

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

And

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2014060234

DECISION

On October 1, 2014, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California.

Leann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's mother represented claimant, who was present.

Oral and documentary evidence was introduced and the matter was submitted on October 1, 2014.

ISSUE

Should Inland Regional Center be required to fund dental implants (either a dental bridge implant or individual tooth dental implants) for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant receives services from the Inland Regional Center. He qualifies for services from IRC on the basis of moderate intellectual disability and epilepsy. Claimant requested that IRC pay for dental implants because he has lost most of his teeth due to

periodontal disease, and his previous dental bridge failed. Claimant's request for payment of dental implants was submitted on January 20, 2014, and included a treatment plan developed by claimant's dentist in which the dentist recommended that claimant receive a dental bridge implant.

2. On May 16, 2014, IRC notified claimant that IRC denied his request for a dental implant.

3. On May 29, 2014, claimant's mother filed a fair hearing request appealing IRC's decision.

Background

4. Claimant is 36 years old and lives with his mother. He sat quietly at the conference table during the hearing.

5. Claimant is missing the majority of his teeth and has moderate to severe periodontal disease with bone loss. Due to the nature of his periodontal disease, the prognosis of keeping his remaining teeth is poor. His lack of teeth causes him to have difficulty chewing and speaking. Claimant also has grand mal seizures that put additional forces on his teeth. Because claimant's seizure disorder can put him at risk for choking, he is not a candidate for removable dentures.

Claimant's Evidence

6. Claimant has seen many dentists and has suffered from periodontal disease for many years. Delta Dental, with whom claimant has dental insurance, denied claimant's request for payment of the dental bridge implant based on its determination that the dental bridge implants are not a covered service under his insurance plan. To date, there has been no submission of a claim for payment to Delta Dental for the individual tooth dental implants, and accordingly there has also been no denial of that insurance claim for the individual dental implants. Claimant never submitted a request to IRC to fund the individual tooth dental implants but instead argued for the first time at the hearing that IRC should fund the individual tooth dental implants because claimant's dentist now asserts that the individual tooth dental implants are a better treatment option.

7. Claimant's mother asserted that claimant has digestive issues associated with his inability to chew food properly. She hopes that dental implants (either bridge or individual) will provide claimant with a better ability to chew food and will resolve some of the symptoms of his digestive problems. She also believed that dental implants will have a significant impact on claimant's quality of life because it will improve his ability to speak, his social interactions and his prospects to live a happier life. Claimant's mother is paying to have claimant's teeth deep cleaned every six weeks in an effort to control his periodontal disease.

8. Claimant's primary care physician, Dr. Brian L. Nguyen, submitted a letter dated September 4, 2014. In his letter he stated that claimant has been a patient for several years and suffers from autism, seizure disorder, respiratory diseases and a history of aspiration. He also stated that, due to his condition, it would not be feasible for claimant to wear dentures. In Dr. Nguyen's medical opinion "the best option for claimant . . . [is] individual dental implants." Dr. Nguyen did not provide any assessment, evaluation or opinion regarding whether such dental implants were feasible or whether claimant had sufficient dental tissue to support implants.

9. Dr. Tien Vu, claimant's current dentist, has been seeing claimant since April 29, 2013. In a letter dated September 24, 2014, Dr. Vu provided his assessment of claimant's current dental needs. Attached to Dr. Vu's letter were documents including patient summary records and three pages of claim submission forms for Delta Dental insurance that have not yet been submitted to the insurance company for payment. Dr. Vu's letter was provided to IRC for the first time during the hearing. In his letter, Dr. Vu states that the "only viable option" for claimant to have functioning teeth with normal dental function is the placement of individual dental implants.

Dr. Vu is also the author of the January 20, 2014, treatment plan provided to IRC to support claimant's request for dental implants; his recommendation at that time was for treatment with a dental bridge implant. By letter dated August 20, 2014, IRC requested additional information concerning the January 20, 2014, treatment plan and questioned whether such a dental bridge implant would fail due to too much stress on the supporting teeth. The dentist changed his treatment plan on September 24, 2014, after receiving IRC's letter. Dr. Vu stated in his September 24, 2014, letter that:

I was originally considering a long span bridge to replace missing teeth on the upper arch, but after consultation with [claimant's] periodontist . . . it was determined a long-span bridge would not be an option due to the extraordinary stress it would place on the bridge anchor teeth.

In his letter Dr. Vu did not provide any explanation, opinion or discussion regarding whether individual dental implants would be successful or whether claimant had sufficient dental tissue to support dental implants.

IRC's Evidence

10. Rene Zambel has been a dental consultant at IRC since 2003. She received her B.S. degree in Dental Hygiene and is a registered dental hygienist with experience with dental implants. At IRC, Ms. Zambel is part of the clinical team that reviews dental records and assesses IRC clients' needs for dental treatment.

11. Ms. Zambel reviewed claimant's dental records, as well as the current literature relating to the success rate of dental implants for patients with periodontal disease,

in an effort to make a determination of whether IRC could fund claimant's request. As part of her review, Ms. Zambel contacted Dr. Harvey Zalsman, Jr., an oral and maxillofacial surgeon, for his opinion regarding the prognosis and feasibility of the requested dental implants. On August 20, 2014, Ms. Zambel sent a letter to Dr. Vu requesting additional information regarding his proposed treatment plan for claimant. Dr. Vu did not respond to Ms. Zambel's letter.

Based on her review, Ms. Zambel determined that the likelihood of success of the dental implants, both the dental bridge implant and the individual implants, was low, and the risk of harm to claimant was high.

12. Dr. Zalsman has a private practice in Loma Linda, California, where he has practiced for twenty years. He has a D.D.S. degree and an M.D. degree, both from Loma Linda University. He completed an internship in pediatrics and a residency in oral and maxillofacial surgery at Loma Linda University. He has twenty-three years of experience placing dental implants in patients. Dr. Zalsman reviewed claimant's dental records at the request of IRC.

13. Based on his review, Dr. Zalsman determined that a dental bridge implant would not be an appropriate treatment for claimant because the likelihood of early failure of the dental implant bridge was high. Dr. Zalsman testified that claimant has poor periodontal health and is taking medications that can cause additional problems with the gingival tissue in his mouth. In addition to early failure, the risks involved with the procedure of implanting a dental bridge include bleeding and infection, which can lead to rapid bone loss. Dr. Zalsman was not able to opine on whether individual dental implants are likely to have a successful outcome for claimant because such a determination would require an evaluation of the type of bone grafting involved and whether claimant had sufficient healthy tissue in which to place the individual implants. Dr. Zalsman had never seen and offered no opinion regarding Dr. Vu's September 24, 2014, treatment plan, submitted by claimant for the first time on the date of the hearing.

The Parties Argument

14. IRC argued that dental implants, both bridge and individual, would not alleviate claimant's developmental disabilities as addressed in his Individual Program Plan (IPP). Furthermore, the individual dental implant treatment plan was not submitted to IRC until the day of the hearing. Further, it had not been submitted to Delta Dental, and therefore, there was no evidence that Delta Dental had denied the claim. Additionally, in light of claimant's periodontal disease the IRC argued that any dental implants, bridge or individual, would not be effective treatment for his loss of teeth because there is a high likelihood of early failure of the implants and a likelihood of serious complications that could make his dental health worse.

15. Claimant's mother disagreed with IRC's position that dental implants would not alleviate claimant's developmental disabilities because, she contended, the implant would

improve his ability to eat, speak and have social interactions, all of which are factors in his overall well-being. Claimant's mother argued that the only way to make a determination of whether or not the individual dental implants will be successful is to implant one individual tooth and wait for results before making a decision to place more individual dental implants.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that he is entitled to receive dental implants.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

4. "Services and supports" are defined in Welfare and Institutions Code section 4512, subdivision (b), as:

"Services and supports for persons with developmental Disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .

5. In order to be authorized, a service or support must be included in the consumer's IPP. (Welf. & Inst. Code, § 4512, subd. (b).)

6. Section 4646.4, subdivision (a)(4), requires that the Regional Center take into consideration: "[T]he family's responsibility for providing similar services and supports for a minor child without disabilities . . ." when developing, reviewing or modifying the IPP.

7. Welfare and Institutions Code section 4648 provides in pertinent part:

[¶] . . . [¶]

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan....

[¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents . . . determines will best accomplish all or any part of that consumer's program plan.

8. Welfare and Institutions Code section 4659, subdivision (d)(1) provides in pertinent part:

Effective July 1, 2009, notwithstanding any other provision of law or regulations to the contrary, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. . . .

Evaluation

The preponderance of the evidence demonstrates that the requested dental bridge implants will not be effective as a service and support for claimant's dental health or his developmental disability as outlined in his IPP because of the high risk of failure and likelihood of serious complications that could exacerbate claimant's dental problems.

With regard to the individual dental implants proposed in the treatment plan provided by claimant's dentist on the day of the hearing, claimant failed to provide a denial of that service by his dental insurer, Delta Dental, as required by Welfare and Institutions Code section 4659, subdivision (d)(1).

The regional center is, therefore, not required to fund the cost of claimant's dental implants.

ORDER

Claimant's appeal is denied.

DATED: October 15, 2014

_____/s/_____
DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings