

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

In the Matter of: )  
 )  
 A T ) OAH No. 12-0779-MDS  
 ) HCS Case No.  
 \_\_\_\_\_ ) Medicaid ID No.

**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Health Care Services (Division) was correct to deny A T's request for prior authorization of a set of dentures from one dental provider when the Division had previously authorized, and Mr. T had previously received, a set of dentures from a different dental provider. The Division denied Mr. T's request for the second set of dentures on the grounds that Medicaid authorizes only one set of dentures per recipient every five years.

The Division correctly determined that Mr. T was not eligible for Medicaid coverage for the second set of dentures because Medicaid had provided Mr. T with another set of dentures only days before. Accordingly, the Division's decision denying prior authorization for the second set of dentures is affirmed.

**II. Facts**

**A. *The Dentures and Dental Services at Issue***

Prior to June 2012 Mr. T had a number of teeth in a condition of advanced decay.<sup>1</sup> The teeth were causing Mr. T a great deal of pain.<sup>2</sup> On May 30, 2012 Mr. T saw No Name dentist N N for an evaluation.<sup>3</sup> During that evaluation Mr. T decided that he would like to have all of his remaining teeth extracted and be fitted with dentures.<sup>4</sup> On May 31, 2012 Dr. N's office contacted the Division's contractor, Xerox State Healthcare, LLC (Xerox), to request prior authorization for the dentures.<sup>5</sup> Xerox authorized the dentures for Mr. T later that day.<sup>6</sup>

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<sup>1</sup> Exs. G5, G7, G11.  
<sup>2</sup> Ex. 1 p.1.  
<sup>3</sup> Exs. G5, G8.  
<sup>4</sup> Exs. G5, G8, 1 p.1.  
<sup>5</sup> Exs. G5, G12.  
<sup>6</sup> Exs. G5, G12.

On June 1, 2012 Mr. T saw Dr. N again and impressions were made for the new dentures.<sup>7</sup> Dr. N also explained the process of fitting immediate dentures, and related topics such as denture measurement, shading, and relines, to Mr. T.<sup>8</sup> Dr. N's office then sent Mr. T's impressions to Oral Arts, a dental lab located in Iowa, for fabrication of the dentures.<sup>9</sup> Mr. T was very anxious to get the dentures and paid \$100.00 for expedited processing and shipping.<sup>10</sup>

On June 7, 2012 Mr. T and Dr. N signed a two page treatment plan.<sup>11</sup> The treatment plan clearly indicated that although the impressions for the dentures were taken on June 1st, the dentures would not be finished until relining was completed on July 1, 2012.<sup>12</sup>

On Friday, June 8, 2012 Mr. T's dentures arrived at Dr. N's office, and that office telephoned Mr. T to let him know.<sup>13</sup> Mr. T stopped by Dr. N's office later that day and picked up the dentures.<sup>14</sup> He had an appointment with his oral surgeon for tooth extractions on June 12, 2012 and needed to have the dentures on hand at that time.<sup>15</sup>

Mr. T examined his new dentures once he arrived home from Dr. N's office.<sup>16</sup> He was very disappointed in how the dentures looked.<sup>17</sup> In Mr. T's words:<sup>18</sup>

The teeth were extremely small like baby teeth, the color of the gums were super fake looking, they did not look natural at all and looked like they would be very hard to eat with . . . . The roof of the dentures was level with the bottom of the teeth, which would have made it impossible to eat with. The length of the teeth were about 1/10th of an inch. They looked like something you would get from a costume store. My wife commented they looked like they came out of a Cracker Jack box.

Notably, *Mr. T did not actually try the dentures*; they were sealed in clear plastic and he did not break the seal.<sup>19</sup> Thus, there is no evidence as to whether the dentures did or did not work.

On Monday, June 11, 2012 Mr. T returned the dentures to Dr. N's office and explained his concerns about them.<sup>20</sup> According to Mr. T, Dr. N's office did not offer to revise the dentures to

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<sup>7</sup> Ex. 1 p.1; Ex. G8.

<sup>8</sup> Ex. G5.

<sup>9</sup> Exs. G2, G8, and Ex. 1 p.1.

<sup>10</sup> Ex. 1 p.1.

<sup>11</sup> Ex. 3.

<sup>12</sup> *Id.*

<sup>13</sup> Exs. G5, G9, and Ex. 1 p.1.

<sup>14</sup> Exs. G5, G9, and Ex. 1 p.1.

<sup>15</sup> Ex. G5; Ex. 1 p.1.

<sup>16</sup> Ex. 1 p.1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Exs. G5, G9, and Ex. 1 p.2.

make them acceptable to Mr. T.<sup>21</sup> According to Dr. N's office, Dr. N telephoned Mr. T later the same day and explained that Mr. T's teeth needed to be extracted, and the dentures then needed to be seated, before the fit and aesthetics of the dentures could be adjusted.<sup>22</sup> On the same date (June 11th) Mr. T and his wife cancelled his future appointments with Dr. N and with the oral surgeon to whom Dr. N had referred him, and asked that his records be released to a lab in Anchorage.<sup>23</sup> Later that day Mr. T and his wife drove from No Name to Anchorage and had his extractions performed, and another set of dentures cast, by a different dental provider.<sup>24</sup> Mr. T received a set of dentures from the Anchorage dental provider, which he characterizes as "extremely nice," on June 18, 2012.<sup>25</sup>

***B. Relevant Procedural History***<sup>26</sup>

On June 19, 2012 the Anchorage dental lab submitted a retroactive request for prior authorization for the dentures which it had made for Mr. T.<sup>27</sup> Xerox denied this prior authorization request on the basis that dentures for Mr. T had already been authorized and provided through Dr. N's office.<sup>28</sup> On October 22, 2012 Xerox provided formal written notice to Mr. T that the Anchorage dental lab's prior authorization request had been denied because he had previously been approved for, and had received dentures through, Dr. N's office and because, pursuant to 7 AAC 110.145(b)(6), Alaska Medicaid will pay for dentures only once every five years.<sup>29</sup> Mr. T requested a hearing later that day.<sup>30</sup>

Mr. T's hearing was originally scheduled for November 14, 2012. However, on November 13, 2012 Mr. T and the Division's hearing representative requested that the hearing be postponed. The parties' request to postpone Mr. T's hearing was granted, and the hearing was postponed to December 5, 2012. On November 29, 2012 Mr. T and the Division's hearing representative

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<sup>21</sup> Ex. 1 p.2.

<sup>22</sup> Exs. G5, G9, G10. Dr. N's version of his telephone contact with Mr. T is consistent with the treatment plan agreed to by the parties (Ex. 3), which indicated that although the impressions for the dentures were taken on June 1st, the dentures would not be finished until relining was completed on July 1, 2012. In other words, the treatment plan evidences an understanding, agreed to by both parties, that the dentures were a "work in progress" and would not be considered completed until the dentures had been relined.

<sup>23</sup> Exs. G5, G10.

<sup>24</sup> Ex. G1.

<sup>25</sup> Ex. 1 p. 2.

<sup>26</sup> Because of its relevance to Mr. T's postponement request of January 14, 2013, the procedural history of this case is set forth in greater detail than usual.

<sup>27</sup> Ex. E1.

<sup>28</sup> Ex. E.

<sup>29</sup> Ex. D.

<sup>30</sup> Ex. C.

requested that the hearing be postponed a second time. This request was granted, and the hearing was postponed another six days to December 11, 2012.

Mr. T's hearing began on December 11, 2012. Mr. T participated by phone from No Name, represented himself, and testified on his own behalf. Gerry Johnson attended the hearing in person and represented the Division. Division employee Jeri Powers attended the hearing and testified on behalf of the Division. Dr. Dale Burke, a dentist in private practice in Alaska, participated by phone and testified on behalf of the Division.

The Division completed the presentation of its case at the December 11th hearing, and its witnesses were both cross-examined by Mr. T. Mr. T also presented some of his own testimony, but later decided that it was important for him to attend the hearing in person, and requested that the hearing be continued to allow him to do so. The Division did not object to holding a supplemental hearing. Accordingly, a supplemental hearing was scheduled for January 14, 2013 at 11:00 a.m.

On January 14, 2013, sometime between 8:00 a.m. and 8:40 a.m., Mr. T contacted the Office of Administrative Hearings and spoke with a legal assistant. He stated that he would not be able to attend the hearing at 11:00 a.m. because of car trouble. He also stated that he would not be able to participate in the 11:00 a.m. hearing by phone because at that time he would be on his way to an appointment that he had scheduled at 1:00 p.m., to which he was getting a ride from another person. He requested another hearing postponement.

As of the January 14th hearing Mr. T's hearing had been postponed three times for a total of 61 days. Mr. T previously provided a two page letter setting forth his testimony and arguments. That letter, dated December 7, 2012, had previously been admitted into evidence as Exhibit 12. In addition, at the hearing of December 11, 2012 Mr. T had testified by phone and had cross examined the Division's witnesses. The statutory deadline for issuance of the decision in this case is February 19, 2013.<sup>31</sup> Because of the looming statutory deadline, and because Mr. T had already submitted a written statement and testified by phone, Mr. T's request for an additional postponement was denied. The record was closed on January 14, 2013.

### **III. Discussion**

The parties' arguments in this case are straightforward. The Division argues that it has already paid for one set of dentures through Dr. N's office and that, under its regulations, Mr. T will not be eligible for Medicaid payment for another set of dentures for five more years. Mr. T

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<sup>31</sup> See A.S. 44.64.060(d).

basically asserts that the dentures provided to him through Dr. N's office were defective and therefore do not count against his Medicaid denture quota.

The Medicaid regulations are silent as to whether Medicaid payment for a defective product or service counts toward a recipient's benefit quota, or, on the other hand, whether a Medicaid recipient's benefit quota should be "credited" for payments made for products or services later found to be defective. However, it is not necessary to decide that legal issue in this case because, even assuming that a second set of dentures can be authorized if a first set is defective, the preponderance of the evidence indicates that the dentures provided by Dr. N's office were not defective.

During the hearing of December 11, 2012 the undersigned administrative law judge (ALJ) examined the set of dentures provided by Dr. N's office. As Mr. T testified, the size of the teeth in the dentures does appear small when compared to natural adult teeth, and the roof of the upper denture does appear lower than one might expect. However, the ALJ has no education or training in the field of dentistry. On the other hand, Dr. Burke, who testified on behalf of the Division at hearing, has substantial expertise and experience in dentistry.<sup>32</sup> His written opinion of August 27, 2012<sup>33</sup> states in relevant part as follows:<sup>34</sup>

Upon review of the dentures . . . [they] appear to have been made from ADA standard products, and the color and thickness of the acrylic are all within normal limits. Since these are immediate dentures, they do have a slightly bulkier appearance than non-immediate dentures, and this is very common . . .

Not knowing what the patient's face looks like, I am unable to judge as to whether the teeth are of correct size. From [review of] the pre-op photos enclosed, the denture teeth do appear to be of similar size to [those] of [the patient].

As to whether this set would have worked with Mr. T, there is no way to know. However, the setup and occlusion of the teeth all appear within normal limits. The set also appears to have been made from accurate impressions as there is evidence of palatal ruggae (ridges) present in the denture.

It is very common for immediate dentures to be lined with a soft liner during the delivery phase. This is necessary as there is no [certain] way to know exactly how much bone would remain after extractions, so the dental lab needs to make an educated guess. The soft liner is then replaced every 4 months or so for the first year. After one year, the majority of bone shrinkage has occurred and a permanent lab reline can be predictably accomplished at that time.

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<sup>32</sup> Dale Burke hearing testimony of December 11, 2012.

<sup>33</sup> Ex. F pp. 3-4.

<sup>34</sup> The formatting of Dr. Burke's original opinion letter is modified / condensed here for brevity. Dr. Burke's hearing testimony recapitulated the information and views stated in his opinion letter.

Had Mr. T proceeded as planned . . . I am confident that the fit of the dentures could have been achieved. If he was unhappy with the aesthetics, then measures could have been taken to correct these issues . . . .

In summary, the only informed testimony as to whether the dentures provided by Dr. N were defective was that the dentures were within normal quality standards and that the dentures could have been made to work for Mr. T.

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.

7 AAC 110.145, titled "Dental Services for Adults," provides in relevant part as follows:

(b) 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 relines; *the department will pay for replacement of complete or partial dentures only once per five calendar years . . .* [Emphasis added].

As discussed above, the preponderance of the evidence shows that the dentures provided by Dr. N were not defective. There is thus no basis for implying an exception to the "once every five years" limitation on dentures imposed by 7 AAC 110.145(b)(6).

#### **IV. Conclusion**

Mr. T received a set of dentures from Dr. N's office in June 2012 which were serviceable (or which could have been made so had he continued through the fitting process). Prior authorization for the second set of dentures (from the Anchorage dental lab) was requested less than five years later. Under 7 AAC 110.145(b)(6), Mr. T is only entitled to Medicaid payment for dentures once every five years. The Division thus correctly determined that Mr. T is not yet eligible for Medicaid coverage for a second set of dentures. The Division's decision denying prior authorization for the second set of dentures is therefore affirmed.

Dated this 5th day of February, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
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 14<sup>th</sup> day of February, 2013.

By: Signed  
Name: Jay D. Durych  
Title: Administrative Law Judge

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