

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

In the Matter of	)	
	)	
E X	)	OAH No. 18-0234-MDX
_____	)	Agency No.

**DECISION**

**I. Introduction**

E X receives Medicaid benefits. Her provider requested authorization for a lower denture for Ms. X. The Division of Public Assistance denied the request because the program had paid for dentures for Ms. X within the past five years. Ms. X appeals.

Because the division’s regulation only allows authorization for a denture once in a five year period, the division’s denial is upheld.

**II. Facts**

Ms. X takes medications to treat seizures, blood clots, and stroke. As a result, she suffers from xerostomia, which has caused her teeth to decay. She has had to have all of her top teeth removed, and all but seven of her bottom teeth.<sup>1</sup> The Medicaid program paid for a set of dentures for Ms. X on July 30, 2015.<sup>2</sup> Ms. X’s dentist is now recommending that she have all but two of her remaining teeth taken out. This will mean that her lower partial denture will no longer fit.<sup>3</sup>

On January 23, 2018, Ms. X’s dentist requested authorization from the Medicaid program for a new lower denture for Ms. X. The dentist specifically requested override of the five-year replacement rule based on medical necessity.<sup>4</sup> The division denied the request for authorization.<sup>5</sup> Ms. X requested a fair hearing.<sup>6</sup>

A telephonic hearing was held on April 2, 2018. Ms. X represented herself. Division Hearing Representative Laura Baldwin represented the division. Division Dental Program Manager Mary Hansen testified.

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<sup>1</sup> Exhibit E at 2; Testimony of X.  
<sup>2</sup> Exhibit E at 1.  
<sup>3</sup> Testimony of X.  
<sup>4</sup> Exhibit E.  
<sup>5</sup> Exhibit D at 1.  
<sup>6</sup> Exhibit C.

**III. Discussion**

Because Ms. X needs to have additional teeth extracted, the partial lower denture she has now is not going fit any longer. Ms. X’s dentist has explained the medical necessity of the denture, and the division did not dispute the medical necessity.

However, the Medicaid program regulations provide that the department will pay for replacement of complete or partial dentures “only once per five calendar years.”<sup>7</sup> Medicaid paid for Ms. X’s current lower denture on July 30, 2015. The five-year period for replacement will not run until 2020. Therefore, Ms. X was not eligible for Medicaid coverage of replacement dentures on January 23, 2018, when her dentist requested authorization.

The Medicaid regulation on coverage for dentures does not provide an exception to the five-year rule. Ms. X’s dentist requested an “override” of the rule, but did not cite any authority that would permit the division to ignore the rule in Ms. X’s case. The division does not have discretion to ignore its own regulation.<sup>8</sup>

**IV. Conclusion**

The division’s January 31, 2018 denial of Advanced Family Dentistry’s request for authorization for a new lower denture for Ms. X is affirmed.

Dated: April 2, 2018.

Signed  
Kathryn L. Kurtz  
Administrative Law Judge

**Adoption**

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 20<sup>th</sup> day of April, 2018.

By: Signed  
Signature  
Kathryn L. Kurtz  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

<sup>7</sup> 7 AAC 110.145(b)(6).

<sup>8</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 - 869 (Alaska 2010) (“Administrative agencies are bound by their regulations just as the public is bound by them.”).