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

In the Matter of	)	
	)	
<b>[REDACTED]</b> ,	)	OHA Case No. 10-FH-2327
	)	
Claimant.	)	Agency Case No. <b>[REDACTED]</b>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

**[REDACTED]** (Claimant) is a Medicaid recipient. (Ex. 1) On November 30, 2009, the Division of Health Care Services (Division) sent the Claimant notice that her request for dentures was denied. (Ex. D) The Claimant requested a fair hearing on August 21, 2010. (Ex. C)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on October 20, 2010. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. **[REDACTED]**, a Health Program Manager III employed with the Division of Health Care Services, appeared in person; he represented the Division and testified on its behalf.

At hearing, the Division requested this case be dismissed because the Claimant had not filed her hearing request within the time allowed by law. The Division's request was granted and this case was dismissed as explained below.

**ISSUE**

This case arose when the Claimant challenged the Division's November 30, 2009 denial of her request for dentures. However, because the Division moved to dismiss the case, the actual issue was:

Did the Claimant's August 21, 2010 hearing request comply with the 30 day time limit for requesting a hearing, as required by 7 AAC 49.040?

## **FINDINGS OF FACT**

The following facts are established by a preponderance of the evidence.

1. On November 23, 2009, the Claimant's dentist submitted a pre-authorization request that Medicaid pay for dentures for the Claimant. (Ex. E, p. 1)
2. On November 30, 2009, the Division sent the Claimant written notice that her pre-authorization request for dentures was denied. (Ex. D)
3. On April 21, 2010, the Claimant requested a fair hearing contesting the November 30, 2009 denial of her pre-authorization request for dentures. (Fair Hearing Case No. 10-FH-2147, Ex. C)
4. On May 18, 2010, this Office dismissed Fair Hearing Case No. 10-FH-2147 as having been untimely filed. (*See* Fair Hearing Case No. 10-FH-2147)
5. The Claimant received the May 18, 2010 Order dismissing Fair Hearing Case No. 10-FH-2147. (Claimant testimony)
6. On August 21, 2010, the Claimant submitted a new hearing request contesting the November 30, 2009 denial of her pre-authorization request for dentures. (Claimant testimony, Ex. C) This is the current case – Fair Hearing Case No. 10-FH-2327.

## **PRINCIPLES OF LAW**

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

This Office's jurisdiction includes Medicaid cases. 7 AAC 49.010. A hearing must be requested within 30 days of the date a Claimant receives notice the Division has taken an adverse action on her case:

A hearing is available upon request only for those clients who make or mail an oral or written request within 30 days after receipt of notice of the division action by which they are aggrieved.

7 AAC 49.040.

If a Claimant disagrees with the decision issued after a fair hearing, the Claimant only has 15 days to file an appeal, which must be made to the Division Director:

**7 AAC 49.220. Appeal to the director.** The client may file an appeal to the [Division] director in writing within 15 days after receipt of the hearing authority's decision.

(Emphasis in original)

### ANALYSIS

The undisputed facts of this case show the following:

1. The Division denied the Claimant's request for dentures on November 30, 2009. The Claimant requested a hearing on April 21, 2010. That hearing request resulted in Fair Hearing Case No. 10-FH-2147, which was dismissed on May 18, 2010, as having been untimely filed. The Claimant received the dismissal order. *See* Finding of Fact 5 above.
2. The Claimant, then, on August 21, 2010, submitted a new hearing request contesting the November 30, 2009 denial of her denture request. *See* Finding of Fact 6 above. That hearing request resulted in the current case, Fair Hearing Case No. 10-FH-2327.

Because there are no disputed facts, this case presents only the legal issue<sup>1</sup> of whether it should be dismissed because the Claimant did not request a hearing with the time allowed by law.

Alaska regulation 7 AAC 49.040 provides a strict time limit on requesting a hearing. The Claimant only has 30 days after receipt of the Division's notice to request a hearing to challenge the Division's adverse action, as stated in the notice. In this case, the Division's adverse action was denial of the Claimant's request for dentures. That denial notice was issued on November 30, 2009.

The Claimant's opportunity to request a hearing challenging the Division's November 30, 2009 denture denial expired at the end of December 2009. The Claimant's August 21, 2010 hearing request was late by almost 8 months. As a result, the Claimant is not entitled to a fair hearing to contest the November 30, 2009 denture denial.<sup>2</sup> *See* 7 AAC 49.040. This case is therefore **DISMISSED** with prejudice and may not be refiled.

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<sup>1</sup> Because this case represents a purely legal issue, with no disputed factual issues, the burden of proof requirement does not apply in this case.

<sup>2</sup> It must be noted that the Claimant's August 21, 2010 hearing request was her second request for a fair hearing on the November 30 2009 denture denial. Her first hearing request, made on April 21, 2010, resulted in Fair Hearing Case No. 10-FH-2147. That case was dismissed on May 18, 2010, because the April 21, 2010 hearing request was untimely, i.e. not made within 30 days of the November 30, 2009 denture denial notice.

The Claimant received the May 18, 2010 dismissal order in Fair Hearing Case No. 10-FH-2147. She then waited 3 months, until August 21, 2010 to refile her hearing request, which resulted in the current case. The Claimant's new request for hearing involves the same Division action where her hearing was previously dismissed. Her remedy is not to file a new request for a hearing, but rather to file an appeal. *See* 7 AAC 49.220 (An appeal to the Division Director must be filed within 15 days of the date the Claimant received the original decision/dismissal order)

## CONCLUSIONS OF LAW

1. The Claimant's August 21, 2010 fair hearing request challenging the Division's November 30, 2009 denial of her denture request was made almost 8 months after the time had expired to request a fair hearing contesting that denial. *See* 7 AAC 49.040.
2. The Claimant's hearing request is therefore time-barred and this case is DISMISSED as having been untimely filed. It may not be refiled (dismissed with prejudice).

## DECISION

This case is DISMISSED as having been untimely filed. It may not be refiled (dismissed with prejudice).

## 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:

Kimberli Poppe-Smart, Director  
Division of Health Care Services  
4501 Business Park Blvd., Suite 24  
Anchorage, AK 99503-7167

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 19th day of November, 2010.

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*/signed/*  
Larry Pederson  
Hearing Authority

### Certificate of Service

I certify that on this 19th day of November 2010, true and correct copies of the foregoing were sent to:  
Claimant, by USPS First Class Certified Mail, Return Receipt Requested.  
And to the following by email:

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

\_\_\_\_\_  
J. Albert Levitre, Jr.  
Law Office Assistant I