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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BRIDGET SHARPE, Plaintiff, v. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION, a state agency, ANTHONY D. RODGERS, Director of the Arizona Health Care Cost Containment System, in his official capacity, and MERCY CARE PLAN. Defendants.	)	No. **COMPLAINT FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISION**

Plaintiff Bridget Sharpe files her Complaint for Judicial Review of Administrative Decision and states the following:

Preliminary Statement

1. In her action for judicial review, Plaintiff Bridget Sharpe alleges that the decision of the Arizona Health Care Cost Containment System (AHCCCS) upholding the denial of upper and lower dentures is arbitrary, capricious, contrary to law and an abuse of discretion. Plaintiff Sharpe has severe decay in her teeth. She is in constant pain from the decay and cannot eat solid food. Due to the condition of her teeth, Defendant Mercy Care Plan has approved the removal of all of her teeth. Ms. Sharpe's primary care physician, her dentist, and a nutritionist have all stated that dentures, a covered AHCCCS service, are medically necessary for her. Unless Ms. Sharpe is provided with dentures, she will not be able to chew food and eat normally. Defendants' denial of medically necessary dentures is in violation of state and federal law.

Parties

2. Plaintiff Bridget Sharpe, a resident of Phoenix, Arizona, is eligible for and receives health care services from the Arizona Health Care Cost Containment System, Arizona's Medicaid program. Plaintiff's AHCCCS health plan is Mercy Care Plan.

3. Defendant Mercy Care Plan contracts with Defendant AHCCCS to provide Medicaid services to eligible persons. Mercy Care Plan was the respondent in Plaintiff's appeal proceedings before AHCCCS.

4. Defendant Anthony D. Rodgers is the Director of the Arizona Health Care Cost Containment System, Arizona's Medicaid program. Defendant Rodgers is sued in his official capacity as Director of the AHCCCS program. As such, he has a duty to ensure that the AHCCCS program is administered in accordance with federal and state laws.

5. Defendant Arizona Health Care Cost Containment System (AHCCCS) is the single state agency responsible for ensuring that Medicaid health services are provided to eligible Arizona residents in compliance with federal Medicaid law, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq,* as well as state laws. Defendant AHCCCS contracts with managed care organizations throughout the state to deliver a specified package of acute care and long term care services in return for a monthly payment per beneficiary.

Jurisdiction and Venue

6. Plaintiff was the complainant in an administrative appeal proceeding before the Arizona Health Care Cost Containment System (AHCCCS) captioned *Bridget Sharpe v. Mercy Care Plan* and numbered 07F-54195-AHC. On November 1, 2006 and December 28, 2007, Defendant Rodgers, as Director of AHCCCS, issued decisions adverse to Plaintiff.

7. The Court has jurisdiction over this action pursuant to A.R.S. § 12-905 (A) because this case is brought to review a final administrative action as authorized under

A.R.S. §§ 12-901 *et seq*.

8. Venue for this action is proper in the Maricopa County Superior Court because
Plaintiff is a resident of Maricopa County, the administrative hearing was held in Maricopa County, and the transaction giving rise to this matter occurred in Maricopa County. A.R.S. § 12-905(B).

Statement of Facts

9. Plaintiff Bridget Sharpe is a 33 year old resident of Phoenix, Arizona who is enrolled in Mercy Care Plan and is diagnosed with obesity, peripheral neuropathy, fibromayalgia, and an orthopedic condition which causes her kneecaps to go out of place. Ms. Sharpe receives pain management treatment, including medication, for the pain related to her orthopedic condition. Ms. Sharpe's pain medication causes severe constipation. Her orthopedic condition and her pain would improve if she lost weight.

10. Ms. Sharpe also has symptomatic teeth with rampant decay. Due to the severe decay in her teeth, Ms. Sharpe is unable to chew most solid food, particularly fresh fruits and vegetables. Her teeth get infected and many are broken. Ms. Sharpe's physicians and nutritionist have determined that she needs to eat fresh fruits and vegetables to reduce her obesity, and by extension, to reduce the pain associated with her orthopedic impairment. Eating fresh fruits and vegetables will also reduce the constipation Ms. Sharpe experiences as a side-effect of her pain medication.

11. Defendant Mercy Care Plan has approved the removal of all of Ms. Sharpe's teeth. However, without her teeth and without dentures, Ms. Sharpe will not be able to chew food and eat normally.

12. Ms. Sharpe's dentist has prescribed dentures for her as medically necessary, an opinion in which Ms. Sharpe's primary care physician and nutritionist concur.

13. On May 31, 2006, Defendant Mercy Care Plan issued a Notice of Action denying upper and lower dentures on the basis that "the information reviewed does not show a medical need for the request."

14. Ms. Sharpe appealed this denial, and on July 10, 2006, Defendant Mercy Care Plan again denied the request stating that "documentation does not meet the criteria / medical necessity of the requested Upper and Lower Dentures."

15. Ms. Sharpe requested a fair hearing, which was held on October 5, 2006 before Administrative Law Judge Dorinda Lang of the Office of Administrative Hearings.

16. At the hearing, Dr. Robert Thielen, the Mercy Care Plan Dental Director, testified that the only circumstance under which dentures would be medically necessary is if the beneficiary could show that there was an adverse health effect of not having teeth that would be life threatening.

17. On October 20, 2006, ALJ Lang issued a recommended decision overturning Defendant Mercy Care Plan's denial of the dentures. ALJ Lang found the dentures to be medically necessary because

> Teeth provide a function to the human body that enables people to eat normally. Dentures prevent the disability and adverse health condition of not being able to eat normally in endentulous patients. They restore a normal bodily function. Without them, the patient's function, and therefore her health, is impaired.

18. On November 1, 2006, the AHCCCS Director, through his designee, accepted the findings of fact in their entirety and modified the recommended decision by finding that the dentures were not medically necessary because

> [t]he ability to chew and masticate is not, in and of itself, a basic medical necessity and is not a disability. Babies, for example, are not disabled or unable to obtain adequate nutrition because they are born without teeth. The evidence does not show that Complainant has any nutritional deficit. Absent such a deficit, or other problems not present here, the ability to chew is not a disability or adverse health condition.

19. On November 30, 2006, Ms. Sharpe filed a Motion for Hearing Review, which was denied by the designee of the AHCCCS Director on December 28, 2006. Ms. Sharpe represented herself at both the hearing and in the Motion for Hearing Review.

20. Plaintiff received a copy of the final decision on December 29, 2006.

21. Pursuant to A.R.S. § 12-904, Plaintiff designates the complete transcript of the hearing held on October 5, 2006, all exhibits introduced at the hearing, as well as all decisions and pleadings filed in the matter, as the record on appeal.

Statutory and Regulatory Framework

22. The federal Medicaid statute, Title XIX of the Social Security Act, is codified at 42 U.S.C. § 1396 *et seq*. It authorizes the states to establish medical assistance programs for low income individuals who meet certain eligibility requirements. These medical assistance programs are jointly funded by the federal and state governments, and are designed by the states within a framework of options and requirements established under the Medicaid statute.

23. As the single state agency responsible for supervising Arizona's Medicaid program, AHCCCS oversees and is responsible for the actions of its contracted managed care health plans. 42 U.S.C. § 1396a(a)(4); 42 U.S.C. § 1396a(a)(5); and 42 C.F.R § 431.10.

24. Dentures, defined as "artificial structures made by or under the direction of a dentist to replace a full or partial set of teeth," are an optional service under the Medicaid statute. 42 U.S.C. § 1396d(12) and 42 C.F.R. § 440.120(b). Once a state chooses to provide an optional service, the state must comply with the provisions of the Medicaid statute and regulations in the provision of that service.

25. Arizona's state Medicaid Plan, state statute, and state regulation authorizes coverage of dentures when ordered by a provider dentist who has determined the dentures to be medically necessary. A.R.S. § 36-2907(6); A.A.C. R9-22-207.

26. In order for a covered service to be deemed medically necessary, it must be "provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or prolong life." A.A.C. R9-22-101(B).

27. The federal Medicaid statute and regulations and the Due Process Clause of the United States Constitution require that beneficiaries of Medicaid be provided with

proper notice, prior to any appeal hearing, of the reasons why a claim for medical assistance is denied. 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.200 *et seq*; 42 C.F.R. § 438.400 *et seq*.

Claims

28. The decisions of Defendant Rodgers in the administrative appeal below are contrary to law and invalid in that:

A. The decision was arbitrary, capricious, contrary to law and an abuse of discretion for the following reasons:

1. It erred in finding that the inability to eat normally is not a disability or an adverse health condition, contrary to state and federal law;
2. It applied a legal standard for medical necessity of dentures that is overly restrictive and contrary to state and federal law and which Plaintiff was not given notice of prior to the hearing;
3. It failed to give appropriate deference to the opinion of Plaintiff's attending physician regarding medical necessity; and

B. Substantial evidence does not support the decision.

29. Plaintiff was harmed by Defendants' illegal and invalid decision and interpretation of law in that she was denied medically necessary medical dentures prescribed by her physician.

30. Plaintiff's health and well being continue to be jeopardized by Defendants' decision.

/ / /

Relief

WHEREFORE, Plaintiff prays that the Court:

A. Enter judgment against Defendants reversing the decision that dentures are not medically necessary for Plaintiff and ordering Defendants to provide Plaintiff with upper and lower dentures;

B. Enter judgment against Defendants and each of them for Plaintiff's costs and reasonable attorney fees and for interest on the unpaid portion thereof at the rate of 10% per annum from the date of judgment until paid; and

C. Grant such other relief as the Court deems proper.

Respectfully submitted this 2nd day of February, 2007.

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