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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MNP/145288

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 13, 2012, at Kenosha, Wisconsin.

NOTE: With the Petitioner's permission, ALJ Ishii contacted Dr. Robert Dwyer, a dental consultant with the Division of Health Care Access and Accountability (DHCAA), Office of the Inspector General. Dr. Dwyer's e-mail and a print out from the online prior-authorization handbook, topic #2876, has been marked as Exhibit 9 and entered into the record.

The issues for determination are whether Petitioner's appeal was timely and whether the Medicaid/Medical Assistance program, which is administered by the Department of Health Services, correctly denied reimbursement for a porcelain crown at a cost of \$850.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County and a Medicaid recipient.

2. On June 1, 2011, Petitioner went to Dental Associates because she was experiencing pain in the area of tooth 31. At that time, Dental Associates informed Petitioner that Title-19 (Medicaid) would only cover the cost of a stainless steel crown. (Exhibit 1, pg. 2)
3. On June 4, 2011, July 26, 2011 and again on August 15, 2011, Petitioner underwent root canal procedures for tooth 31 at Dental Associates. (Exhibit 1, pgs. 2- 4)
4. Petitioner did not want a stainless steel crown because she was concerned that mercury would be in the crown and that her acid reflux would erode the crown, leading to mercury poisoning. (Testimony of Petitioner)
5. Petitioner is uncertain whether Dental Associates submitted a prior authorization to use a crown made from materials other than stainless steel. (Testimony of Petitioner)
6. Based upon representations made by Dental Associates, Petitioner believed they would not use a non-stainless steel crown. So, Petitioner went to her friend, a dentist at Burlington Family and Laser Dentistry, to have a porcelain crown installed on tooth 31. (Testimony of Petitioner)
7. Petitioner's friend informed her that he was not a Medicaid certified provider and that he did not normally accept Medicaid patients. However, Petitioner wanted to do the dental work anyway, because she was afraid of getting mercury poisoning from a stainless steel crown. (Testimony of Petitioner)
8. Petitioner's friend put a porcelain crown on tooth 31 and on November 9, 2011, Burlington Family and Laser Dentistry submitted a bill to BadgerCare who rejected the claim on the same day. (Petitioner's testimony; Exhibit 1, pg. 5)
9. Petitioner paid the entire \$850 bill, making the second and final payment on November 29, 2011.
10. Petitioner does not know whether her friend/Burlington Family and Laser Dentistry submitted a prior authorization request for the porcelain crown.
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 10, 2012.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. In this case, the negative action was the denial of coverage for a porcelain crown installed by Burlington Family and Laser Dentistry. Petitioner's appeal was filed almost a year after coverage was denied. However, it does not appear anyone properly informed Petitioner of her appeal rights. As such, her appeal shall be considered timely.

In order to participate in the medical assistance programs administered by the State of Wisconsin, a provider, such as Burlington Family and Laser Dentistry must obtain certification pursuant to Wis. Admin. Code Chapter 105. It is undisputed that Burlington Family and Laser Dentistry is not a certified Medicaid provider. As such, their services cannot be covered by either Medicaid or BadgerCare. (See Wis. Admin. Code §105.01)

Even if Burlington Family and Laser Dentistry had been a certified provider, porcelain crowns are not covered by Medicaid or BadgerCare. (See Exhibit 9, online handbook Topic #2876) However, a certified provider can install an upgraded crown, if the provider is willing to accept the same reimbursement rate as for a stainless steel crown. (See Exhibit 9, e-mail from Dr. Dwyer) Thus, the denial of the claim submitted by Burlington Family and Laser Dentistry was appropriate.

It should be noted that Petitioner expressed a great deal of frustration with Dental Associates and believes that they lied to her or provided her with misinformation regarding her appeal rights and whether they submitted a prior authorization request for a non-stainless steel crown.

I also wonder whether anyone at Dental Associates or Burlington Family and Laser Dentistry clearly explained to Petitioner the difference between *amalgams*, which are used for fillings and can contain mercury, and stainless steel *crowns*, which are used to cover a tooth after a root canal . In either event, this is NOT the forum in which to address such concerns.

If Petitioner is dissatisfied with her provider, she can file a complaint with Wisconsin Dental Associates by calling (414) 276-4520.

Petitioner may also wish to consult with the Aging and Disability Resource Center in Kenosha, if she has any other concerns:

8600 Sheridan Rd., Suite 500
Kenosha, WI 53143

Phone (262) 605-6646
Toll free 1-800-472-8008
Fax (262) 605 -6649

CONCLUSIONS OF LAW

The Medical Assistance/Medicaid program properly denied coverage for the \$850 porcelain crown and Petitioner is not entitled to reimbursement for that expense.

THEREFORE, it is ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of December, 2012.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 20, 2012.

Division of Health Care Access And Accountability