

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

In the Matter of)

K T)
_____)

OAH No. 17-0792-MDX
Agency No.

DECISION

I. Introduction

K T's request for Medicaid authorization for a new upper denture was denied because under the applicable regulations, she was not eligible for a new denture. She appealed. At the hearing, Ms. T established that the damage done to her denture was not her fault. A binding regulation, however, sets a strict limit on when a replacement denture will be covered by Medicaid. Therefore, the Division's denial of coverage is affirmed.

II. Facts

A telephonic hearing was held in this matter on August 22, 2017. Ms. T represented herself and testified on her own behalf. Laura Baldwin represented the Division of Health Care Services (Division). Medical Assistance Administrator III Mary Hansen testified on behalf of the Division. The following facts are based on the testimony presented at the hearing.

Ms. T is a Medicaid recipient. She needs a partial maxillary (upper) denture. In June 2014, she was approved for, and received, a partial upper denture. In May 2017, approval was requested for a replacement partial upper denture. Medicaid payment was denied for the upper denture, because one had been approved and paid for by Medicaid only about three years before the request for a replacement denture.

Ms. T explained in her testimony that in March 2017, she was the victim of a domestic violence assault, the result of which was that her upper denture was broken. She testified that she took the denture to a dental care provider who told her that it was damaged beyond repair. She further explained that she has been able to eat soft foods only since the incident, and that not having a functional denture has made her life very difficult.

III. Discussion

Medicaid coverage for medical and dental services is governed by a strict set of regulations. Under these regulations, the Division may authorize a new set of dentures or partial

dentures only once every five years.¹ Because Ms. T’s upper denture was not over five years old, the Division denied authorization for a new partial upper denture.

At the hearing, Ms. T appeared to understand the rules and regulations applicable to her request. She does not contest that her current denture is less than five years old. In her view, however, Medicaid should pay for a replacement denture because her original denture was broken as the result of her being the victim of a domestic violence assault that she did not cause or provoke. She did not disagree that the five-year limitation is appropriate for a quality denture under most circumstances. Here, however, her need for a new denture was caused by her being the victim of a criminal assault. In Ms. T’s view, the facts here justify an exception to the five-year waiting period for a new denture.

The Division does not contest that the damage to her denture was not Ms. T’s fault. However, the regulation relied upon by the Division, 7 AAC 110.145, is binding law. The wording of the regulation does not permit any exceptions to the five-year rule.² No other regulation or statute allows for an exception. Ms. T is, essentially, asking for a ruling that the regulation means “only once per five calendar years unless the original denture is broken as the result of a crime of domestic violence and through no fault of the applicant.” This approach is understandable. We cannot, however, add words or terms to a regulation in this proceeding.³ Changing the terms of the regulation can only occur during the rulemaking process. Because 7 AAC 110.145 is a binding rule that sets a strict standard for when a new denture may be covered, the Division’s decision is affirmed.

Ms. T is encouraged to further explore with her dental care provider whether her denture can somehow be repaired. She may also try inquiring with the Alaska Violent Crimes Compensation Board regarding the possibility of obtaining financial assistance related to the assault incident that resulted in her denture being broken.

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¹ 7 AAC 110.145(b)(6)(A).

² Under 7 AAC 110.145(b)(6)(A), “the department will pay . . . for the following dental services: . . . (6) prosthodontics, including complete or partial dentures and denture repair or relines; the department will pay for (A) replacement of complete or partial dentures only once per five calendar years.”

³ See *Hickel v. Cowper*, 874 P.2d 922, 927–28 (Alaska 1994) (“We are not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result.”).

IV. Conclusion

The Division's June 8, 2017 decision denying Ms. T's request for dental authorization is affirmed.

DATED this 20th day of October, 2017.

By: Signed _____
Andrew M. Lebo
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 6th day of November, 2017.

By: Signed _____
Name: Andrew M. Lebo
Title: Administrative Law Judge

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