

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:	)	
	)	
E T	)	OAH No. 16-1203-PER
	)	Agency No. 2016-0815

**FINAL DECISION**

**I. Introduction**

E T receives health care benefits through the Public Employees Retirement System (PERS). Mr. T fell and broke a tooth. The dentist who repaired that tooth also provided services for two adjacent teeth. Mr. T’s dental benefits were exhausted, which meant that Mr. T requested medical coverage for his dental costs. The PERS Administrator provided coverage for the repair of the broken tooth, but denied coverage for the other two teeth. Mr. T initiated this appeal to challenge the denial.

A proposed decision was issued on December 19, 2016. The parties were provided an opportunity to file proposals for action if either objected to the proposed decision. Mr. T did not file a proposal for action. The PERS Administrator did. After consideration of that proposal for action, the December 19, 2016 proposed decision is modified pursuant to AS 44.64.060(e)(3) – (5), and the following constitutes the Final Decision in this action.

The record shows that Mr. T fell and broke tooth #8, which is a natural tooth.<sup>1</sup> Tooth #8 and tooth #10, also a natural tooth, are the anchor teeth for a fixed bridge for tooth #9, an artificial tooth. As part of the repair to tooth #8, his dentist had to also operate on teeth #9 and #10. Because the repair of teeth #9 and #10 was a necessary component of the repair to tooth #8, those repairs are also covered. However, because Mr. T had already exhausted his dental benefits for the year, the repairs are covered under the medical portion of the plan. Accordingly, the PERS Administrator’s denial of coverage is REVERSED.

**II. Facts**

The following facts were established through the agency record and the exhibits provided by the parties as part of their motion practice.

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<sup>1</sup> This case involves dental services performed on three separate teeth. The teeth are lingual #8, facioincisal #9, and facioincisal #10 (R. 62). They are referred to as #8, #9, and #10 for ease of reference.

Mr. T is covered by the Retiree Health Plan (Plan), the self-insurance plan the State of Alaska offers to retired PERS employees. He fell on his patio in March 2015.<sup>2</sup> In so doing, he fractured tooth #8. Tooth #8 is a natural tooth. It along with tooth #10, also a natural tooth, are the supports for a bridge that holds tooth #9, which is an artificial tooth.<sup>3</sup>

Mr. T saw his dentist about his fractured tooth. The dentist repaired tooth #8. However, as he explained it, in order to repair tooth #8, he had to also work on teeth #9 and #10:

Mr. T had an accident at his rental in No Name, AZ last year and requested me to repair the dental damage caused by the fall. The resultant repair required me to replace #9 and prepare the natural support teeth (i.e. #8 and #10). I found no evidence of decay to the bridge support natural teeth (#8 and #10).

The enclosed pictures and x-rays show the trauma to the natural teeth. #8 shows that it was fractured from the accident as described by Mr. T. There was no evidence that the fractures were related to biting or chewing and both #8 and #10 were free of any decay. The damage to the natural tooth #8 was due to non-biting.<sup>4</sup>

The dentist added in subsequent correspondence:

Because of the nature of this accident I concluded that the repair necessary for patient was to treat not only #8 but also replacing #10. For that reason, I reported the Dental code D6750 for both #8 and #10. Current dental repair protocol for repair of a fractured crown necessitates the disturbance of both natural bridge supports. For Mr. T's accident there are no known dental procedures that would allow me [to] leave #10 in place when repairing #8. Other dental repair procedures could have been selected but would not be as economical as the method used.<sup>5</sup>

Mr. T filed a claim with the Plan.<sup>6</sup> Aetna, the administrator for the medical portion of the Plan, initially denied the entire claim.<sup>7</sup> After several levels of appeal, the PERS Administrator authorized payment for the repair to tooth #8 under the medical portion of the Plan.<sup>8</sup> Moda, the administrator for the dental portion of the Plan, also reviewed the portion of the claim relating to teeth #9 and #10 to determine if the dental portion of the Plan would pay for those repairs. However, Mr. T had already exhausted his dental benefits for the year, which meant that coverage for teeth #9 and #10 was not allowed under the dental portion of the Plan.<sup>9</sup>

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<sup>2</sup> R. 43.  
<sup>3</sup> R. 10, 43, 59 – 62.  
<sup>4</sup> R. 15.  
<sup>5</sup> R. 10.  
<sup>6</sup> R. 58 – 59.  
<sup>7</sup> R. 52.  
<sup>8</sup> R. 11 – 13.  
<sup>9</sup> Ex. A, p. 4.

### III. Procedural History

Mr. T appealed the denial of coverage for teeth #9 and #10 to the Office of Administrative Hearings. At a prehearing conference, the parties agreed that this case could be resolved by motion practice, based upon the agency record, without requiring an evidentiary hearing. The PERS Administrator filed a motion for summary adjudication asking for a decision in its favor. Mr. T opposed the motion, requesting that a decision be issued in his favor. In essence, the parties have cross-moved for summary adjudication. Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.<sup>10</sup> It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.<sup>11</sup>

### IV. Discussion

The undisputed facts in this case are that Mr. T fell and fractured an otherwise healthy natural tooth, tooth #8. Tooth #8 was the anchor for a bridge for tooth #9, an artificial tooth. Tooth #10, a healthy natural tooth, was the other anchor for the bridge. Mr. T's dentist repaired tooth #8. As part of that repair, he stated that it was necessary to replace #9 and prepare #10. He wrote: "[c]urrent dental repair protocol for repair of a fractured crown necessitates the disturbance of both natural bridge supports. For Mr. T's accident there are no known dental procedures that would allow me [to] leave #10 in place when repairing #8."

It is undisputed that Mr. T had exhausted his dental benefits for the year. Accordingly, the issue is whether the medical portion of Mr. T's Plan covered the repairs. The PERS Administrator did not argue or present any evidence that the repair was not medically or dentally necessary. Instead, the PERS Administrator denied coverage of the dental services for teeth #9 and #10 under a provision of the Plan which provides:

The Plan pays for medical conditions of the teeth, jaw, and jaw joints as well as supporting tissues including bones, muscles, and nerves. Medical services include: Services needed to treat accidental fractures or dislocations of the jaw, or injury to natural teeth if the accident occurs while the individual is covered by the Plan.<sup>12</sup>

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<sup>10</sup> See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

<sup>11</sup> See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Pierce, *Administrative Law Treatise* § 9.5 at 813 (5th ed. 2010).

<sup>12</sup> R. 7 – 8, quoting from the *AlaskaCare Retiree Health Plan Booklet*.

The PERS Administrator argues, based upon the language of the Plan, that it can only cover the cost of the repair to tooth #8 because it was the only natural tooth which was injured in Mr. T's accident.

Mr. T argues that repairing the damage to tooth #8 disturbed his other teeth, which then had to be repaired. The uncontroverted evidence, as explained by Mr. T's dentist, was that the repairs to #9 and #10 were a direct consequence of and required to completely repair the damage to tooth #8. Mr. T's argument is persuasive. It is a reasonable expectation based upon the Plan's language. The PERS Administrator's position is an unduly restrictive interpretation of the Plan, which would preclude any payment for treatments for damage collaterally caused by a medically/dentally necessary treatment. It is also contrary to well established Alaska law regarding the interpretation of insurance contracts, which is that insurance contracts (1) "are considered contracts of adhesion that must be construed to provide the coverage 'a layperson would have reasonably expected from a lay interpretation of the policy terms,'"<sup>13</sup> and that its "coverage provisions are interpreted broadly, while exclusions are viewed narrowly."<sup>14</sup> Consequently, because the dental repairs required for teeth #9 and #10 were a direct consequence of the repair to tooth #8, those costs are covered by the medical portion of the Plan.

#### **V. Conclusion and Appeal Rights**

Summary adjudication is entered in favor of Mr. T. The medical portion of the Plan covers his dental costs for all three of the affected teeth, tooth #8, tooth #9, and tooth #10.

**This Final Decision is issued under the authority of AS 39.35.006. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.**

DATED this 20<sup>th</sup> day of January, 2017.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

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

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<sup>13</sup> *In re D.T.*, OAH No. 10-0577-PER (2011), page 2, quoting *Whispering Creek Condominium Owner Association v. Alaska National Insurance Company*, 774 P.2d 176, 177-178 (Alaska 1989).

<sup>14</sup> *Id.*