

stated that the petitioner cannot benefit from regular dentures, making a cast crown necessary to enable her to chew her food and to avoid severe depression.

3. Subsequent to the Department's initial denial of coverage, dated November 30, 2004, the petitioner submitted another letter from her dentist and additional letters from a periodontic specialist, her psychotherapist, and the surgical nurses who were familiar with her gastric bypass operation.

4. In its initial and follow-up decisions DCF concluded that the petitioner's condition is not unique, and that she has not shown that the lack of adequate dentition will cause a significant deterioration in her health.

5. It does not appear that the Department disagrees with the opinions of the petitioner's dentist and periodontist that the petitioner's particular dental problems preclude any alternative to a cast crown if the petitioner is to achieve adequate dentition. The Department has determined, however, that lack of dentition is not a unique condition and that the petitioner can maintain an adequate diet through soft and liquid foods.

6. Regarding the petitioner's *physical* health, the petitioner's treating physician initially noted that the petitioner "would face malnutrition and malabsorption

complications if she could not adequately chew". In its initial decision the Department countered that these opinions ignore the option of a modified diet. In response, the petitioner's periodontist opined that a liquid diet "seems highly insensitive to the emotional and health needs of the patient". The petitioner's surgical nurses noted the petitioner's history of gastric and weight problems and opined that "a liquid or soft diet is generally higher in calories and could put her at additional risk for weight gain", and that "the ability to chew a variety of foods" was "important . . . to maintain her health". The Department responded with its own consulting physician's opinion that "consuming a liquid diet is not a cause of vomiting or weight gain and is in fact better tolerated mechanically than chewed food" (emphasis in original).

7. Weighing the above opinions, it cannot be concluded that the Department abused its discretion on relying on its consulting doctor's opinion over those of the petitioner's nurses in assessing whether the petitioner is likely to suffer any serious consequence to her *physical* health if she has to make modifications to her diet to allow for her inability to chew food.

8. However, the evidence provided by the petitioner regarding her *mental* health is more problematic. There is no indication that the Department disputes the assessment of the petitioner's therapist that "she has a complex, interrelated history of trauma, major depressive episodes and medical problems which has resulted in her total disability". Her dentist stated that "she will fall into a depressive state due to lack of front teeth". The Department found that her treating physician noted her history of "stress induced depression", and that he opined that not having front teeth would be "highly stressful".

9. In addition to the above, the petitioner's therapist submitted the following:

A very specific feature of (petitioner's) personality makes social contact difficult for her. Dental malformations from early childhood were a focus of harassment by peers and make dental issues an emotional trigger.

(Petitioner) has overcome many of her issues and maintains a good but fragile balance between her many health/mental health problems and her admirable efforts to work as much as she is able.

I am of the opinion that her situation is unique in that the loss of her teeth would jeopardize her total well being and functioning.

10. In its decisions in this matter the Department's only response to the above appears to be the summary

conclusion that "it is speculative that depression would ensue" without dentures. In light of the above evidence, *none of which is controverted*, it cannot be concluded that the Department has given adequate consideration to the petitioner's *mental* health problems.

ORDER

The decision of DCF is reversed. The Department shall grant her request for Medicaid coverage for a cast crown.

REASONS

As a cost-saving measure, DCF has eliminated coverage of dentures and related items (specifically including "cast crowns") for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, DCF has a procedure for requesting exceptions to its non-coverage which requires the recipient to provide information about her situation and supporting documentation. M108. DCF must then review the information in relation to a number of criteria as set forth below:

1. Are there 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?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?

3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless DCF has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence.

See, e.g., Fair Hearing No. 17,547. The Board has specifically ruled, however, that it is an abuse of discretion for the Department to ignore or summarily reject uncontroverted medical evidence in M108 cases. Fair Hearing No. 17,132.

In this case, there is no question that the Department was overly summary in its consideration of the allegations regarding the petitioner's mental health problems and all of the *uncontroverted* medical evidence she supplied in support of her unique psychological need to preserve her dentition. In light of the above, the Department must grant the petitioner's request for M108 coverage of a cast crown.

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