STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: August 1, 2018
[redacted]
AGENCY: MAP
FH #: 7803518P

In the Matter of the Appeal of

[redacted]

from a determination by the New York City Department of Social Services

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

For the Appellant

[redacted]

For the Social Services Agency

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was Center for Healthy Living's July 25, 2018 determination to deny the Appellant's application for approval of partial lower dentures, 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 who was born on February 5, 1938 was in receipt of Medicaid and was enrolled in Centers Plan for Healthy Living (hereinafter Centers Plan).

2. On or about May 31, 2018, the Appellant's dentist requested a prior authorization for complete dentures-upper and partial lower dentures, for the Appellant.

3. On July 25, 2018, Centers Plan via Healthplex, approved the request for complete dentures-upper, but denied the request for partial lower dentures.

4. On August 1, 2018, the Appellant requested this fair hearing.

APPLICABLE LAW

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 care, services and supplies 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 his 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 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 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, . . .

* * *

The United State Department of Health and Human Services (Health Care Finance Administration) has granted the State of New York a waiver under Section 1115 of the Social Security Act to permit the operation of a demonstration waiver program for Managed Care Programs in which certain eligible Medicaid recipients are subject to mandatory enrollment. An "Operational Protocol" (Protocol) has been approved by the Health Care Finance Administration as required by the Terms and Conditions governing the demonstration waiver. Such Protocol details the day-to-day operations of the program.

Section 364-j (1)(c) of the Social Services Law defines "Managed Care Program" as a program in a social services district in which Medicaid recipients enroll on a voluntary or mandatory basis to receive Medicaid services, including case management, directly or indirectly (including by referral) from a managed care provider ("Medicaid Managed Care Health Plan"), or, if applicable, from a mental health special needs plan or a comprehensive HIV special needs plan.

Chapter Four of the Protocol describes the Medicaid services covered under the Managed Care Program. Managed care enrollees will be entitled to the same benefits and coverages as are available under the fee-for-service program. The capitated health care benefits package will be comprehensive for HMOs and PHSPs. Emphasis will be on primary, preventive, and acute episodic care. MCOs must provide all services included in the capitated benefit package, to the extent that such services are medically necessary. "Medically necessary" is defined in Social Services law as medical, dental, and remedial care, services and supplies which are necessary to prevent, diagnose, and correct or cure conditions in the person that may cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity or threaten some significant handicap [see Social Services Law 365-a (2)]. Also, by statute, EPSDT and family planning services are "deemed" medically necessary and therefore are, by definition, covered.

18 NYCRR Section 506.2(a) 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.

18 NYCRR Section 506.3(b) 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.

According to the dental provider manual, services provided must conform to acceptable standards of professional practice. Dental care provided under the Medicaid program must meet as high standards of quality as can reasonably be provided to the community-at-large. All materials and therapeutic agents used or prescribed must meet the minimum specifications of the American Dental Association, and must be acceptable to the State Commissioner of Health. Experimental procedures are not reimbursable in the Medicaid program.

The dental provider manual provides that dental care provided under the Medicaid Program includes only *essential services* (rather than “comprehensive” services), and further provides:

All prosthetic appliances such as complete dentures, partial dentures, denture duplication and relining procedures include six months of post-delivery care. Placement of immediate dentures and the use of dental implants and related services are beyond the scope of the program. Complete and/or partial dentures will be approved only when existing prostheses are not serviceable or cannot be relined or rebased. Reline or rebase of an existing prostheses will not be reimbursed when such procedures are performed in addition to a new prostheses for the same

arch. If a recipient's health would be adversely affected by the absence of a prosthetic replacement, and the recipient could successfully wear a prosthetic replacement, such a replacement will be considered. In the event that the recipient has a record of not successfully wearing prosthetic replacements in the past, or has gone an extended period of time (three years or longer) without wearing a prosthetic replacement, the prognosis is poor. Mitigating factors surrounding these circumstances should be included with the prior approval request. Partial dentures will be approved only when they are required to alleviate a serious health condition including one that affects employability. Eight natural or prosthetic teeth in occlusion (four maxillary and four mandibular teeth in functional contact with each other) are generally considered adequate for functional purposes.

DISCUSSION

The Appellant who was born on February 5, 1938 was in receipt of Medicaid and was enrolled in Centers Plan for Healthy Living (hereinafter Centers Plan). On or about May 31, 2018, the Appellant's dentist requested a prior authorization for complete dentures-upper and partial lower dentures, for the Appellant. On July 25, 2018, Centers Plan via Healthplex, approved the request for complete dentures-upper, but denied the request for partial lower dentures. The request for partial lower dentures was denied because the Appellant already has or will have 8 points (4 top and 4 bottom natural or prosthetic teeth) in biting contact.

The Dental Policy and Procedure Code Manual indicates that 8 posterior, natural or prosthetic teeth, (molars and/or premolars) in occlusion (4 maxillary/top and 4 mandibular/bottom in functional contact with each other) will be considered adequate for functional purposes.

The Appellant was represented by [redacted]. The Appellant's Representative acknowledged that the Appellant had received her complete upper dentures. The testified that since the Appellant's bottom teeth were not complete and the Appellant has not received partial lower dentures, that the Appellant could not chew, found it hard to brush her teeth and was uncomfortable.

Part of the evidence packet submitted by Center's Plan was a copy of the Appellant's gum chart. The chart indicated that of her bottom teeth, the Appellant still had teeth 19, 24, 25, 28, 29 and 30. The evidence establishes that between the Appellant's complete upper dentures and her bottom teeth, the Appellant had 8 points of biting contact. Accordingly, Center's Plan determination to deny the Appellant's request for partial lower denture is sustained.

DECISION

Center's Plan determination to deny the Appellant's request for partial lower dentures was correct.

DATED: Albany, New York
01/10/2019

NEW YORK STATE
DEPARTMENT OF HEALTH

By
H. Cooper Gregory

Commissioner's Designee