
In the Matter of the Appeal of
██████████
from a determination by the Suffolk County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on December 9, 2011, in Suffolk County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

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For the Office of Managed Care

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was the Appellant's request for a fair hearing to review the Agency's determination to deny the Appellant's prior approval request timely?

Assuming the request was timely, was the Agency's determination to deny the Appellant's prior approval request correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age 54, has been in receipt of a Medical Assistance authorization under Royal Health Care as provided by Denta Quest.

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2. On February 12, 2011, the Appellant's dentist requested prior approval for root canal treatment, posts, cores and crowns on tooth number 20 for the Appellant.

3. The Agency's dentist reviewed the prior approval request and the supporting documentation. The Agency's dentist found that the Appellant had eight posterior teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other).

4. On February 23, 2011, the Agency determined to deny the Appellant's dentist's prior approval request for root canal treatment on tooth number 20 for the Appellant on the grounds that the Appellant has eight posterior teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other) which are considered adequate for functional purposes.

5. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Medical Assistance benefits.

6. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record and it was not returned as undeliverable by the United States Post Office.

7. On May 13, 2011, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

Section 365-a of the Social Services Law provides in part:

2. "Medical Assistance" shall mean payment of part or all of the cost of medically necessary medical, dental and remedial care, services and supplies, as authorized by this title or the regulations..., which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or

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threaten some significant handicap and which are furnished an eligible person in accordance with this title and the regulations...

Section 364.2 of the Social Services Law provides in part, as follows:

The Department of Health shall be responsible for . . .

- (b) establishing and maintaining standards for all non-institutional health care and services rendered pursuant to this title, . . .

* * *

Pursuant to regulations at 18 NYCRR 513.0, where prior approval of medical, dental and remedial care, services or supplies is required under the MA program, such prior approval will be granted when the medical, dental and remedial care, services or supplies are shown to be medically necessary to prevent, diagnose, correct or cure a condition of the recipient which: (1) causes acute suffering; (2) endangers life; (3) results in illness or infirmity; (4) interferes with the capacity for normal activity; or (5) threatens to cause a significant handicap. Pursuant to 18 NYCRR 513.6, the determination to grant, modify or deny a request initially must be made by qualified Department of Health professional staff exercising professional judgment based upon objective criteria and the written guidelines of the Department of Health and regulations, and commonly accepted medical practice.

Section 506.2(a) of 18 NYCRR provides that dental care in the Medical Assistance program shall include only preventive, prophylactic and other routine dental care, services and supplies, and dental prosthetic and orthodontic appliances required to alleviate a serious health condition including one which affects employability.

Section 506.3(b) of the Regulations requires prior approval for all dental prosthetic appliances which shall be furnished only if required to alleviate a serious health condition including one which affects employability.

Section 2.2.4.1 of the New York State Medicaid Management Information System (MMIS) Dental Provider Manual provides that when any portion of the total treatment plan requires prior approval, the total treatment plan must be submitted for review on the prior approval request form.

Section 2.2.3.2 of the New York State Medicaid Management Information System (MMIS) Dental Provider Manual provides that services provided must conform to acceptable standards of professional practice.

Section 2.2.3.1 of the New York State Medicaid Management Information System (MMIS) Dental Provider Manual provides that:

Dental care in the Medicaid Program shall include only essential Services rather than comprehensive care. The provider shall use this Manual to determine when dental services are considered "essential" by the Medicaid Program. The application of standards related to individual services is made by the Department of Health Area Office Dental Director when reviewing individual cases.

Section 2.2.7.6 of the New York State Medicaid Management Information System (MMIS) Dental Provider Manual provides that:

- (f) Dentures and partial dentures will not be provided for all recipients who are edentulous or partially edentulous. Factors which are considered by the Local Dental Director in reviewing each individual prior approval request on its own merits include such items as:
 - iii. Need for function or aesthetics: Partial dentures will be approved only when they are essential for aesthetics or function. Under the New York State Medicaid Program, six posterior teeth in occlusion (three maxillary and three mandibular teeth in functional contact with each other) are generally considered adequate for functional purposes. One missing maxillary anterior tooth or two missing mandibular anterior teeth may be considered a serious aesthetic problem which warrants a prosthetic replacement. The applicability of these guidelines, which are given as a point of reference, will be determined in each individual case.

Eight posterior teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other) will be considered adequate for functional purposes. Requests for partial dentures, endodontic therapy, posts and crowns will be reviewed for necessity based upon the presence/absence of eight points of occlusal contact in the mouth (bicuspid/molar contact).

Under the Medicaid Guidelines Molar root canal therapy for patients 21 years of age and over, are not within the scope of the Federal Medicaid Program unless the extraction would be medically contraindicated or the tooth or the tooth is a critical abutment for an existing serviceable prosthesis.

DISCUSSION

On February 23, 2011, the Agency determined to deny the Appellant's dentist's prior approval request for root canal treatment on tooth number 20 for the Appellant on the grounds that the Appellant has eight posterior teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other) which are considered adequate for functional purposes.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning Medical Assistance, the Appellant failed to

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request this hearing until May 11, 2011, which was more than sixty days after the Agency's determination.

The Appellant submitted medial documentation that she was receiving chemotherapy for breast cancer before and during the subject period and that her physical condition prevented her from requesting a fair hearing in a timely manner. This documentation was undisputed by the Agency and established a good cause reason for the Appellant failing to request the fair hearing within the sixty day statute of limitations. Therefore, the record does establish a sufficient basis for tolling the sixty day statute of limitations and the Commission has jurisdiction to review the Agency's action.

The Agency determined to deny the root canal treatment on tooth number 20 for the Appellant on the grounds that the Appellant has eight posterior teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other) which are considered adequate for functional purposes.

The Appellant disagrees with the Agency and stated that she needs the procedure to ease the pain in her mouth when she chews on that side.

The dental care under the Medical Assistance Program is not intended to provide optimum or ideal care under all circumstances. Rather, the Program is intended to assure that the dental health of eligible recipients, such as the Appellant, are reasonably and appropriately functional, and to alleviate serious dental health problems. The Appellant's evidence does not rebut the requirements under Medicaid which mandate that if the Appellant has sufficient teeth in occlusion for functional purposes, the request for root canal treatment on tooth number 20 is not medically necessary. Therefore, the Agency's action is correct and the Agency's determination to deny Appellant's dentist's prior approval request must be affirmed.

The Agency's determination can be considered neither arbitrary nor capricious as it is supported by substantial medical evidence and must be affirmed.

DECISION

The determination of the Agency to deny the Appellant's dentist's prior approval request is correct.

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DATED: Albany, New York
12/20/2011

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, reading "Richard A. Zurbrugg". The signature is written in a cursive style with a large, prominent initial "R".

Commissioner's Designee