

worked.⁸ Ms. C had her previous mouth guard since the 1990s.⁹ Ms. C testified credibly that her quality of life suffered greatly without a properly fitted mouth guard.

III. Discussion

The mouth guard can be a covered service.

The issue in this case is whether Medicaid covers the mouth guard prescribed by Ms. C's dentist. The Notice of Denial states that her claim was denied for "the following reasons, based on the following legal authority:"¹⁰

The occlusal guard requested for you is not covered by Medicaid for recipients over 21. Unless otherwise provided in 7AAC 105-160, the department will not pay for a service that is not reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system, as determined upon review by the department. 7AAC 105.110(1).¹¹

At hearing, the Division made clear it was not denying coverage for Ms. C's mouth guard because it did not believe the mouth guard was medically necessary.¹² Instead, the Division denied the mouth guard because it believes it is not a covered service.¹³ Mouth guard does not appear on its fee schedule as a Medicaid covered service and the Division was not aware of an avenue to get coverage for the mouth guard.¹⁴ The Division did not assert that the mouth guard was considered orthodontic services, which are specifically excluded for those over 21 or older.¹⁵

A notice of denial must "detail" the "reasons for the proposed adverse action, including the statute, regulation, or policy upon which that action is based."¹⁶ Here, the Division's basis for denial at hearing is different from what was stated in the denial notice.

The notice sent to Ms. C stated that the reason for denial was that occlusal guards are not covered for those over 21 and that 7 AAC 105.110(1) precludes payment for any service that is not medically necessary. However, at hearing the Division conceded that the mouth guard was medically necessary. The Division also stated that age was not the limiting factor

⁸ C testimony.

⁹ C testimony.

¹⁰ Exhibit D, page 1.

¹¹ Exhibit D, page 1.

¹² Ybarra testimony; Swenson testimony.

¹³ Swenson testimony.

¹⁴ Swenson testimony.

¹⁵ Swenson testimony.

¹⁶ 7 AAC 49.070.

for mouth guard coverage. The Division did not argue that the mouth guard was on the list of excluded services for those 21 and older.¹⁷ Ms. Swenson testified that a mouth guard is simply not a covered service.¹⁸ According to the Division, mouth guards are not covered regardless of medical necessity.

The Division was unaware of previous instances of mouth guard approval under Medicaid.¹⁹ However, a relatively recent OAH case on point established that coverage for a mouth guard hinges on medical necessity.²⁰ There, the Division denied coverage because at the time of the denial the Division did not have the information to show that the mouth guard was medically necessary.²¹ The Department adopted a decision that approved the mouth guard once it was shown to be medically necessary.

As shown above, the letter from Ms. C's dentist and Ms. C's testimony demonstrate that the mouth guard was medically necessary.²²

IV. Conclusion

Because Ms. C has proven by a preponderance of the evidence that her custom mouth guard is medically necessary, her claim should be preauthorized. The Division's denial is reversed.

Dated August 21, 2014.

Signed _____
Bride Seifert
Administrative Law Judge

¹⁷ Excluded dental services are found in 7 AAC 110.145(d)(1)-(9).

¹⁸ Swenson testimony.

¹⁹ Swenson testimony.

²⁰ See OAH No. 12-0252-MDS (coverage approved after modification of finding, Sept. 5, 2012). In a prior Office of Hearings and Appeals case upholding denial, the Division claimed that the mouth guard was an orthodontic service, explicitly excluded from coverage. See OHA No. 08-FH-75 (July 2, 2008). In the current case, the Division did not argue that the night guard was an orthodontic service. This decision does not address whether a mouth guard prescribed to combat grinding teeth is orthodontic.

²¹ OAH No. 12-0252-MDS.

²² Exhibit 1.

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 9th day of September, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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