STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 19,989
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 to the policy of not paying for dentures for adults under the Medicaid program. The issue is whether the Department abused its discretion in making this decision.

FINDINGS OF FACT

1. The petitioner has severe lupus arthritis and dental problems, which limit her ability to chew food. She has an upper denture, but has been prescribed a lower one as well. She alleges that without a lower denture she must take expensive medications that would be unnecessary if she was able to increase the types of foods she could eat.

2. The sole evidence the petitioner has been able to produce are identical letters submitted by her treating neurologist dated November 10, 2005 and January 26, 2006. Both letters state as follows:

> The patient has longstanding lupus arthritis with a malocclusion of her jaw with an upper denture only so

> that she has significant unequal bite and pressure on her temporomandibular jaw that impairs chewing and creates excessive pain. Her examination shows subluxation of the TMJ and the patient has appropriate medical indications for lower dentures. The lower dentures will improve her health and decrease her need for medications.

3. The Department denied the petitioner's request for M108 coverage because its consultants feel the petitioner's pain can be alleviated and her dietary needs met through a diet of pureed food. Despite several continuances granted expressly for this purpose, the petitioner has been unable to obtain any further medical opinion that addresses this issue.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the Department has eliminated coverage of dentures and related items for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, the Department has a procedure for requesting exceptions to this non-coverage policy that requires the recipient to provide information about her situation and supporting documentation. M108. OVHA 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. 19,425. In this case there is an unfortunate gap between the petitioner's allegations and the medical documentation she has been able to obtain thus far from her treating physician.

In particular, the petitioner's doctor has not addressed the Department's determination that there are medically appropriate dietary alternatives to the service the petitioner is seeking—namely, switching to soft and pureed foods (i.e., No. 8 under the above M108 criteria). Unless and until the petitioner's doctors rebut this determination, it cannot be concluded that the Department has abused its discretion in denying coverage under the above regulation.[1] Thus, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

# # #

[1] At the fourth, and last, hearing in this case (held by phone on February 28, 2006) the petitioner was advised that she can resubmit a request for coverage under M108 when and if she can obtain further information from any of her doctors that addresses this issue.