

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Docket No. 2014-16891 PA
Case No. ██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. Appellant appeared and testified.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Medicaid Utilization Analyst, testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for Prior Authorization (PA) of complete upper and partial lower dentures?

FINDINGS OF FACT

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

1. Appellant is an ██████-year-old Medicaid beneficiary.
2. On ██████████, Appellant received maxillary and mandibular (upper and lower) dentures. (Department Exhibit A.10)
3. On ██████████ the Department received a prior authorization request for complete upper and lower partial dentures for Appellant. On ██████████, the Department sent Appellant written notice that her prior authorization request for the dentures was denied on the basis that Appellant "complete or partial dentures are not authorized when a previous prosthesis has been provided within 5 years,

...Patient will qualify in ██████████". (Exhibit A.7)

4. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing, protesting the denial.
5. On ██████████ an administrative hearing was held with Administrative Law Judge (ALJ) ██████████. [Docket No 2013-60009] In that decision the ALJ recognized that Appellant had filed a complaint with the Department of Licensing and Regulatory Affairs (LARA) against the provider of the dentures and had turned over the dentures to the State for evidence. The Department recommended that "Appellant get the dentures back so that she can take them to a different provider for repair." (Exhibit A.20-23)
6. Appellant took her dentures to a new dentist-Dr. ██████████. On ██████████ the Department received a prior authorization request from Dr. ██████████, DDS for complete upper and partial lower dentures, stating that the dentures cannot be repaired. (Exhibit A.9, A.11)
7. On ██████████ the Department issued a denial notice denying the ██████████ PA request for the same reason as previously given-the 5 year rule. (Exhibit A.7)
8. On ██████████ MAHS received a hearing request from Appellant.

CONCLUSIONS OF LAW

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. . . .

*Medicaid Provider Manual, Practitioner
Version date April 1, 2013.*

Under the general policy instructions for Medicaid related dental services the MPM sets replacement schedules for denture repair and replacement:

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 (rebasement) 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....

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.

Medicaid Provider Manual, Dental
§6.6A, Version date April 1, 2013, pp. 17, 18

In this case, the Department argued that the denial is supported by the “5 year rule”, and, that a fraud complaint against a provider cannot be an exception to the 5 year rule.

Appellant argues that she followed the Department’s instructions by taking the dentures to different provider for repair. That new provider documented that the dentures could not be serviced.

First, this ALJ wishes to note that the language found the MPM as to the conditions when dentures “are or are not authorized” cited above do not contain grammatical connectors between paragraphs; there is no “or” or “and” between the paragraphs. It is unclear whether ALL the conditions must be met, or, if any one will suffice to make a recipient eligible or ineligible.

Certain connectors can require a specific reading such as the use of the word “shall” and in the case of inclusive vs exclusive “or” and use of the word “and.” Administrative law is not exempt from legal issues of statutory construction, which is particularly difficult when non-lawyers write policy and argue for a certain interpretation at an administrative hearing. However, in this case, there are no connectors at all, with one exception.

The position of the Department and this ALJ’s administration in this case is that “medical necessity” requires a strict reading as Medicaid resources are limited. In light of this, along with the dicta in found in *Chevron v Natural Resources Defense Council*, 467 US 837 (1984), this ALJ will uphold the denial on the basis of the 5 year rule.

It is noted that Sec 6.6A also contains restrictions regarding a situation where repair or adjustment was required but not done within six months. Appellant could be barred from replacement under this section.

After a careful review of the credible and substantial evidence of the whole record, and all of the testimony, this ALJ finds that Appellant has not shown by a preponderance of evidence that she meets the eligibility criteria found in Section 6.6.A in the Medicaid Provider Manual. The Department's denial is affirmed.

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 of complete upper and lower partial dentures.

The Department's decision is **AFFIRMED**.

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Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: April 7, 2014

Date Mailed: April 9, 2014

[REDACTED]
cc: [REDACTED]

***** NOTICE *****
The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.