

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,186
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying Medicaid coverage for dentures. The issue is whether dentures are medically necessary for the treatment of a medical condition.

FINDINGS OF FACT

1. The petitioner is a forty-nine-year-old woman who was disabled from work by a heart attack and has been receiving Social Security benefits since May of 1997. She is post open heart surgery, and has insulin-dependent diabetes and high blood pressure.

2. As part of her post-surgery cardiac care, the petitioner has been advised to eat as many fresh fruits and vegetables as she can and to avoid cholesterol and fat. She has also been advised that raw vegetables are preferable because they provide more fiber. The petitioner is unable to grind up raw vegetables because her teeth are worn down and many of them are missing. She has an old partial denture which she used to wear but which now causes her pain when she chews. She has lost additional teeth since her last denture fitting due to diabetes. In addition, the petitioner says she has "colitis", that is

she gets diarrhea or constipation if her food is not properly chewed.

3. The Medicaid program covered most of the treatment for the petitioner's medical conditions and now covers her medications which run \$400 to \$500 per month. However, her request for coverage of a new partial denture was denied by the Department of Social Welfare on July 28, 1997, as not being a covered service.

4. In support of her application, the petitioner presented a letter from her treating physician dated July 15, 1997, which stated, in pertinent part, as follows:

[Petitioner] has been under my care since March of 1994, for numerous health problems including insulin dependent diabetes mellitus and hypercholesterolemia. After undergoing coronary artery bypass surgery as well as vascular surgery last year, it is imperative that [petitioner] follow a strict low cholesterol, low fat, high fiber diabetic diet. She recently is suffering with tooth loss and needs a lower partial denture to consume the kinds of foods her diet requires. This kind of dental appliance is medically necessary and without Medicaid benefits to cover this expense, [petitioner] would not be able to afford the partial denture.

5. Her physician further stated in response to questions posed to him in a questionnaire dated November 18, 1997, that the petitioner continued to need dentures, that they were not primarily for cosmetic reasons, that improving the petitioner's dietary intake was medically necessary for treatment of the conditions affecting her heart, as well as for treatment of diabetes mellitus and hypercholesterolemia. He also stated that he believed that

the continued lack of dentures would hinder medically needed treatment and care being provided to the petitioner because "progression of heart disease and poor lipid control would be the outcome if she cannot maintain the necessary diet for which dentures are necessary." He added:

[Petitioner] must follow a diet high in fresh fruits and vegetables and whole grains in order to treat her diabetes and heart disease. Without dentures this would be impossible and obtaining the necessary fiber in her diet could not occur.

6. The Vermont state medical director for the Medicaid program offered testimony in opposition to her physician's statement. He agrees that the petitioner has a serious medical condition which requires close attention to diet. He does not disagree that she needs to lower her intake of fats and increase her intake of fiber rich foods, including fruits and vegetables. He testified that, indeed, anyone would benefit from this kind of diet and it could best be achieved through chewing food with dentition in which the enzymes in the mouth contribute to digestion. He disagrees, however, that it is "impossible" to get those kinds of nutrients without dentures. He testified that it was possible through a professionally constructed diet to get those kinds of nutrients without the need to chew by consuming soft fresh foods, fiber-filled soft cereals and fresh vegetables and fruits that had been ground in a blender and by taking vitamin supplements. His testimony

was that such a methodology would provide the petitioner with a therapeutic diet which was adequate and appropriate.

Based on these assertions, he had concluded that dentures are not medically necessary in the petitioner's case because there are other viable alternatives to meeting her medical needs. He testified further that dentures may be medically necessary in some cases citing as examples temporomandibular joint disease (in which the alignment of the jaws through dentition is important), and gastrointestinal tract problems such as colitis, (where the form in which the food enters the stomach may be critical).

He stated, in fact, that he might feel differently about this case if the petitioner's physician had backed up her assertion that she had colitis.

7. Following this testimony, the hearing officer gave the petitioner additional time to provide further medical evidence from her physician showing either that she had been diagnosed as suffering from colitis or that soft and pureed foods could not provide the nutrition that she needed. After two months, the petitioner was contacted as to whether she intended to supply such evidence. She responded that she was still waiting for such information and asked, in addition, to recall the medical director to question him about "the inconsistency of the Department's practice in providing denture coverage for recipients

suffering from TMJ, but not for other recipients who need dentures." That request was denied by the hearing officer as irrelevant to a determination of the central issue here--whether the petitioner had shown that the dentures were a medical necessity for her--and she was given a further opportunity to submit evidence. After two more months, the petitioner submitted her case with no additional evidence.

8. Based on the above evidence, it is determined that the petitioner has the medical conditions and has been prescribed the therapeutic diet described by her treating physician in paragraphs four and five above. However, it cannot be found that the treating physician's bald assertion that it is "impossible" to deliver this diet other than through the use of dentures is credible. His opinion did not discuss any basis for that statement or discuss and dismiss any alternatives. The Department's physician raised and discussed reasonable alternatives to delivering the needed nutrition based on that physician's own clinical experience. The petitioner was invited to have her own physician respond to those assertions and to explain why dentures were the only means of obtaining the needed nutrition. Her failure to do so leaves a gap in the evidence and gives the finder of fact the right to draw a negative inference with regard to the withheld testimony, to wit, that her own physician could not disagree that

viable alternatives exist. It must be concluded, therefore, that there are acceptable and adequate alternatives to dentures to provide the needed nutrition to the petitioner as outlined in the medical director's testimony set forth in paragraph six above. In addition, based on the medical evidence of record, it cannot be found that the petitioner has been diagnosed as having colitis or that the alleviation of pain is a significant factor in the prescription of dentures for her.

ORDER

The decision of the Department is affirmed.

REASONS

There is no question in this case that the best, easiest and perhaps most humane solution for the delivery of needed nutrients to the petitioner would be to allow her to chew her own food through the assistance of dentures. However, that is not the test for determining whether the petitioner can be provided with coverage under the Medicaid program.

The Medicaid regulations themselves contain a blanket proscription against the coverage of dentures for any person over twenty-one years of age. Medicaid Manual Section M 621. In response to arguments made by advocates over the years, the Board has carved out an exception to

this rule in order to avoid conflicts with other Medicaid regulations which require the provision of medically necessary treatments for illnesses or injuries clearly covered by the program. Fair Hearing No. 12,180. In that case, as in its progeny, the medical necessity of the dentures was clearly shown. See also Fair Hearings 10,379, 11,207 and 11,625. ¹

For purposes of this hearing, the sole issue is whether the petitioner has shown that she has a disease or condition for which the provision of dentures is a necessary medical treatment. This does not mean a showing that dentures would be helpful, easy, best or even most effective. It simply means that the treatment sought will accomplish the medical goal, and there is no other "reasonable alternative treatment" for accomplishing that goal. See Fair Hearing No. 14,481, page 4.

In this case, there is no question that the provision of dentition is a method of accomplishing the goal of providing nutrition to the petitioner. However, once the

¹ Those decisions were not appealed. Under the statutes governing these hearings, those decisions are deemed to be adopted as rulings of the Secretary of the Agency. Presumably, then, the Department abides by the rulings of the Secretary and analyzes all requests for dentures with regard to whether they are medically necessary in the treatment of some disease. If this is not being done, as the petitioner seems to be arguing, the petitioner and others similarly situated may need to seek injunctive relief in an appropriate court rather than this forum.

Department puts on credible evidence that there are alternatives which will accomplish the same goal for individuals in the same situation, the burden shifts back to the petitioner to show that those alternatives are not viable in her situation; that is, that they are not reasonably expected to accomplish the medical goal of providing her with a therapeutic diet. In this case, in spite of being asked to do so, the petitioner put on no evidence whatsoever that the alternatives proposed by the Department were not viable in her situation.

The petitioner has argued extensively with regard to the arbitrariness and inconsistency of the Department's decision and the standards it uses in deciding who gets "blenders" and who gets "dentures". The petitioner's argument loses sight of the fact that the Board hears this matter de novo and is charged by law with ruling on interpretations to be afforded to terms like "medically necessary". See generally 3 V.S.A. § 3091. The utility of the director's testimony was to provide facts about alternative methods of delivering the treatment needed by the patient and he was certainly competent to give such testimony. What he did or did not do in his capacity as an administrator or how "far off track" he and the Department have "wandered in its Medicaid coverage reviews" may present frustrations for the petitioner and her attorney but are not helpful concepts in deciding the merits of this

individual appeal. Ultimately, the Board, must find the facts and make legal rulings based on the law and its own prior decisions interpreting "medical necessity".

Finally, the petitioner argues that since the Department's unwritten policy seems to be the provision of dentures for some conditions but not others, failure to provide dentures to a patient with a cardiac and diabetes condition is an impermissible denial solely because of the patient's diagnosis, type of illness, or condition in violation of 42 C.F.R. § 440.230(c). That argument misses one vital fact: the denial was not because of the petitioner's type of illness at all but because the evidence showed that the service she requested was not medically necessary to treat her condition. The petitioner cites nothing in the Medicaid regulations which would prohibit a State from refusing to pay for a service that was deemed not medically necessary for a recipient. As the Department's ultimate decision to deny coverage is based on the factual failure of the case to meet the medical necessity standard, the denial must be upheld as a valid one.

#