

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

In the Matter of:)
)
 S P) OAH No. 16-0494-MDX
) HCS Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Health Care Services (Division) was correct to deny S P's dentist's request for prior authorization of Medicaid funding for a new set of dentures. The Division denied Ms. P's dentist's request for a new set of dentures on the grounds that Medicaid had paid for Ms. P's current set of dentures on May 22, 2014, and, under 7 AAC 110.145(b)(6), the Division may authorize a new set of dentures for a Medicaid recipient only once every five calendar years.¹

It is clear, based on the evidence in the record, that Ms. P's current set of dentures do not fit her well, and that this is causing her substantial hardship. However, the regulation which authorizes a new set of dentures only once every five years contains no exceptions or hardship provisions. Further, neither the Division nor the Office of Administrative Hearings (OAH) have the authority to relax the five-year rule, no matter how sympathetic and deserving a claimant may be. Accordingly, the Division correctly determined that Ms. P is not currently eligible for Medicaid coverage for a new set of dentures. The Division's decision, denying Ms. P's dentist's prior authorization request for a new set of dentures, is therefore affirmed.

II. Facts

A. Ms. P's Dental Problems

The facts relevant to this case are not in dispute. Ms. P is 38 years old.² Approximately two years ago she had to have all of her teeth removed.³ At that time (in May 2014) Ms. P obtained a set of dentures, which were made for her by No Name Dental and paid for by Alaska Medicaid. Ms. P tried to wear the dentures, but they seemed too large, did not fit correctly, and were painful and uncomfortable. The dentures rubbed and would cause sores on her gums. Because of this, Ms.

¹ Exhibit D.

² Exhibit C4.

³ All factual findings in this paragraph are based on Exhibits C2 - C3 and Ms. P's hearing testimony unless otherwise stated.

P cannot wear both her upper denture and her lower denture at the same time. This makes it impossible for Ms. P to eat using her dentures, which in turn has caused her to lose weight; she has lost 35 pounds in the two years since she was fitted for dentures. In addition, the inability to wear both dentures at the same time makes it extremely difficult for her to speak clearly. Finally, the inability to wear both dentures at the same time also causes her to feel self-conscious because it affects her facial features.

Ms. P works at the front desk of a no name facility.⁴ In this position, it is important for her to look presentable and to be able to speak clearly. Accordingly, her employer requires that she wear her dentures at work. However, this is painful and uncomfortable.

After two years of putting up with these problems, in February 2016 Ms. P saw No Name Dentistry to see what the problem was and if anything could be done.⁵ The dentist examined Ms. P and informed her that two of the bones bordering her mouth are too big and need to be reduced.⁶ The dentist recommended an alveoplasty⁷ of both the mandible (lower jaw bone) and the maxilla (upper jaw bone). The dentist's notes state that Ms. P's "[b]uccal⁸ bone is thick and has large horny undercuts that make the denture oversized, poor fitting, and difficult to wear." Based on these problems, the dentist wrote that new dentures are medically necessary for Ms. P.

B. Relevant Procedural History

On April 1, 2016, No Name Dentistry submitted a request for prior authorization of new upper and lower dentures for Ms. P.⁹ On April 28, 2016 the Division's contractor, Xerox State Healthcare, LLC (Xerox), denied the request prior authorization because, under 7 AAC 110.145(b)(6), Alaska Medicaid may only pay for the replacement of dentures once every five calendar years.¹⁰ On May 4, 2016 Ms. P requested a hearing to contest this decision.¹¹

Ms. P's hearing was held on May 19, 2016. Ms. P participated in the hearing by phone, represented herself, and testified on her own behalf. Terri Gagne participated in the hearing by phone and represented the Division. Mary Hansen, manager of the Division's Medicaid dental

⁴ All factual findings in this paragraph are based on Exhibits C3,E2, and Ms. P's hearing testimony.

⁵ All factual findings in this paragraph are based on Exhibits C2, C3, C4, E2, and Ms. P's hearing testimony.

⁶ The dentist's exam notes state "[patient] has large boney undercuts on the UL, UR, and upper anter" (Exhibit C4). "UL" is dental shorthand for "upper left quadrant"; "UR" is dental shorthand for "upper right quadrant."

⁷ An alveoplasty is a surgical procedure used to smooth and reshape a patient's jawbone, in areas where teeth have been extracted or otherwise lost, usually performed in preparation for dentures (Mosby's Dental Dictionary, 2nd Edition (Elsevier 2008)), accessed on June 13, 2016 at <http://medical-dictionary.thefreedictionary.com/alveoloplasty>.

⁸ Buccal bone is the bone on the outward (cheek) side of the jaw (Medical Dictionary for the Dental Professions (Farlex 2012), accessed on June 13, 2016 at <http://medical-dictionary.thefreedictionary.com/buccal+surface>).

⁹ Exhibits D, E1.

¹⁰ Exhibit D.

¹¹ Exhibit C.

program, participated in the hearing by phone and testified for the Division. The record closed at the end of the hearing on May 19, 2016.

III. Discussion

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

Ms. P obtained her first set of Medicaid-funded dentures in May 2014. Thus, at this time, it has been just over two years since Ms. P last obtained dentures through the Medicaid program.

Unfortunately, the Division's regulations contain no exception to the "once every five years" limitation on dentures imposed by 7 AAC 110.145(b)(6). The Division is bound by its regulations, and has no discretion in this matter.¹² It is not allowed to make exceptions to its Medicaid services criteria no matter how deserving the claimant or how sympathetic the case. Accordingly, the Division cannot authorize Medicaid funding for a new set of dentures for Ms. P until May 2019.

Fortunately, as the Division's dental program manager discussed at hearing, there are a number of dental services, which likely *can be authorized* by Alaska Medicaid, which should help with Ms. P's dental problems. First, Alaska Medicaid would likely authorize an alveoplasty to reduce the excess bone in Ms. P's jaws.¹³ Once that surgery has been performed, there will be more room in Ms. P's mouth, and it is likely that the dental office which originally manufactured Ms. P's existing dentures will be able to revise those dentures so that they have a reasonably comfortable fit. This should allow Ms. P to utilize her existing dentures for the next three years, by which time she will once again be eligible for a new set of Medicaid-funded dentures.

IV. Conclusion

Pursuant to 7 AAC 110.145(b)(6), a Medicaid recipient is entitled to Medicaid payment for dentures only once every five years. Because Ms. P received her last set of Medicaid-funded

¹² An administrative agency is "bound by [its] regulations unless and until it repeals or amends the regulation[s] . . . just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

¹³ All factual findings in this paragraph are based on Mary Hansen's hearing testimony unless otherwise stated.

dentures in 2014, Ms. P must wait approximately three more years before she will once again be eligible for a set of Medicaid-funded dentures. Accordingly, the Division was correct to deny the request for prior authorization of new dentures submitted by Ms. P's dentist. The Division's decision, denying Ms. P's dentist's request for prior authorization, is therefore affirmed.

Dated this 20th day of June, 2016.

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 29th day of July, 2016.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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