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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-0136
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is a Medicaid recipient. On February 7, 2008, the Division of Health Care Services (Division) received her request that the Medicaid program preapprove payment for her to receive tinted lenses.¹ (Ex. E, pp. 1-2) The Division denied her request on February 12, 2008. (Exs. D; E, p.2) The Claimant requested a Fair Hearing on February 21, 2008. (Ex. C) This office has jurisdiction in accordance with 7AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on March 19, 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

Was the Division correct when it denied Medicaid coverage for the Claimant's tinted lenses?

FINDINGS OF FACT

1. The Claimant has been diagnosed with hyperopia and photophobia. (Ex. E p. 1) Hyperopia is "[a]n abnormal condition of the eye in which vision is better for

¹ The evidence in this hearing uses the terms "tinted lenses", "transition lenses", "photochromatic lenses" interchangeably. For the purposes of this Decision the term "tinted lenses" is used for all of these terms.

distant objects than for near objects.”² Photophobia is “[a]n abnormal insensitivity to or intolerance of light, especially by the eyes, as may be caused by eye inflammation, lack of pigmentation in the iris, or various diseases.”³

2. On December 17, 2007, [REDACTED], OD, completed a Certificate of Medical Necessity form, requesting that the Medicaid program pay for tinted lenses for the Claimant due to her light sensitivity. (Ex. E)
3. On February 12, 2008, the Division denied the request for payment for tinted lenses. (Ex. D) The basis for its denial was that “tint, photochromatic only covered in cases of Albinism.” (Ex. E, p. 2. emphasis in original) This restriction is contained in the Division’s *Provider’s Billing Manual*, which has not been adopted into regulation. (Exs. B, p. 6; F) The Claimant is not an albino.

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 tinted lenses. When an application for benefits is denied, the applicant has the burden of proof⁴ by a preponderance of the evidence.⁵

The Alaska Medicaid program pays for vision care services, including one pair of glasses per year. 7 AAC 43.630(a). However, the Medicaid program will not pay for tinted lenses “unless medically necessary for a recipient.” 7AAC 43.645(a) The Alaska Medicaid regulations do not define the term “medically necessary.”⁶

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 facts in this case are undisputed. The Division denied the Claimant’s request for tinted lenses because the Division’s Medicaid *Provider’s Billing Manual* only allows for tinted lenses when the recipient is an albino. (Ex. B p. 6) The Claimant is not an albino.

² *The American Heritage Stedman’s Medical Dictionary* 389 (Houghton Mifflin, 2002)

³ *Id.* at 637

⁴ “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)

⁵ 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)

⁶ In contrast, the California statutes explicitly define the term “medically necessary”: “[a] service is ‘medically necessary’ or a ‘medical necessity’ when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.” Ca. Welf. & Inst. Code §14059.5.

The pertinent Alaska Medicaid regulation states that tinted lenses are authorized only where they are determined to be “medically necessary”. 7 AAC 43.645(a) The *Provider’s Billing Manual*, which limits tinted lenses to albinos only, is not adopted into regulation. As such, it merely represents the Division’s interpretation of its own regulation. I.E., the Division interprets the term “medically necessary”, in this case, to be limited to albinism.

The optometrist’s documented medical reason for the tinted lenses is photophobia. (Ex. E p.1) The medical definition of photophobia makes it clear that photophobia is not limited to cases of albinism: “[a]n abnormal insensitivity to or intolerance of light, especially by the eyes, as may be caused by eye inflammation, lack of pigmentation in the iris, or various diseases.”⁷

The Division’s interpretation of medical necessity for tinted lenses that limits their availability to albinos is one that ignores the fact that photophobia (“abnormal insensitivity to or intolerance of light”) has medical causes besides albinism. This is not a reasonable interpretation of the regulation. It is “plainly erroneous and inconsistent with the regulation.” Lauth at 184. As such, the Division’s interpretation, limiting the availability of tinted lenses only in the cases of albinism, does not require deference.

In summary, the Claimant’s optometrist prescribed tinted lenses for the Claimant. He supported it with a medical diagnosis of photophobia. This was a health care provider’s determination of medical necessity. The Division was therefore not correct when it denied the Claimant’s request that Medicaid provide her with tinted lenses.

CONCLUSIONS OF LAW

1. The Division’s denial of the Claimant’s request for tinted lenses was denied because the Division’s Medicaid *Provider’s Billing Manual* only allows tinted lenses for albinos.
2. The Division’s Medicaid *Provider’s Billing Manual* is neither a regulation or adopted into regulation. It is the Division’s interpretation of its regulations.
3. The pertinent vision care regulation, 7 AAC 43.645(a) only requires that tinted lenses be justified as being “medically necessary.” It does not limit their availability to albinos.
4. The Division’s interpretation of the regulation limiting tinted lenses to albinos is a very narrow reading of the term “medically necessary” as contained in the regulation. It ignores the fact that photophobia has a number of other causes besides albinism. It is therefore inconsistent with the regulation and clearly erroneous.

⁷ *The American Heritage Stedman’s Medical Dictionary* at 637

5. The Division was therefore not correct when it denied the Claimant's request for tinted lenses. The Claimant's medical diagnosis of photophobia established the medical necessity for her prescription.

DECISION

Division was not correct when it denied the Claimant's request the Medicaid program pay for tinted lenses.

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 20th day of May, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of May, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

Al Levitre
Law Office Assistant I