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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. 09-FH-2097  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Mr. [REDACTED] (Claimant) submitted, through his dentist, a request for pre-authorization of payment by Medicaid for a replacement mandibular denture on July 30, 2009. (Ex. D-3, F-1) Claimant's request was denied on July 30, 2009. (Ex. D-4, E-1) The Division of Health Care Services,<sup>1</sup> (Division), notified Mr. [REDACTED] of the denial by mail on July 31, 2009. (Ex. D-1)

Claimant requested a Fair Hearing on September 22, 2009. (Ex. C-1) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.020(4).

The Fair Hearing was held on November 2, 2009. Claimant appeared telephonically and testified on his own behalf. Ms. [REDACTED], Fair Hearing Representative for the Division of Health Care Services, appeared in person and testified for the Division.

On October 22, 2009, the Division filed a Motion to Deny Fair Hearing Request because Claimant had waited beyond the 30 day period allowed for requesting a fair hearing. Claimant had not received the Division's denial letter and had late filed his fair hearing

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<sup>1</sup> Affiliated Computer Services (ACS) notified Claimant on behalf of the Division. ACS is a private organization that is under contract to act as a liaison and provide communications between Medicaid recipients and the Division.

request. At the hearing, Claimant explained that he had problems receiving his mail and the hearing proceeded for good cause shown.<sup>2</sup>

### **ISSUE**

Was the Division correct to deny Claimant's July 30, 2009 application for pre-authorization of Medicaid payment for a replacement mandibular denture?

### **FINDINGS OF FACT**

1. Claimant, through his dentist on July 30, 2009, requested pre-authorization of Medicaid payment for replacement of his mandibular denture which he had lost. (Exs. D, p. 3; E; F; Claimant testimony)
2. Claimant previously had obtained Medicaid payment for dentures in July 2007. (Exs. D, p. 3; E; F; Claimant testimony)
3. On July 31, 2009, the Division of Health Care Services denied Claimant's request for Medicaid authorization for a replacement denture because Medicaid had paid for Claimant's dentures in July 2007, approximately two years prior. (Ex. D)
4. On September 22, 2009, Claimant requested a Fair Hearing concerning this denial. (Ex. C)

### **PRINCIPLES OF LAW**

#### **I. Burden of Proof**

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). Claimant's pre-authorization request seeks a change from the status quo by seeking benefits and therefore Claimant has the burden of proof.

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<sup>2</sup> Claimant learned of the denial of his pre-authorization request when his dentist telephoned him, told him of the denial, and urged Claimant to go to the Medicaid office to follow up, which he did. (Claimant testimony) Claimant never received any paperwork concerning his requests from the Division. (Claimant testimony) On October 26, 2009, Claimant received a letter sent by the Office of Hearings and Appeals (Office) that included copies of the Divisions' Motion to Deny Fair Hearing Request, Claimant's Fair Hearing Request (Ex. C), and the Authorization Request Denial (Ex. D, pp. 1-2). The cover letter sent with the packet also informed Claimant his hearing was scheduled for October 29, 2009. Claimant requested the hearing be rescheduled. The Claimant's fair hearing was re-scheduled to November 2, 2009.

At the Fair Hearing, Claimant opposed the Motion to Deny Fair Hearing on grounds that he had not received any paperwork from the Division. Claimant was granted a fair hearing for good cause shown.

## II. Standard of Proof

A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

Preponderance of the evidence is defined as follows:

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 (5<sup>th</sup> Ed. 1979)

## III. Medicaid Program

The Medicaid Program (Program) is a federal program administered by the states. Regulation 7 AAC 43.625(b)(6) provides the Department of Health and Social Services will pay for

“prosthodontics, including complete or partial dentures and denture repair or relines; the department will pay for replacement of complete or partial dentures only once per five calendar years.”

## ANALYSIS

### I. Issue

Was the Division correct to deny Claimant's request for pre-authorization of the replacement of his mandibular denture on July 31, 2009?

### II. Burden of Proof

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). Because Claimant's Application seeks to change the status quo by obtaining funding for replacement of his denture, Claimant has the burden of proof in this case.

### III. The Department may not authorize Medicaid payment for dentures except once every five years.

Claimant lost his mandibular denture. Therefore, he requested pre-authorization for Medicaid to pay for a replacement denture. This request was denied by the Division and communicated to Claimant by Affiliated Computer Services.

Regulation 7 AAC 43.625(b)(6) clearly and absolutely regulates the circumstances under which the Department of Health and Social Services may pay for dentures. This regulation specifies that replacement of complete or partial dentures will be paid only once every five calendar years.

Medicaid previously paid for Claimant's dentures in July 2007, as was proved by Claimant's testimony at the hearing and the Division's exhibits. Applying the regulation to the facts of this case, Claimant is not eligible for Medicaid paid replacement dentures until January 1, 2012, the fifth calendar year after 2007. Therefore, by law, the Department may not pre-authorize payment for Claimant's replacement denture.

The Division is required to abide by regulation 7 AAC 43.625(b)(6) and therefore correctly denied Claimant's request for pre-authorized payment for his replacement denture on July 31, 2009.

### **CONCLUSIONS OF LAW**

1. The Division correctly followed regulation 7 AAC 43.625(b)(6) which precludes payment for dentures except once every five calendar years.
2. Claimant did not meet his burden of proving by a preponderance of the evidence that the Division erred when it denied pre-authorization of Medicaid payment for his replacement mandibular denture on July 31, 2009.

### **DECISION**

The Division was correct to deny Claimant's request for pre-authorization of the replacement of his mandibular denture on July 31, 2009.

### **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 Public Assistance  
Department of Health and Social Services  
P.O. Box 110640  
Juneau, AK 99811-0640

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 December \_\_\_\_\_, 2009

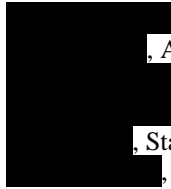





\_\_\_\_\_  
/Signed/  
Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_day of  
December, 2009 true and correct  
copies of the foregoing were sent to

Claimant, via U.S.P.S. certified mail, return receipt requested

and to other listed persons (via e-mail), as follows:

, Deputy Commissioner  
, Administrative Assistant II  
, Policy & Program Development  
, Eligibility Technician I  
, Staff Development & Training  
, Fair Hearing Representative

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J. Albert Levitre, Jr.  
Law Office Assistant I