

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: December 12, 2017

AGENCY: MAP
FH #: 7664773N

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the New York City	:
Department of Social Services	:

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 January 31, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Medicaid Managed Long Term Care Plan

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was the Medicaid Managed Long Term Care Plan's determination to deny the Appellant's dentist' prior approval request for fixed bridgework on teeth numbers 6, 7, 8, 9, 10 and 11 for the Appellant, correct?

FACT FINDINGS

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 53, has been in receipt of Medical Assistance benefits provided through a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living (hereinafter "Plan"). The Plan has delegated the management of the Appellant's dental benefits and services to Healthplex.

2. On May 15, 2017, the Appellant's dentist requested prior approval for fixed bridgework on teeth numbers 6, 7, 8, 9, 10 and 11 for the Appellant.

3. By MLTC Initial Adverse Determination notice, dated May 16, 2017, Healthplex, on behalf of the Plan, notified the Appellant of its determination to deny the Appellant's dentist's May 15, 2017 request as "beyond the scope" of Medicaid Dental Guidelines.

4. The Appellant appealed the Plan's May 16, 2017 determination. By Appeal Review Form, dated July 28, 2017, Healthplex, on behalf of the Plan, upheld its May 16, 2017 determination.

5. On December 12, 2017, the Appellant requested this fair hearing to review the Plan's determination.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of 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.

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 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.

With regard to fixed bridges, the New York State Medicaid Program Provider Manual for Dental Procedure Codes Section IX provides, in pertinent part as follows:

Fixed bridgework is generally considered beyond the scope of the Medicaid program. The fabrication of any fixed bridge may be considered only for a patient with no recent caries activity (no initial restorations placed during the past year), no unrestored carious lesions, no significant periodontal bone loss in the same arch and no posterior tooth loss with replaceable space in the same arch. The replacement of a missing tooth or teeth with a fixed partial denture will not be approved under the Medicaid program when either no replacement or replacement with a removable partial denture could be considered appropriate based on Medicaid prosthetic guidelines. The fabrication of fixed and removable partial dentures in the same arch or the use of double abutments will not be approved.

The placement of a fixed prosthetic appliance will only be considered for the anterior segment of the mouth and in those exceptional cases where there is a documented physical or neurological disorder that would preclude placement of a removable prosthesis or in those cases requiring cleft palate stabilization. In cases other than for cleft palate stabilization, treatment would generally be limited to replacement of a single maxillary anterior tooth or replacement of two adjacent mandibular teeth.

DISCUSSION

The uncontroverted evidence establishes that the Appellant, age 53, has been in receipt of Medical Assistance benefits provided through a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living (hereinafter "Plan"). The Plan has delegated the management of the Appellant's dental benefits and services to Healthplex. On May 15, 2017, the Appellant's dentist requested prior approval for fixed bridgework on teeth numbers 6, 7, 8, 9, 10 and 11 for the Appellant. By MLTC Initial Adverse Determination notice, dated May 16, 2017, Healthplex, on behalf of the Plan, notified the Appellant at her address of record of its determination to deny the Appellant's dentist' May 15, 2017 request as "beyond the scope" of Medicaid Dental Guidelines.

The record further establishes that the Appellant's dentist requested a reconsideration , via internal appeal, of the May 16, 2017 determination and that the Plan, by Appeal Review Form which is dated July 28, 2017,determined to uphold the May 16, 2017 determination.

At the hearing the Plans' representative raised the Statute of Limitations as an objection to jurisdiction, in that the request for the fair hearing exceeds the applicable 60 day timeframe for a fair hearing request in this matter. The record shows that the Appellant's fair hearing request was not made until December 12, 2017, fully seven months after the initial adverse determination and four months after the denial of the internal appeal.

At the hearing the Appellant testified that she did not timely request the fair hearing because she waited for her doctor to tell her that the request was denied. The Appellant contends that her doctor did not so inform her of the denial by the Plan until December 12, 2017. This contention, however, is not credible, particularly given the four month period during which the Appellant claims to be waiting for said bridgework. Nor does the Appellant's contention constitute good cause, particularly since the May 16, 2017, notice explicitly advises that a fair hearing must be request within "**60 days** from the date on this notice."

The evidence has been considered. The record does not establish that the Appellant provided a sufficient basis to preserve the Appellant's fair hearing rights on the Plan's May 16, 2017 determination. The Plan's May 16, 2017 notice was timely, and adequately advised the Appellant of the Appellant's right to a State Fair Hearing, which must be requested within "60 days from the date on this notice." Accordingly, the Commissioner does not have jurisdiction to review this matter.

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DECISION

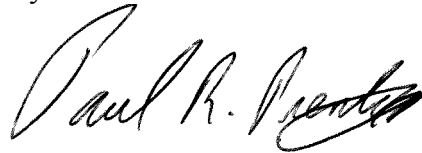
The Commissioner is without jurisdiction to review the Plan's May 16, 2017 determination to deny the Appellant's dentist' prior approval request for fixed bridgework on teeth numbers 6, 7, 8, 9, 10 and 11 for the Appellant.

DATED: Albany, New York

03/12/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Paul R. Prentiss", with a stylized flourish at the end.

Commissioner's Designee