

facial anomaly, deformity or has been unable to function with a complete denture for at least two years and other surgical corrections have been unsuccessful in improving the retention of the denture.” N.J.A.C. 10:56-2.13(c)1.

Petitioner does meet the requirements set forth in the regulation. Petitioner argues that he is unable to wear a denture due to a gagging reflex. In support of this, Petitioner points to a 2013 decision by an independent utilization review organization (IURO) which determined an implant was appropriate for a different tooth. The IURO’s 2013 decision was provided after the hearing and was not admitted into evidence. Furthermore, while the IURO’s 2013 decision was binding on Petitioner and Horizon with regard to the tooth at issue in that matter, it is not binding on the Office of Administrative Law’s (OAL) Initial Decision or the DMAHS Director’s Final Agency Decision with regard to the tooth at issue in the current matter. N.J.A.C. 11:24-8.7(k). However, since it was relied upon in the Initial Decision, it is worth noting that Petitioner’s gagging reflex was not the basis for the IURO’s 2013 decision to grant Petitioner’s request for an implant. In fact, the IURO’s decision states:

The provider noted ‘ongoing gagging reflex’ but did not describe the reflex as hyperactive. Gagging reflex is a normal protective reflex that is ‘ongoing’ in normal people. This CN IX-innervated reflex prevents oral contents from entering the throat except as part of swallowing. It is thus a rather desirable reflex. The provider did not discuss any underlying medical conditions/evaluations or nutritional issues that may be causal or consequent to this malady.

In the current matter, Petitioner submitted his provider’s proposed treatment plan, dated August 16, 2016. However, in support of this treatment plan, Petitioner provided a June 11, 2013 letter from his dentist with a note from Dr. Loay Deifallah’s office manager stating the condition still exists. Petitioner’s dentist did not testify on his behalf and no further details, such as those noted in the IURO’s 2013 decision above, were

provided. No evidence was presented to establish medical necessity for an implant for the tooth in question in this matter. Petitioner has failed to show that he meets the regulatory requirements for a dental implant pursuant to N.J.A.C. 10:56-2.13(c)1.

THEREFORE, it is on this 27th day of APRIL 2018,

ORDERED:

That the Administrative Law Judge's recommended decision to provide Petitioner with dental services for tooth #20 is hereby REVERSED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services