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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. 10-FH-2472
)	
Claimant.)	DHCS Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

On November 26, 2010 a request for prior authorization for payment of Medicaid Dental Services was submitted on behalf of Mr. ██████████ (Claimant) by his dentist (Ex. E-1). On December 1, 2010 Affiliated Computer Services, Inc., (a private entity acting as agent for the State of Alaska Division of Health Care Services), mailed a letter to the Claimant denying his dentist's request for prior authorization of the requested Medicaid dental benefits (Ex. D-1). The Claimant's guardian disagreed with this benefit denial, and on December 29, 2010 a hearing request was submitted on behalf of the Claimant (Ex. C-1).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant's hearing began as scheduled on February 8, 2011 before Hearing Examiner Jay Durych. The Claimant attended the hearing in person but, due to his medical impairments, did not testify. The Claimant's mother and legal guardian, Ms. ██████████, attended the hearing in person, represented her son, and testified on his behalf. ██████████, Medical Assistance Administrator III with the Division of Health Care Services (Division or DHCS), attended the hearing in person, represented DHCS, and testified on its behalf. ██████████, Medical Assistance Administrator III with DHCS, participated in the hearing by telephone and testified on behalf of DHCS.

The parties' testimonies and exhibits were received into evidence. At the end of the hearing the record was left open to allow the Claimant until February 22, 2011 to file additional exhibits; DHCS was given until March 8, 2011 to file any response. On March 8, 2011,

following this Office's receipt of the parties' post-hearing filings, the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on December 1, 2010, it denied the Claimant's dentist's request for prior authorization for a specific type of dental appliance, (known as "Maryland Bridge Wings" and classified by Medicaid as a "Retainer – Cast Metal for Resin Bonded Fixed Prosthesis"), based on the assertion that this type of dental appliance is not a covered item under the State of Alaska's Medicaid regulations?

FINDINGS OF FACT

The following facts were established by a preponderance of the evidence:

1. The Claimant was born in 1983 and was 27 years of age at the time the Medicaid prior authorization request at issue in this case was submitted (Ex. E-1).
2. Several of the Claimant's upper front teeth were removed due to an accident / fall which occurred in 2009 (██████████ testimony). The Claimant's teeth were fractured so badly that they had to be removed by an oral surgeon. *Id.* The Claimant is currently missing teeth numbers eight (8) and nine (9) due to the accident (Ex. H-1).
3. There are several possible approaches to the restoration or repair of the Claimant's dental injuries (██████████'s and ██████████'s testimony). One of these approaches would be to use a removable dental appliance (██████████ testimony). The problems with this approach are that (a) there is a significant danger that, due other medical impairments, the Claimant would choke on it; and (b) the Claimant, due to other medical impairments, would probably spit it out and not use it. *Id.* The Claimant previously had a removable dental appliance, but it was not effective because the Claimant would flick it out with his tongue. *Id.*
4. Another treatment option would be to install a permanent "partial upper" (██████████ testimony). However, this option would not be ideal because it would require the Claimant to undergo multiple dental procedures, and, given the Claimant's other medical impairments, multiple procedures would be mentally and/or emotionally taxing for the Claimant. *Id.*
5. A third treatment option would be to install a complete / traditional bridge (██████████ testimony). Again, however, this option would not be ideal for the Claimant because, given his disabilities, he might fall again and impact on his front teeth again. *Id.* A significant impact on a traditional bridge, which is firmly anchored to the teeth on either side, could result in breaking out the anchor / abutment teeth on either side. *Id.* If this were to occur, her son would then be missing two additional front teeth. *Id.*
6. The Claimant's dentist (██████████, D.D.S.), after consulting with other dentists, came to the conclusion that a retainer-cast metal for resin bonded fixed prosthesis, (a

type of removable six (6) tooth bridge, commonly known as “Maryland Bridge Wings,”¹ would be the best solution for the Claimant’s particular needs (██████ testimony; Ex. H-1). The Claimant’s dentist has recommended the Maryland Bridge Wings for the abutment teeth, instead of full crowns, primarily because of the potential for future accidental injuries to the Claimant’s teeth (Ex. H-1). With Maryland Bridge Wings there is less potential trauma to the abutment teeth, in the case of an accident, than if full crowns were used (Ex. H-1). Using Maryland Bridge Wings would also cost less than using full crowns (Ex. H-1).

7. On November 26, 2010 the Claimant’s dentist submitted a request, to Alaska Medicaid / DHCS, for prior authorization of Maryland Bridge Wings for the Claimant (Ex. E-1). The prior authorization request sought Medicaid payment approval using Medicaid dental code No. D6545 (Ex. E-1).

8. On December 1, 2010 Affiliated Computer Services, Inc. mailed a letter to the Claimant, on behalf of DHCS, denying his dentist’s November 26, 2010 request for prior authorization of the Maryland Bridge Wings (Ex. D-1). The denial letter stated in relevant part: “Denied dental code D6545 Bridge Wing Tooth #6 #7 #10 #11. D6545 is not a covered code.” (Ex. D-2).²

9. At the hearing on February 8, 2011, the Division introduced into evidence pages 35 – 43 of the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults* (Exs. G-1 through G-9). Those codes begin numerically with Code No. D0120 and end with Code D7972. *Id.* The code for the Maryland Bridge Wings at issue in this case, D6545, is not listed as a covered code by the *CDT Procedure Codes* (Ex. G).

¹ Dental bridges are supported by natural teeth or implants, and literally bridge the gap created by one or more missing teeth. See University of Maryland Medical Center website at <http://www.umm.edu/oralhealth/bridge.htm>; see also <http://www.webmd.com/oral-health/dental-health-bridges> (date accessed April 20, 2011). A bridge is made up of two crowns for the existing teeth on either side of the gap, with one or more false teeth in between. *Id.* The two anchoring teeth are called abutment teeth. *Id.* The false teeth between the abutment teeth are called pontics, and can be made from gold, alloys, porcelain, or a combination of these materials. *Id.* Maryland bonded bridges, (also called a resin-bonded bridge or a Maryland bridge), are made of plastic teeth and gums supported by a metal framework. *Id.* Metal wings on each side of the bridge are bonded to the existing (abutment) teeth. *Id.*; see also *Oxford American Handbook of Clinical Dentistry* (Da Silva, Mitchell, and Mitchell (2007)) at pages 274-275, accessed online at <http://books.google.com/books> (date accessed April 21, 2011); *Restorative Dentistry* (A.D. Walmsley 2002) at page 150, accessed online at <http://books.google.com/books> (date accessed April 21, 2011).

² The portion of the Division’s notice letter beginning “This determination is based on the following:” (Ex. D-2) *should*, for purposes of clarity, have contained a citation to all of the regulations on which the Division’s decision was based. See 42 CFR 431.206(b); 42 CFR 431.210(a); 7 AAC 49.070; *Allen v. State of Alaska Department of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155 (Alaska 2009); and *Rodriguez By and Through Corella v. Chen*, 985 F.Supp. 1189, 1196 (D. Arizona 1996), *appeal dismissed* by *Rodriguez v. Chen*, 121 F.3d 716 (9th Cir. 1997). However, because the Division’s notice letter contains a citation to one of the relevant Alaska Administrative Code chapters (7 AAC 145) at the first page of the letter (Ex. D-1), the notice is legally sufficient.

10. Ms. [REDACTED] has been advised that Medicaid will cover alternative procedures (such as implants) which cost much more than the Maryland Bridge Wings requested in this case ([REDACTED] testimony).

11. DHCS does not dispute that Maryland Bridge Wings may be the best dental procedure / dental appliance for the Claimant ([REDACTED] testimony). However, Medicaid does not cover all dental procedures / dental appliances, and Maryland Bridge Wings are one of those non-covered procedures / appliances ([REDACTED] testimony).

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo or existing state of affairs normally has the burden of proof.³ This case involves the denial of an initial application or claim 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.⁴ 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.⁵

II. The Medicaid Program – In General.

Medicaid was established by Title XIX of the Social Security Act in 1965 to provide medical assistance to certain low-income needy individuals and families. 42 USC § 1396 *et. seq.* Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs) at Title 42, Part 435 and Title 45, Part 233. The Medicaid program’s general eligibility requirements are set forth at 42 CFR Sections 435.2 – 435.1102.

The Medicaid program is administered in Alaska by the Department of Health and Social Services’ Division of Health Care Services (DHCS). *Id.* The State of Alaska’s Medicaid statutes are set forth at A.S. 47.07.010 – A.S.47.07.900. The State of Alaska’s regulations

³ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170, 1179 n.14 (Alaska 1986).

⁵ *Black’s Law Dictionary* 1064 (West Publishing, Fifth Edition, 1979); see also *Robinson v. Municipality of Anchorage*, 69 P.3d 489 (Alaska 2003).

implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapter 43 and Chapters 100 – 160.

III. Medicaid Adult Dental Services.

Alaska Statute (AS) Section 47.07.067 provides in relevant part as follows:

(a) [DHSS] shall pay for minimum treatment and for preventative and restorative adult dental services Regulations adopted under this section must include the following: (1) a maximum amount of benefits for preventative and restorative adult dental services of \$1,150 for each eligible recipient in a fiscal year; and (2) specification of the scope of coverage for preventative and restorative adult dental services.

The regulations adopted by the State of Alaska Department of Health and Social Services (DHSS) pertaining to Medicaid dental services are set forth at 7 AAC 110.140 – 7 AAC 110.160.

State Medicaid regulation 7 AAC 110.145, titled “Dental Services for Adults,” provides in relevant part as follows:

(b) Except as provided in (c) of this section, 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:

....

(3) restorative care, including amalgams, resins, stainless steel crowns, and full crowns for restoration of decayed or fractured teeth; temporary restorations, cement bases, and local anesthesia are considered components of a complete restorative procedure and may not be billed separately;

....

(i) Dental services provided under (b) and (c) of this section must be prior authorized by the department When requesting prior authorization, a provider must include on a form provided by the department . . . (2) dental procedures codes for which authorization is requested

State Medicaid regulation 7 AAC 145.120 provides in relevant part as follows:

(a) The department will pay a dentist for dental services provided to a recipient 21 years of age or older in accordance with the . . . *CDT Procedure Codes: Enhanced Dental Services for Adults* table adopted by reference in 7 AAC 160.900.

State Medicaid regulation 7 AAC 160.900(e) provides in relevant part that “(e) The following department fee schedules are adopted by reference . . . (2) . . . *2010 CDT Procedure Codes: Enhanced Dental Services for Adults*, Table I-4b, revised as of March 2, 2010”

IV. Other Legal Principles Applicable to This Case.

“Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that “the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

ANALYSIS

There are no disputed factual issues in this case. The Division does not dispute that Maryland Bridge Wings may be the best dental procedure / dental appliance available for the Claimant (██████ testimony). The Claimant does not dispute that Maryland Bridge Wings are not listed in the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults* (Exs. G-1 through G-9). Thus, the issue raised in this case is whether a dental procedure / dental appliance can be covered by Alaska Medicaid / DHCS, where that procedure / appliance is necessary or appropriate for the patient, even though that procedure / appliance is not listed in the *CDT Procedure Codes*. This is a purely legal issue which must be determined based on the applicable Medicaid regulations.

State Medicaid regulation 7 AAC 110.145 is a regulation providing, *in general terms*, which dental procedures and appliances are covered by Medicaid for adult applicants, and which are not. 7 AAC 110.145(b) provides in relevant part that “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 (3) restorative care, including . . . resins, stainless steel crowns, and full crowns for restoration of . . . fractured teeth Thus, pursuant to 7 AAC 110.145(b)(3), Alaska Medicaid covers the *general class* of restorative dental procedures and appliances required by the Claimant.

The general scope of 7 AAC 110.145 is, however, limited by State Medicaid regulation 7 AAC 145.120(a). That regulation provides in relevant part that “[t]he department will pay a dentist for dental services provided to a recipient 21 years of age or older in accordance with the . . . *CDT Procedure Codes: Enhanced Dental Services for Adults* table adopted by reference in 7 AAC 160.900.” In other words, 7 AAC 110.145 states the *general classes* of dental services covered by Medicaid, while 7 AAC 145.120(a) states the *particular procedures or appliances* that are covered. As stated in 7 AAC 145.120(a), the *only* particular restorative dental procedures or appliances covered by Medicaid are those listed in the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults* (Exs. G-1 through G-9).

At the hearing on February 8, 2011, the Division introduced into evidence pages 35 – 43 of the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults* (Exs. G-1 through G-9). The code for the Maryland Bridge Wings at issue in this case, D6545, is simply not listed as a covered code (Ex. G-8; ██████ hearing testimony).

The Division does not dispute that Maryland Bridge Wings may be the best dental procedure / dental appliance available for the Claimant (██████ testimony). However, the Division is not at liberty to ignore its own regulations, no matter how sympathetic the facts of a case may be.⁶ Likewise, this Office does not have the authority to create an exception to a valid regulation, regardless of whether such an exception might be desirable in a particular case.⁷

In summary, the Maryland Bridge Wings requested by the Claimant are not a covered item under the Alaska Medicaid regulations. Accordingly, the Division was correct when, on December 1, 2010, it denied the Claimant’s dentist’s request for prior authorization for “Maryland Bridge Wings,” (classified by Medicaid as a “Retainer – Cast Metal for Resin Bonded Fixed Prosthesis”), because this dental procedure / appliance is not a covered item under the State of Alaska’s Medicaid regulations.

CONCLUSIONS OF LAW

1. State Medicaid regulation 7 AAC 145.120(a) provides that the *only* restorative dental procedures or appliances covered by Medicaid are those listed in the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults*.
2. The code for the Maryland Bridge Wings for which authorization was requested in this case, D6545, is not listed as a covered code by the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults*.
3. Accordingly, the Division was correct when, on December 1, 2010, it denied the Claimant’s dentist’s request for prior authorization for “Maryland Bridge Wings,” (classified by Medicaid as item D6545 (“Retainer – Cast Metal for Resin Bonded Fixed Prosthesis”), because this dental procedure / appliance is not a covered item under the State of Alaska’s Medicaid regulations and the American Dental Association’s *CDT Procedure Codes: Enhanced Dental Services for Adults*.

⁶ “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

⁷ State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that “the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

DECISION

The Division was correct when, on December 1, 2010, it denied the Claimant's dentist's request for prior authorization for "Maryland Bridge Wings," (classified by Medicaid as item D6545- "Retainer – Cast Metal for Resin Bonded Fixed Prosthesis").

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, Division of Health Care Services
Department of Health and Social Services
4501 Business Park Boulevard, Suite 24
Anchorage, Alaska 99503-7167

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 25th day of April, 2011.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on April 25th, 2011 true and correct copies of the foregoing document were sent to the Claimant via USPS Mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant - via USPS Certified Mail, Return Receipt Requested

██████████, Fair Hearing Representative

██████████, Director, DHCS
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Eligibility Technician I

(signed)

By: _____
J. Albert Levitre, Jr.
Law Office Assistant I