

digestion, biting of inner lip and cheek," an inability "to grasp and shear food bits such as a sandwich", and emerging "emotional distress and insecurity" "in respect to appearance, necessary for future professional employment search, and a new career."

4. In a review dated November 1, 2004, DCF concluded in a four page document that the petitioner did not meet the requirements for an exception. The reasons for the denial are summarized as follows:

- The evidence does not show that the petitioner's health condition is unique.
- There was no evidence that the petitioner was unable to digest his food or has any health condition related to an inability to chew.
- Any dental pain and infection can be controlled through medication and following a dental health treatment plan.
- Nutritional needs can be met through food preparation and other means to be discussed with his physician.
- Failure to receive new dentures will not result in serious detrimental health consequences to the petitioner.

5. The petitioner appealed this denial and was informed at hearing on January 11, 2005, that he could provide evidence from his physician that lack of dentition would have

serious health consequences for him and ask for reconsideration of the decision.

6. On May 26, 2005, the petitioner's physician wrote a letter to DCF saying that the petitioner needs new dentures due to changes in the shape of his jaw. He further stated that the dentures do not fit well and cause significant pain with chewing. This has resulted in oral pain and headaches as well as intraoral mucosal injuries. The oral pain and headaches can last up to 1 1/2 hours after a meal. Poor chewing has caused gastrointestinal symptoms and nutritional problems due to decreased food intake. In summary his poorly fitting dentures are resulting in significant medical problems and should be replaced to prevent permanent damage and to relieve pain.

7. On June 21, 2005, DCF issued a review of the new information saying that the physician's letter did not establish a serious medical consequence and that DCF stood by its original decision.

8. The petitioner was given time to respond to DCF's latest decision but provided nothing and failed to attend a rehearing scheduled for July 26, 2005. Nothing further has been submitted by the petitioner.

9. It is concluded that DCF considered all of the pertinent evidence, addressed that evidence and made a decision that was reasonable in light of the evidence not to make an exception to its general rule of denying dentures to Medicaid recipients.

ORDER

The decision of DCF is affirmed.

REASONS

The Medicaid program does not pay for dentures and has not since November 1, 2002. M621.6. Exceptions to non-coverage can be requested through a process in which the recipient provides medical evidence of "extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided." M108¹.

The Board has held that it will not substitute its judgment in M108 cases because the decision to grant an exception is one of discretion for DCF. Fair Hearing Nos. 17,337, 17,547 and 18,061. That discretion is not unfettered, however, and the Board will review DCF's decision

¹ There are other considerations listed in M108 which are not relevant to this appeal as the matter was decided negatively on the first key criterion.

to ascertain if it was arbitrarily made. Cameron V. DSW, SCT. Docket No. 2000-339, August 23, 2001. Fairness requires that the decision be based upon a review and analysis of all of the evidence and the application of the appropriate standard.

In this case, DCF did review and respond to the concerns raised in the evidence provided by the petitioner and did apply the applicable standard set forth above. There is no question that the petitioner, and certainly anyone who is edentulous, can benefit from the use of properly fitted dentures to chew food. However, DCF's contention that the petitioner failed to show that he had a unique health situation and would suffer serious detrimental consequences without dentures is a reasonable one. This is particularly true in light of DCF's unanswered assertions that the petitioner's current health problems can be addressed through means other than the provision of dentures. The petitioner was unable to show a serious gastro-intestinal or other disease² which would make it essential for him to follow a particular diet or carefully chew and digest his food. It

² Persons who have been granted dentures in the past have showed the existence of serious diseases such as chronic ulcerative colitis (Fair Hearing No. 12,180) or insulin dependent diabetes mellitus and hypercholesterolemia (Fair Hearing No. 14,481).

must be concluded that DCF has followed its regulations and has fairly exercised its discretion in this matter and the decision must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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