

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,625
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare to deny her request for a Medicaid exception authorization for partial dentures because they are not a covered service.

FINDINGS OF FACT

1. The petitioner is a forty-eight-year-old woman who has a disease known as olivopontine cerebellar degeneration which affects her fine motor skills, speech, breathing and walking. She uses a wheelchair but can walk with assistance. The petitioner, who lives in a nursing home, needs help with most of her daily activities, including cutting her food up for eating.

2. The petitioner has upper dentures which are old and do not fit as well as they used to. She has had several teeth extracted from her lower jaw due to decay. She has never had a denture fitted to her lower jaw.

3. Because of these problems with her dentition, the petitioner has trouble chewing her food. On one occasion, approximately a year ago, the petitioner choked on a tomato which was lodged in her throat due to improper chewing and was hospitalized briefly. The petitioner does not eat any kind of

special foods and does not eat pureed or liquified food. Her problem is accommodated for by eating softer food cut into finer pieces.

4. On September 29, 1992, the petitioner's doctor filled out a request for a Medicaid exception to pay for new dentures for the petitioner. He stated that her old dentures had been repaired in the past but are now "shot". It was his opinion that the petitioner "requires dentures in order to obtain adequate nutrition." Her dentist also wrote a letter supporting her request stating that "her upper partial denture has needed numerous repairs. It is at the point now where the fit of her denture can only degenerate rapidly. She is definitely in need of a new upper denture."

5. On November 5, 1992, the petitioner's request was refused by the Department because it was determined to be "not a covered service."

6. Subsequent to the denial, the petitioner submitted two further medical opinions, one from her neurologist which stated that "[s]he needs dentures to help with dentition," and one from another dentist who has treated her which stated that the petitioner "has seven teeth missing on her lower jaw, rendering it impossible for her to masticate food properly. This would result in digestive problems, and also would most likely cause TMJ problems." His opinion was "that these seven lower teeth need urgent replacement with a Partial Lower Denture."

7. Based on the above evidence it cannot be concluded that the petitioner experiences pain from her situation or that she currently suffers from TMJ (temporomandibular joint syndrome). Neither can it be found that the petitioner is in imminent danger of harm from her lack of teeth nor that she will suffer from malnutrition if she does not get new dentures. Her physician's opinion that she needs dentures in order to obtain adequate nutrition is not supported by any findings that she needs to eat particular foods due to her medical condition or any findings that alternatives such as softened, pureed or liquified foods could not provide the petitioner with adequate nutrition. Neither is there any evidence that the petitioner's nutritional status has changed since her lower teeth have been pulled (actual digestive problems, weight loss, etc.). Therefore, it cannot be concluded that the provision of dentures is essential to the maintenance of her nutritional health.

ORDER

The Department's decision is affirmed.

REASONS

The Department's Medicaid regulations contain a provision in the "dental services" portion that dentures as a "rehabilitative, cosmetic, or elective procedure" are not a covered service. M 9 621. An exception to the non-covered

status of dentures is found at M ə 619.1 which provides the following:

Treatment for temporomandibular joint dysfunction is a covered medical service for recipients of any age. Reimbursement will be made to enrolled providers (M.D., D.M.D., or D.D.S.).

The Board has interpreted the above provision to allow for the provision of dentures if they are needed to treat TMJ. See Fair Hearing Nos. 10,379 and 11,207.

The petitioner argues that she should fall under that exception because her dentist has opined that the seven missing teeth in her lower jaw "would most likely cause TMJ problems." She argues that the regulation should extend to the prevention of TMJ and not just the treatment of that problem as it is expressed in the regulation.

The petitioner may be right that it makes sense to prevent a disease rather than to just treat it when it occurs. However, the above Medicaid regulation does not allow or require preventative treatment for TMJ and the petitioner has advanced no legal reason why it must. The Department has made a decision only to cover treatment of the disease and in the absence of a showing that the Department's decision either violates Medicaid statutes or regulations or runs afoul of a constitutional protection, the Board is not authorized to strike down the Department's legally adopted regulation, however much it may disagree with that policy. See 3 V.S.A. ə 3091(d).

The petitioner argues in the alternative that she should be granted an exception authorizing dentures because she cannot properly chew and digest her food without dentures and will experience pain if she chokes again on her food. Undoubtedly this is true of all persons who lack dentition and, as sympathetic as her situation is, she has again advanced no legal argument as to why the Department is prohibited from promulgating a scheme which eliminates prosthetic assistance for persons who have difficulty chewing their food.

The petitioner has presented no persuasive evidence that her particular medical situation creates unique problems for her (as opposed to other edentulous individuals) which prevent her from obtaining the nutrition she needs except through the use of dentures. Had she been able to present such evidence, the dentures might have been found "medically necessary" to prevent a life-threatening problem. However, the petitioner put on no evidence that she currently is nutritionally threatened or that she suffers from serious digestive problems which cannot be resolved except through resort to the use of dentures. Therefore, she cannot be found to have met her burden of showing that she meets any criteria for an exception to the general prohibition against the coverage of dentures.

If the petitioner has or develops further evidence on this issue, she is encouraged to apply again.

RULINGS ON PETITIONER'S REQUESTS

FOR FINDINGS AND CONCLUSIONS

1. Granted.
2. Granted.
3. Granted.
4. Denied.
5. Granted.
6. Granted as to the probability of the choking itself being a painful event. Denied as to general pain from her lack of dentition.
7. Denied.
8. Granted.
9. Granted.
10. Denied.
11. Denied.
12. Denied.
13. See No. 9.

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