

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
 O C) OAH No. 12-0308-MDS
) Agency No.
_____)

DECISION¹

I. Introduction

On July 30, 2012, O C’s medical provider submitted a request for Medicaid coverage for progressive vision lenses. On August 1, 2012, the Department of Health and Social Services, Division of Health Care Services, through its contractor, Xerox State Healthcare, LLC (Xerox), denied the request. Ms. C requested a Fair Hearing on August 15, 2012.

Ms. C’s hearing was held on September 27, 2012. She appeared by telephone. Gerry Johnson represented the division by telephone. The hearing was recorded.

Based on the record as a whole and after due deliberation, the decision denying Ms. C’s July 30, 2012 application for progressive lenses is **AFFIRMED**.

II. Facts

Ms. C, 54 years of age, is legally blind. Although she has worn corrective lenses since the age of 16 for reading, she has not always been blind. Ms. C believes her condition is the result of severe injuries she received during incidents of domestic violence during the year 2000. Ms. C testified it has been suggested to her that her blindness is the result of complications from diabetes, but she denies that connection, stating she did not have any vision problems before suffering the injuries in 2000. Ms. C stated another potential cause of her blindness is a stroke she had following surgery two years ago.

The quality of Ms. C’s vision has been the same since about 2005. She could see some things through her left eye, but the eye does not have a lens in it, so the vision was not at all useful. After Ms. C’s stroke, her left eye “went dark” and she can no longer see anything through it. She has about 10% vision in her right eye and for adequate correction would require a trifocal lens. The image Ms. C sees with her right eye is like looking through a straw, so with a standard trifocal lens, the very small picture at the end of the straw would have two lines through

¹ This decision is being printed for distribution in #14 Arial Black font pursuant to Ms. C’s request.

it and would limit her vision to the point that the standard lenses would not significantly help her eyesight. But with progressive lenses, she would not see any lines and her vision could be improved.

Ms. C's eye care provider, Dr. Larry Coon, describes her as having:

an eye condition severely limiting her peripheral vision. As such, a conventional bifocal is very disorienting to her and causes visual confusion. Hopefully you will consider allowing her to have a progressive additional lens which has proven in the past to be much better tolerated.^[2]

Dr. Coon's office submitted an order for progressive lenses for Ms. C to Xerox on July 10, 2012.³ On August 1, 2012, Xerox denied the request, stating progressive lenses are not covered by Medicaid.⁴ Ms. C requested a Fair Hearing on August 15, 2012.⁵

III. Discussion

The issue in this appeal is whether Ms. C's request for the Medicaid program to provide her with progressive lenses was correctly denied. Ms. C has the burden of proving by a preponderance of the evidence that her request should have been approved.⁶

Ms. C asserts that it is necessary for her to have progressive lenses so that she can have at least some vision in one eye. She testified conventional bifocal or trifocal lenses with visible lines actually interfere with her vision more than they help. The department asserts that the denial of Ms. C's request for progressive lenses was correct because the regulations that apply to the Medicaid program do not allow for them.

Medicaid was established in 1965 to provide medical assistance to certain needy individuals and families.⁷ It is a cooperative federal-state program that is jointly financed with federal and state funds.⁸ In Alaska, the Department of Health and Social Services administers the Medicaid program in accordance with applicable federal and state laws and regulations. Xerox is a contractor that provides some of the department's services.

In general, Medicaid provides a limited amount of vision hardware. The regulations state that the department will pay for one complete pair of eyeglasses per calendar year, plus one

² Exh. E at pg. 2.

³ Exh. E at pg. 1.

⁴ Exh. D at pg. 5.

⁵ Exh. C.

⁶ 2 AAC 64.290(e).

⁷ 42 USC § 1396 *et. seq.*

⁸ Wilder v. Virginia Hospital Association, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).

additional pair of glasses, with prior authorization and medical justification.⁹ The regulations applying to vision services also specifically state that the department will *not* pay for progressive or no-line lenses.¹⁰ There is no exception for situations involving medical necessity, even, as in Ms. C's case, where it appears that no other lenses will adequately correct her vision. Neither the department nor the administrative law judge has the ability to ignore the department's regulations or interpret them differently for specific Medicaid recipients.¹¹

IV. Conclusion

There is no provision in the Medicaid regulations for the program to provide progressive or no-line lenses for Medicaid recipients. There are no exceptions, even for medical necessity. The determination denying Ms. C's request for progressive lenses is affirmed.

DATED this 13th day of November, 2012.

Signed

Kay L. Howard
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23rd day of November, 2012.

By: *Signed*

Name: Kay L. Howard
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

⁹ 7 AAC 110.705(c).

¹⁰ 7 AAC 110.715(a)(3).

¹¹ "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).