1, 2008. (Ex. C) On February 5, 2008, the Division sent the Claimant formal written notice her request was denied. (Ex. D) This office has jurisdiction in accordance with 7AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held on May 5, 2008. [REDACTED], Fair Hearing Representative for the Division of Health Care Services, attended in person and represented the Division. The Claimant attended the hearing telephonically and represented herself.

ISSUE

The Claimant argued the Division improperly denied coverage for her removable appliance therapy because it was preventative dental treatment covered under the Medicaid regulations. The Division argued its denial was correct because removable appliance therapy was an orthodontic service, which was explicitly not allowed by the Medicaid regulations. The resulting issue is:

Was the Division correct when it denied Medicaid coverage for the Claimant’s removable appliance therapy, because the removable appliance therapy was an orthodontic service?

FINDINGS OF FACT

1. The Claimant is a Medicaid recipient. She is 62 years old (Date of Birth [REDACTED], [REDACTED]). (Ex. E, p. 1)
2. The Claimant “has classic wear facets from nocturnal bruxing.” (Ex. E, p. 2) Bruxism is “[t]he habitual involuntary grinding or clenching of the teeth, usually during sleep.”¹
3. On July 31, 2007, Dr. [REDACTED], D.M.D, completed a Certificate of Medical Necessity form, requesting that the Medicaid program pay for removable appliance therapy, i.e. a nightguard, procedure/drug code 8210, for the Claimant, due to her bruxism. (Ex. E, pp. 1 - 2) That request was faxed from Dr. [REDACTED]’s office to the Division on December 12, 2007. *Id.*
4. The Division’s February 5, 2008 written notice to the Claimant stated her request for removable appliance therapy was denied because the Medicaid program did not cover this service for adults. (Ex. D, pp. 1 – 2)
5. Removable appliance therapy, Code D8210, is classified under orthodontic services: “minor treatment to control harmful habits” in the Health Common Procedure Coding System book (20th Edition, 2007).
6. The Claimant presented a letter from a legislator, Alaska State Senator [REDACTED], stating his opinion that a night guard (removable appliance therapy) was a Medicaid covered preventative dental care expense. (Ex. 5)

PRINCIPLES OF LAW

This case involves the issue of whether or not the Division was correct when it denied the Claimant’s request that Medicaid pay for her removable appliance therapy (nightguard). When an application for benefits is denied, the applicant has the burden of proof² by a preponderance of the evidence.³

Removable appliance therapy, also referred to as a nightguard, is a dental service. The Alaska Medicaid program pays for limited dental services for persons over the age of 21 years. The applicable regulation authorizes payment for “dental services for the immediate relief of pain and acute infection, except as specifically excluded under (c) of

¹ *The American Heritage Stedman’s Medical Dictionary* 116 (Houghton Mifflin, 2002)

² “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

³ Preponderance of the evidence is defined as:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black’s Law Dictionary 1064 (5th Ed. 1979)

this section.” 7 AAC 43.625(a). Limited preventative care is authorized, however orthodontic services are specifically excluded. 7 AAC 43.625(b)(2) and (c)(9).

The Division’s interpretation of its own regulation is reviewed under the reasonable basis standard; the Division is deferred to unless the interpretation is “plainly erroneous and inconsistent with the regulation.” *Lauth v. State*, 12 P.3d 181, 184 (Alaska 2000)

ANALYSIS

The Division denied the Claimant’s request for a nightguard (removable appliance therapy) because the nightguard was an orthodontic appliance, and therefore not covered under the Medicaid regulation that specifically excludes orthodontics from being a Medicaid covered service.

The Claimant argued that orthodonture services were corrective in nature, and that a nightguard for her was preventative in nature, and therefore covered under the Medicaid regulations. Her argument, in its essence, was that the Division misclassified a nightguard as orthodonture, where in her case, it was preventative.

Alaska Medicaid regulations do not define “orthodontics.” See 7 AAC 43.1990. However, a medical dictionary definition of orthodontics states that orthodontics includes both corrective and preventative care: orthodontics is “[t]he dental specialty and practice of preventing and correcting irregularities of the teeth, as by the use of braces.”⁴ The use of a nightguard to prevent further damage to the Claimant’s teeth from her bruxism falls squarely within this definition of orthodontics.

The specific listing and coding of “removable appliance therapy” (nightguard) as an orthodontic service in the Health Common Procedure Coding System book (20th Edition, 2007) also supports the Division’s conclusion that removable appliance therapy (nightguard) is an orthodontic service.

Given the Medicaid regulation’s explicit exclusion from coverage for orthodontics, the fact that the removable appliance therapy (nightguard) is coded as an orthodontic service, and the fact that the dictionary definition of orthodontics includes preventative care, the Division’s interpretation of its regulation, 7 AAC 43.625(c)(9), to deny Medicaid coverage for the Claimant’s removable appliance therapy (nightguard) was a reasonable one. The Division’s interpretation of its own regulation is deferred to unless the interpretation is “plainly erroneous and inconsistent with the regulation.” *Lauth v. State*, 12 P.3d 181, 184 (Alaska 2000)

The Alaska Medicaid program does not provide coverage for orthodontic services. The Division reasonably interpreted its own regulation when it concluded that removable appliance therapy (nightguard) prescribed for the Claimant was an orthodontic service.

⁴ *The American Heritage Stedman’s Medical Dictionary* 585 (Houghton Mifflin, 2002)

The Division was therefore correct to deny coverage for the Claimant's prescribed removable appliance therapy (nightguard).

CONCLUSIONS OF LAW

1. The Division was correct when it denied coverage for the Claimant's prescribed removable appliance therapy (nightguard) because the removable appliance therapy was an orthodontic service.

DECISION

The Division was correct when it denied the Claimant's request the Medicaid program pay for her removable appliance therapy (nightguard).

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Health Care Services
Department of Health and Social Services
PO Box 110660
Juneau, AK 99811-0660

An appeal request must be sent within 15 days from the date of receipt of this decision.
Filing an appeal with the Director could result in the reversal of this decision.

DATED this 2nd day of July, 2008.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 2nd day of July, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Director
██████████, Policy & Program Development
██████████, Staff Development & Training
Gerry Johnson, Fair Hearing Representative

/signed/
Al Levitre, Law Office Assistant I