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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-700
)
 Claimant.) Medicaid I.D. No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Medicaid Dental Services Program applicant (undisputed hearing testimony). At some time prior to July 2, 2008, the Claimant applied and was approved for certain dental benefits (Ex. A, p. 2; undisputed hearing testimony). However, for reasons discussed in more detail in the Findings of Fact below, the Claimant did not actually receive the dental benefits which had been approved (Ex. A, p. 2; undisputed hearing testimony). When the Claimant requested that the Division of Health Care Services (DHCS or Division) authorize another dentist to provide the dental benefits at issue, the Claimant's request was denied (Ex. A, p. 2; undisputed hearing testimony). The Claimant requested a fair hearing on October 1, 2008 (Ex. C, p.1). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on November 4, 2008. The Claimant appeared in person and represented himself. [REDACTED] attended in person to represent the Division.

ISSUE

Was the Division correct to deny the Claimant's request to disburse monies for a full set of dentures during fiscal year 2009 when the Claimant had previously requested and obtained approval for (1) maxillary dentures in fiscal year 2008, and (b) mandibular dentures in fiscal year 2009, but had not actually received the dentures, and where the 2008 and 2009 benefit monies were refunded to the Division by the Claimant's initial dentist?

FINDINGS OF FACT

1. The Claimant applied for maxillary (upper) dentures at some time during fiscal year 2008. This application was approved by the Division on May 5, 2008 (Ex. A, p. 2).
2. In June 2008 the Claimant went to the Smile Care Center and had an upper (maxillary) denture made (Claimant hearing testimony).
3. The Claimant applied for mandibular (lower) dentures at some time during fiscal year 2009. This application was approved by the Division on July 2, 2008 (Ex. A, p. 2).
4. In July 2008 the Claimant went to the Smile Care Center and had a lower (mandibular) denture made (Claimant hearing testimony).
5. When the dentures came back from the lab, the upper dentures and the lower dentures did not fit together correctly (Claimant hearing testimony). Modifications were made by the Smile Care Center and/or a separate dental lab, but when the dentures came back for the second time, they still were not right (Claimant hearing testimony).
6. The Smile Care Center attempted to modify the dentures a second time in-office, but when the Claimant tried them for the third time, the dentures still were not right (Claimant hearing testimony). At that point, on or about September 16, 2008, the Smile Care Center advised the Claimant that it was unwilling to perform any further work on the dentures (Claimant hearing testimony).
7. The Smile Care Center told the Claimant that if he returned the dentures, the Smile Care Center would refund all money paid for the dentures to the Division (Claimant hearing testimony).
8. The Claimant returned both the upper (maxillary) and the lower (mandibular) dentures to the Smile Care Center at some time during the period September 16, 2008 – September 30, 2008 (Claimant hearing testimony). On October 1, 2008 the Smile Care Center refunded all monies paid for the dentures to the Division (Ex. A, p. 2).
9. At the hearing, the Claimant testified:

I waited until last June [2008] so that I could have the uppers made, and then in July [2008] I could have the lowers made, so that I would have my teeth together, otherwise what good are half of your teeth? . . . And so what happened was . . . Medicaid did pay for that . . . [But] these people [Dr. Straub / the Smile Care Center] made the teeth wrong . . . they screwed it up . . . and then . . . they didn't want to mess with it any more . . . so they returned the money to [the State] . . . they returned the money . . . all of it . . . for both the upper and the lower [dentures] It's really a ridiculous situation that I got into.

10. After the Smile Care Center had refunded all of the Claimant's denture money to the Division, the Claimant found a second dentist, Dr. [REDACTED], who was willing to provide the Claimant with dentures for a total fee within the Medicaid payment limits (Claimant hearing testimony). The Claimant and/or Dr. [REDACTED] then applied to the Division for pre-approval to obtain funding to make a new, correct set of dentures for the Claimant (Claimant hearing testimony).

11. The Division denied this request on the basis that the Claimant could obtain either upper dentures, or lower dentures, during a single fiscal year, but could not obtain both upper and lower dentures during a single fiscal year, because purchasing both upper and lower dentures would require payment in excess of the \$1,150.00 annual limit specified by 7 AAC 43.625 (Ex. A, p. 2; Claimant hearing testimony).

12. During the hearing, Mr. [REDACTED] acknowledged that there is no dispute that the Claimant did not actually receive functional dentures and returned the defective dentures to the Smile Care Center.

13. At the hearing, after the Claimant had finished testifying, Mr. [REDACTED] stated "he [the Claimant] is accurate in what he is saying . . . Everything [the Claimant] said sounds highly accurate . . . We have not paid for a complete set or a partial set [of dentures]" ([REDACTED] hearing testimony). Thus, this case does not involve any disputed issues of material fact.

14. At the hearing, Mr. [REDACTED], in admirable candor, explained the Division's view of the situation as follows:

"We just recently in the last fiscal year started covering adult . . . dentures . . . so we have never run across this before . . . where somebody has received dentures in one [fiscal year and then in another fiscal year] . . . and have this happen . . . so we have no mechanism to allow repayment. . . . He would have to wait until July 1, [2009] as we have no mechanism to go back."

15. There was no allegation made by the Division that the Claimant had obtained dentures through the Alaska Medicaid program at any time during the five (5) years prior to fiscal year 2008.

16. There was no allegation made by the Division that the Claimant had used any portion of the monies available annually pursuant to 7 AAC 43.625 prior to the Claimant's applications for dentures during fiscal years 2008 and 2009.

PRINCIPLES OF LAW

Ordinarily, the party seeking a change in the status quo has the burden of proof. State of Alaska Alcoholic Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985). This case involves the denial of an application for Medicaid benefits by the Division. Accordingly, the Claimant has the burden of proof here because he is attempting to change the existing status quo by obtaining Medicaid benefits.

A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission, 711 P.2d 1170 (Alaska 1986). The Medicaid regulations applicable to this case do not specify any particular standard of proof. Therefore, the “preponderance of the evidence” standard is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not. Black’s Law Dictionary 1064 (5th Ed. 1979).

7 AAC 43.625 provides in relevant part as follows:

(b) The department will pay for dental claims under this section that are applied toward a recipient's annual limit for service dates from July 1 to June 30 of that year. On July 1 of each year, a recipient's annual limit returns to the maximum limit permitted under this section. Beginning April 1, 2007, the department will pay, up to an annual limit of \$1,150 per recipient 21 years of age or older, for the following dental services:

* * * * *

(6) prosthodontics, including complete or partial dentures and denture repair or reline; the department will pay for replacement of complete or partial dentures only once per five calendar years;

ANALYSIS

The facts in this case are undisputed. The Claimant applied and was approved for Medicaid benefits to purchase maxillary (upper) dentures during fiscal year 2008. The Claimant applied and was approved for Medicaid benefits to purchase mandibular (lower) dentures during fiscal year 2009. The Division paid the Claimant’s 2008 and 2009 Medicaid denture benefits to the Smile Care Center. However, the Smile Care Center declined to complete the dentures to the Claimant’s satisfaction, and refunded to the Division all monies received by it on behalf of the Claimant. The net result is that the Claimant still has no dentures, and the Division still has all monies previously approved for and allocated to the Claimant for dental work during fiscal years 2008 and 2009.

Pursuant to 7 AAC 43.625(b), the Claimant is entitled to a maximum of \$1,150.00 in dental benefits for fiscal year 2008, and another \$1,150.00 in dental benefits for fiscal year 2009. Pursuant to 7 AAC 43.625(b)(6), the Claimant is entitled to use this money to purchase dentures.

The Division has essentially taken the position that once the Claimant’s 2008 and 2009 Medicaid dental benefits were returned to the Division by the Smile Care Center, those monies were no longer the property of the Claimant, but somehow reverted to the property of the State. However, 7 AAC 43.625 does not support this position, and the Division has cited no other authority in support of its proposition.

Once the Claimant's 2008 and 2009 Medicaid dental benefits were returned to the Division by the Smile Care Center, they did not automatically revert to State ownership as if the Claimant's 2008 and 2009 applications had never been approved. Rather, once the Claimant's applications for benefits were approved, and once the Claimant's benefits were issued, those benefits became the property of the Claimant regardless of whether the benefit money was held by the Smile Care Center or by the Division. The benefits remained the property of the Claimant until such time as either (1) the benefits were transferred to a dentist in payment for services properly rendered to the Claimant, or (2) the Claimant intentionally waived his right to the benefits by appropriate communications to the Division. Neither of these scenarios occurred in this case.

The fact is that although the Claimant was approved for benefits under 7 AAC 43.625 for fiscal years 2008 and 2009, the Division has never actually paid-out those benefits. The Claimant's request that the Division disburse to Dr. [REDACTED] his previously-approved Medicaid benefit monies for fiscal years 2008 and 2009 simply does not constitute a new application for benefits within the meaning of 7 AAC 43.625. Accordingly, the previously approved benefit monies for fiscal years 2008 and 2009 must, at the Claimant's request, be disbursed to a qualified dental provider of the Claimant's choice for rendition of the approved services (upper and lower dentures).

CONCLUSIONS OF LAW

1. Pursuant to 7 AAC 43.625(b), the Claimant is entitled to a maximum of \$1,150.00 in dental benefits for fiscal year 2008, and another \$1,150.00 in dental benefits for fiscal year 2009.
2. The Claimant applied and was approved for Medicaid benefits to purchase maxillary (upper) dentures during fiscal year 2008.
3. The Claimant applied and was approved for Medicaid benefits to purchase mandibular (lower) dentures during fiscal year 2009.
4. The Claimant obtained both sets of dentures and the Division disbursed funds to the Claimant's dentist. However, the dentures were unsatisfactory. The Claimant returned the dentures to the dentist, and the dentist refunded payment to the Division.
5. The fact that the initial dentist seen by the Claimant refunded the Claimant's 2008 and 2009 Medicaid dental benefits to the Division did not cause the Claimant's previously-approved Medicaid dental benefits to revert to the Division under 7 AAC 43.625.
6. The Claimant's request that the Division disburse to a second, substitute dentist his previously-approved Medicaid dental benefit monies for fiscal years 2008 and 2009 does not constitute a new application for Medicaid dental benefits within the meaning of 7 AAC 43.625. It is merely an extension of the Claimant's previously approved Medicaid dental benefit applications.
7. The Division erred when it denied the Claimant's request to disburse his 2008 and 2009 Medicaid dental benefit monies to a second, substitute dentist for the preparation of dentures.

DECISION

The Division erred when it denied the Claimant's request to disburse his 2008 and 2009 Medicaid dental benefit monies to a second, substitute dentist for the preparation of dentures.

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, 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

If the Claimant appeals, the 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 _____ day of December, 2008.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of December, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Deputy Commissioner
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Fair Hearing Representative

Al Levitre
Law Office Assistant I

