



authorization.<sup>5</sup> However, the regulations specify that the program will not pay for orthodontic treatment for a recipient if the recipient “has a history of caries during the six months before treatment or ... demonstrates oral hygiene inadequate to successfully complete orthodontic services.”<sup>6</sup>

At the hearing, Ms. Hansen testified that according to the division’s record of dental claims submitted for T, T had fillings on December 12, 2016. A letter from T’s dentist, Dr. O, verified that T “has been caries free since 12/12/16 when last restorations were completed.” The letter, dated March 15, 2017, went on to note that T showed no signs of recurrent decay and that he had increased home care.<sup>7</sup> Although Dr. O’s letter suggests that T has been taking good care of his teeth since December, it also confirms that T had caries that required fillings in December 2016.

Ms. L did not directly contest that T receiving fillings in December, but cited the Orthodontic Referral Oral Health and Hygiene Assessment form for T completed by Dr. O. This form is required under 7AAC 110.153(a)(2)(H) for preauthorization. The form has been adopted by reference into the program regulations in 7 AAC 160.900. Dr. O checked the box on the form indicating that T “presented for a caries-free initial visit or has had all decayed teeth restored and has remained caries free for at least six months; and demonstrates oral hygiene adequate to begin and successfully complete orthodontic services.”<sup>8</sup> However, in light of the subsequent letter from Dr. O noting the restorative work in December, as well as Ms. Hansen’s testimony about the division’s claims records for T, the form is not persuasive evidence that T had been caries-free for six months when prior authorization was requested.

Ms. L also argued that braces are medically necessary for T. The division did not contest this point. The division has determined that T qualifies for interceptive orthodontia.<sup>9</sup> The division’s authorization team noted that T is “approved but, will need to resubmit when patient is 6 months caries free.”<sup>10</sup> So the division is not disputing whether T needs braces, but instead

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<sup>5</sup> 7 AAC 110.153(a)(2) (Exhibit B at 4).

<sup>6</sup> 7 AAC 110.153(c). There is an exception for orthodontic treatment of cleft palate, but because T does not show cleft palate deformities according to the HLD report at Exhibit E, page 2, that exception does not apply in this case.

<sup>7</sup> L Exhibit 1.

<sup>8</sup> Division Exhibit E at 3 (emphasis omitted).

<sup>9</sup> Division Exhibit C at 4.

<sup>10</sup> Division Exhibit E at 1.

basing its denial of prior authorization on the fact that T has had caries requiring fillings within the past six months.

Finally, Ms. L argued that time is of the essence, and T requires braces now to prevent greater problems in the future. Dr. E C's notes specifically recognized the value of early treatment in this case.<sup>11</sup> Furthermore, the division's policy on interceptive orthodontic treatment recognizes the importance of early intervention.<sup>12</sup> That policy defines "successful interception to be intervention in the incipient stages of a developing problem to lessen the severity of the malformation and eliminate its cause." So, division policy recognizes the need for early treatment of orthodontic issues. However, the regulation prohibiting payment for a patient who has had a history of caries during the six months before treatment does not include an exception for interceptive orthodontic treatment. The prohibition on payment for orthodontic services for a recipient with a history of caries during the six months before treatment applies to interceptive orthodontic treatment.

The division and Ms. L agree that T needs braces. The division has correctly determined that it is prohibited by regulation from paying for interceptive orthodontic services provided to T before six months have elapsed since his most recent filling. The evidence presented at the hearing supports the division's conclusion that T received restorative treatment for caries in December 2016. Assuming that T does not develop any new caries, the earliest date he could receive treatment that the division could pay for would be June 13, 2017.

#### **IV. Conclusion**

Six months have not yet elapsed since T had his last filling on December 12, 2017. A division regulation prohibits payment for services if the recipient has a history of caries during the six months before treatment. The division's decision to withhold prior authorization until T remains caries free for at least six months reflects this. The division's decision is affirmed.

Dated: March 30, 2017.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

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<sup>11</sup> Division Exhibit E at 1.

<sup>12</sup> Department of Health and Social Services, Division of Health Care Services, Orthodontic Services Statement of Coverage 07/01/2015, available at <http://dhss.alaska.gov/dhcs/Documents/PDF/orthodontia.pdf>. See Exhibit B at 9 - 10.

## Adoption

The undersigned, by delegation from 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 April 17, 2017.

*Signed*  
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Kathryn L. Kurtz  
Administrative Law Judge

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