STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Appellant

_____/

Docket No. 2010-13146 PA
[redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], sister, appeared on the Appellant's behalf. [redacted], brother in law, appeared as a witness for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted], Dental Hygienist and Diaper and Incontinence Supply Manager, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's request for prior authorization for a lower complete denture?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.

2. On [redacted], the Department received a prior authorization request for an upper complete denture from the Appellant's dentist. (Exhibit 1, page 8)

3. On [redacted], the Department denied the prior authorization request for the upper complete denture. The Department determined that the Appellant did not qualify under the 5 year rule. The payment history indicated an upper complete denture was placed [redacted] (Exhibit 1, pages 8-9)

4. The Department sent the Appellant a Notification of Denial on [redacted]. (Exhibit 1, pages 6-7)

5. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's request for a hearing. (Exhibit 1, page 3)

6. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health sent the Appellant a letter noting that the hearing request form did not contain his signature nor was there any documentation of a legal guardian. The letter gave the Appellant 30 days to return to hearing request form with his signature. (Exhibit 2)

7. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's signed request for a hearing. (Exhibit 1, page 3)

CONCLUSIONS OF LAW

Department's Motion for Dismissal of Appellant's Request for Hearing –

At the outset of hearing, the Department made a motion to dismiss the Appellant's request for hearing. The Department stated that a valid hearing request was not received within the 90 day timeframe allowed under 42 CFR § 431.221(d) and Bridges Administrative Manual (BAM) Section 600, pages 2 and 4 of 34 as effective July 1, 2009. (See Exhibit 1, pages 4-5) The Department explained their position is that the hearing request was not valid until it was signed by the Appellant. Since the denial notice was issued [redacted] and the request for hearing bearing the Appellant's signature was not returned until [redacted], more than 90 days later, the Department moved for a dismissal.

The Department failed to consider 42 CFR § 431.221 as a whole in requesting the dismissal:

> **§ 431.221 Request for hearing.**
> (a) The agency may require that a request for a hearing be in writing.
>
> (b) The agency may not limit or interfere with the applicant's or recipient's freedom to make a request for a hearing.
>
> (c) The agency may assist the applicant or recipient in submitting and processing his request.
>
> (d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearings.

42 CFR § 431.221(a) does not require the hearing request to be in writing, let alone be signed by the Appellant. 42 CFR § 431.221(b) prohibits the Department from limiting or interfering with the Appellant's right to make a hearing request. Finally 42 CFR § 431.221(c) allows the Department to assist the Appellant in submitting and processing the hearing request.

In the present case, it is uncontested that the Department issued the denial notice on [redacted] and that the initial request for hearing was received on December 11, 2009 signed by the Appellant's sister as the authorized hearing representative. The initial request was received within 90 days of the denial notice.

However, as there was no written authorization for the Appellant's sister to be his authorized hearing representative, the State Office of Administrative Hearings and Rules for the Department of Community Health sent the Appellant a letter noting that the hearing request form did not contain his signature nor was there any documentation of a legal guardian. The letter, dated [redacted], gave the Appellant 30 days to return to hearing request form with his signature. (Exhibit 2)

The State Office of Administrative Hearings and Rules for the Department of Community Health sent the [redacted] letter in accordance with the Federal Regulations which prohibit the state agency from limiting or interfering with the Appellant's right to make a request for hearing and which allow the agency to assist the Appellant with the submission and processing of his request. The request for hearing, signed by the Appellant, was received 29 days from this letter, on [redacted]. (Exhibit 1, page 3)

The Department's reliance on the specific provision on BAM 600 is also misplaced. BAM 600 policy primarily addresses Department of Human Services Hearings (DHS). The only portions of BAM 600 that directly apply to Department of Community Health (DCH) hearings are found on pages 9-10 of 34. Specifically, the policy states:

> **DCH HEARINGS MA, TMA-Plus and AMP Only**
>
> DCH Administrative Tribunal conducts administrative hearings regarding DCH determinations. See "DCH Determinations" below. The Tribunal also conducts hearings regarding the following DHS determinations:
>
> - Medical transportation.
> - Level of payment for home help services.
> - Denial or reduction of specific home help services related to activities of daily living.
>
> The administrative tribunal has the same authorities and responsibilities for DCH hearings as SOAHR has for DHS hearings. These include:
>
> - Granting/denying a hearing request.
> - Scheduling/rescheduling the hearing.

- Notifying all parties of the time/place of the hearing.
- Processing requests for in-person hearings.
- Granting/denying requests for adjournments.
- Issuing administrative subpoenas.
- Reimbursing clients for hearings-related expenses.
- Holding the hearing.
- Issuing a decision and order.
- Granting/denying a rehearing/reconsideration request.

Bridges Administrative Manual (BAM) Section 600
Page 9 of 34 July 1, 2009

Accordingly, the policy specifies that it is the DCH Administrative Tribunal which has the authority and responsibility to grant or deny a hearing request regarding a DCH determination, such as the hearing request at issue in the present case. The portion of BAM 600 cited by the Department relate to DHS hearing requests. Further, the signature requirement cited on page 2 of 34 only states that "the request must bear a signature" referring to an adult member of the eligible group of the clients authorized hearing representative. This portion of DHS policy does not require the Appellant to sign the hearing request, the signature of his authorized hearing representative is sufficient. (See Exhibit 1, page 5a)

The motion for dismissal is DENIED.

Denial of Upper Complete Denture -

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

1.10 PRIOR AUTHORIZATION

> Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services.

MDCH Medicaid Provider Manual, Practitioner Section, October 1, 2005, page 4.

The issue in this case is whether the Department properly applied the five year rule for denture coverage. *MDCH Medicaid Provider Manual, Dental Section, July 1, 2009, pages 17-19,* outlines coverage for dentures:

6.6 PROSTHODONTICS (REMOVABLE)

6.6.A. GENERAL INSTRUCTIONS

Complete and partial dentures are benefits for all beneficiaries. All dentures require PA.

Providers must assess the beneficiary's general oral health and provide a five-year prognosis for the prosthesis requested. An upper partial denture PA request must also include the prognosis of six sound teeth.

Complete or partial dentures are authorized:

- If there is one or more anterior teeth missing;
- If there are less than eight posterior teeth in occlusion (fixed bridges and dentures are to be considered occluding teeth); or
- Where an existing complete or partial denture cannot be made serviceable through repair, relining, adjustment, or duplicating (rebasing) procedures.

If a partial denture can be made serviceable, the dentist should provide the needed restorations to maintain use of the existing partial, extract teeth, add teeth to an existing partial, and remove hyperplastic tissue.

Before final impressions are taken and any construction begun on a complete or partial denture, healing adequate to support a prosthesis must take place following the completion of extractions or surgical procedures. This includes the posterior ridges of any immediate denture. An exception is made for the six anterior teeth (cuspid to cuspid) only when an immediate denture is authorized.

Reimbursement for a complete or partial denture includes all necessary adjustments, relines, repairs, and duplications within six months of insertion. This includes such services for an immediate upper denture when authorized.

If a complete or partial denture requires an adjustment, reline, repair, or duplication within six months of insertion, but the services were not provided until after six months of insertion, no additional reimbursement is allowed for these services.

Complete or partial dentures are not authorized when:

- A previous prosthesis has been provided within five years, whether or not the existing denture was obtained through Medicaid.
- An adjustment, reline, repair, or duplication will make them serviceable.
- Replacement of a complete or partial denture that has been lost or broken beyond repair is not a benefit within five years, whether or not the existing denture was obtained through Medicaid.

6.6.B. COMPLETE DENTURES

Only complete dentures with noncharacterized teeth (i.e., without cosmetic enhancements, such as gold denture teeth) and acrylic resin bases are a benefit of Medicaid. To be covered by Medicaid, all of the following procedures must be used to fabricate the dentures:

- Individual positioning of the teeth;
- Waxup of the entire denture body; and
- Conventional laboratory processing.

A preformed denture with teeth already mounted (i.e., teeth already set in acrylic prior to initial impressions) forming a denture module is not a covered benefit. Overdentures or Cusil dentures are not a covered benefit.

Medicaid Provider Manual, Dental Section,
Version date July 1, 2009.

The Department introduced the Appellant's Medicaid beneficiary payment history into evidence showing that a complete upper denture was placed January 24, 2006. (Exhibit 1, page 9) The Department testified that the prior authorization request for the upper complete denture was denied because the Appellant had this prosthesis provided within the past five years. The Department testified that this denial was in accordance with the policy outlined in the Dental Section of the Department's Medicaid Provider Manual

The Appellant's sister testified that the Appellant came to live with her in [redacted] and the Dentures he had were mismatched and did not fit his mouth. The Appellant's sister stated she was not aware of a prior upper complete denture being placed in [redacted]. The Appellant's brother in law testified that the Appellant was choking on food with his old

dentures and that the Appellant's doctor said he had contacted the Department and was told the denture would be allowed. The Appellant's witnesses also stated that they believed dental implants had also been approved.

It is noted that the Appellant's dentist noted that the Appellant has current prior authorization number, that treatment had started but has not been completed, and requested additional time on this Prior Authorization Request form. The Department testified that they looked up the prior authorization number but it was not found in the system. The Department checked the system again during this hearing, again no record of this number was found. Further, the Department witness testified that extensions were not being allowed as the dental program was closing and that dental implants were never a covered benefit under the dental program.

Based on the testimony of the Appellant's sister and brother in law, the Appellant has been undergoing surgical procedures on his jaw/mouth. As there is no record of a prior authorization approval through the dental program, the Appellant's representative may wish to check with the Appellant's doctors to see if the dental implants and upper complete denture were approved under his medical coverage due to the surgical treatment.

While this ALJ has sympathy for the Appellant's circumstances, the program parameters do not allow for coverage for dentures more than 1 time in a 5 year period. The Appellant's representative did not provide any documentation from the Appellant's dentist's office to dispute the payment history submitted by the Department or documentation of an approved prior authorization for the upper complete denture. The Department provided sufficient evidence that its denial was in accordance with policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for prior authorization for a lower complete denture

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 4/12/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.