STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WAKE	12 INS 04763

JAN FJELSTED, Petitioner, vs. NORTH CAROLINA STATE HEALTH PLAN Respondent.	)))))))	**FINAL DECISION**

On October 10, 2012, the undersigned conducted an administrative hearing in this case in Raleigh, NC. At the conclusion of the hearing, the undersigned withheld ruling and directed the parties to submit a proposed decisions with in thirty (30) days after receipt of the hearing transcript. The record in the case is now closed.

APPEARANCES

For the Petitioner: Jan Fjelsted
210 Wyndham Drive
Garner, NC 27529

For the Respondent: Heather H. Freeman
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629

ISSUES

Did the Respondent deprive Petitioner of property, fail to use proper procedure, act erroneously, arbitrarily or capriciously, or otherwise substantially prejudice Petitioner's rights when it denied the Petitioner's claim for dental treatment?

RELEVANT STATUTES AND POLICIES

N.C. Gen. Stat. §135, N.C. Gen. Stat. Chapter 150B, Article 3; and the State Health Plan PPO Benefit Booklet.

EXHIBITS

For Petitioner: Exhibit 1

For Respondent: Exhibits 1-5

WITNESSES

For Petitioner: Paul Fjelsted
Jan Fjelsted

For Respondent: Donna Williams

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner is a member of the State Health Plan.

2. Respondent is an agency of the State of North Carolina, and offers health care benefits to eligible active and retired employees and their enrolled dependants in accordance with the applicable North Carolina General Statutes, the benefit booklet for Respondent's preferred provider organization (hereinafter "PPO") plan, and Respondent's health care policies.

3. At all times relevant to the issues in this contested case, Petitioner was a member of Respondent's Standard PPO plan.

4. Blue Cross Blue Shield of North Carolina (BCBSNC) is the claims processing contractor for the State Health Plan and administers State Health Plan member claims and billing.

5. On July 23, 2011, Petitioner suffered an accidental fall which resulted in injuries to her mouth and treatment at an emergency room. The State Health Plan provided coverage for Petitioner's claims for the treatment she received on July 23, 2011.

6. On December 1, 2011, Petitioner received dental treatment from Dr. Robert McArthur. Specifically, Petitioner received a root canal and resin restoration to her number seven and number eight teeth, and a laminate veneer to her number seven tooth.

7. Claims for Dr. McArthur's December 1, 2011 services to Petitioner were submitted to BCBSNC for payment. (Respondent's Exhibits 1 and 2) BCBSNC denied Petitioner's claims for the dental treatment Petitioner received on December 1, 2011 from Dr. McArthur as non-covered services under the State Health Plan.

8. Petitioner appealed the denial of payment for the December 1, 2011 dental treatment. (Respondent's Exhibit 3)

9. Petitioner's appeal for coverage of the December 1, 2011 treatment was denied and notice was provided by letter dated April 23, 2012. (Respondent's Exhibit 4) The letter states the basis of the denial of Petitioner's appeal and quotes the State Health Plan benefits booklet.

10. Donna Williams, Appeals Team Lead for BCBSNC, testified on behalf of Respondent. Mrs. Williams testified that the language in Respondent's benefit booklet, as stated in Respondent's Exhibit 5, applied to the dental services Petitioner received from Dr. McArthur on December 1, 2011

11. The section titled "**COVERED SERVICES**" on page 13 of Respondent's benefit booklet contains a subsection titled "**Dental Treatment Covered Under Your Medical Benefit**", which describes dental treatment that is covered under the medical benefit pursuant to the Standard PPO Plan and is applicable to Petitioner's coverage. That subsection states:

> Your health benefit plan provides benefits for diagnosis, therapeutic or surgical procedures, including oral *surgery* involving bones or joints of the jaw, when the procedure is related to one of the following conditions:
>
> - Accidental injury of the natural teeth, jaw, cheeks, lips, tongue, roof and floor of the mouth

(Respondent's Exhibit 5)

12. Mrs. Williams further testified that the dental services Petitioner received on December 1, 2011 were non-covered services under Petitioner's plan, regardless of whether those services were related to an accidental injury. Mrs. Williams' interpretation of the benefits as stated in the booklet is erroneous.

13. Mrs. Williams testimony reveals an interpretation of the benefit booklet that is contrary to the ordinary and plain language of the sections cited. Mrs. Williams consistently testified that the coverage, if at all, only applied "to the jaw or jawbone." (See Tr. pp. 20, 22, 29). While testifying during the course of the contested case hearing, Mrs. Williams even incorrectly read a portion of the policy by stating that the benefits applied to "accidental injury <u>other than</u> natural tooth (sic) . . . ." (Tr. p. 29) (Emphasis added).

14. The very plain language of this section sets forth what dental treatment services are covered by the Plan. This section very plainly states "[Y]our health benefit plan provides benefits for diagnosis, therapeutic or surgical procedures . . . related to . . . [A]ccidental injury of the natural teeth. . . ." (Emphasis added) The omitted clauses are merely expansive of this language. The phrase set off by commas which states "including oral *surgery* involving bones or joints of the jaw" expands and clarifies that those particular items are indeed included. In no way does common English and grammatical usage make that clause a limitation on the types of services to be rendered. Apparently, and in accord with the t estimony of Mrs. Williams, BCBSNC has been using that phrase incorrectly as a limitation that only those services were covered, contrary to the plain and ordinary language of the section. (Respondent's Exhibit 5)

15. The second paragraph explaining what dental services are covered states: "Reconstructive *dental services* following accidental injury are only covered when the accident occurred while the *member* is covered by the *State Health Plan* and the services are provided within two years of the accident." (Emphasis in the original) This section is very much on point with the services provided to Petitioner herein and was apparently overlooked or ignored by Respondent. There is no question that the services were performed within two years. While the booklet makes extensive use of italics, italics are used for emphasis and the fact that "dental services" is italicized show importance. It is not speaking of surgery or other less common types of treatment. (Respondent's Exhibit 5)

16. Contained within the broad "**COVERED SERVICES**" section of Respondent's benefit booklet, but specific to covered dental treatment, is the treatment exclusion for "[D]ental root form implants or root canals." When read *in pari material* with what services are covered within the section, it must be read that the exclusion section does not apply to accidental injury cases. To read otherwise would make the exclusionary section of paramount importance to the inclusionary section and render the inclusionary section almost if not entirely without effect. General rules of grammatical interpretation would not favor such an interpretation. All parts of the section must be read as though they have equal value, equal worth, so that one does not negate the other. It must be assumed that the drafters of the booklet did not intend any part of the booklet to be mere surplusage or to be negated by another. (Respondent's Exhibit 5)

17. Respondent's benefit booklet sets forth "**WHAT IS NOT COVERED?**" on page 30, 30. It states that:

> Exclusions that are specific to a type of service are stated along with the benefit description in "*Covered Services*." Exclusions that apply to many services are listed in this section. To understand all of the exclusions that apply, read "*Covered Services*," "Summary of Benefits" and "What Is Not Covered?" In addition, your health benefit plan does not cover services, supplies, drugs or charges that are:
> (Underscore emphasis added; italics in the original)

18. The very plain language of this section is that exclusions are generally found in the specific sections, and especially if it is a specific type of service, then it will be in the

"Covered Services" section for that particular service. This listing of services not covered is a catch-all for services not otherwise specifically addressed in the benefits booklet.

19. The first bullet point within the exclusions list cited by Respondent is "for *cosmetic* purposes." This bullet point very specifically states "[F]or removal of excess skin from the abdomen, arms or thighs, except as specifically covered by your health benefit plan." While the Respondent had an extremely narrow and incorrect interpretation of the "covered" section, it has a greatly exaggerated and unwarranted interpretation of this section which would apparently include <u>any</u> cosmetic service. This bullet point has a definitive reference which is the only cosmetic procedure referenced. The section does not say "for example" or other qualifying language. (Respondent's Exhibit 5)

20. The next bullet point referenced by the Respondent is "[F]or any services that would not be necessary if a noncovered service had not been received, except for *emergency services* in the case of an *emergency*." This section would have applicability if the Petitioner's services were found not to be covered. (Respondent's Exhibit 5)

21. The third bullet point referenced by the Respondent is "[F]or dental care, dentures, dental implants, oral orthotic devices, palatal expanders and orthodontics except as specifically covered by your health benefit plan." The bullet point definitely applies to the issue at hand in that the question to be answered is whether or not Petitioner's dental care is "specifically covered by your health benefit plan." (Respondent's Exhibit 5)

22. Paul Fjelsted, Petitioner's husband, testified on Petitioner's behalf. He testified that after conferring with multiple providers for several months after Petitioner's accident she sought treatment with Dr. Robert McArthur, D.D.S.. Mr. Fjelsted testified that Dr. McArthur performed the root canals and resin restorations, which were part of the root canals procedures, and a veneer.

23. Petitioner entered into evidence a letter from Dr. Robert McArthur, D.D.S., dated October 4, 2012, which described the treatment he provided to Petitioner on December 1, 2011. In Dr. McArthur's letter he described providing Petitioner with endodontic therapy and lingual resin to close access to the endo therapy, followed by a resin veneer to increase functionality and cosmetic appearance to tooth number 7 and endodontic therapy followed by lingual resin to close access to endo procedure to tooth number 8. (Petitioner's Exhibit 1)

24. The uncontroverted evidence is that the "endo therapy" for each tooth at issue referred to by Dr. McArthur is a root canal. The "lingual resin placed to close the access" is put in to fill the void left by performing the root canal. Once the root canal has been performed it cannot simply be left open. It does not take a dental expert to understand that. It seemingly would be malpractice for a dentist to merely leave open the canal left by performing a root canal.

25. The submissions by Dr. McArthur to Respondent seeking compensation are in accord with his having performed root canals on tooth 7 and tooth 8 and then closing the canals with lingual resin after completion of the root canals. Dr. McArthur stated in his letter that his

was a very conservative approach avoiding more costly and perhaps more risky procedures such as orthodontics and implants. His more conservative approach has seemingly been successful.

26. As stated, Dr. McArthur used a resin veneer to strengthen tooth 7 and to increase the functionality of that tooth. Teeth numbered 7 and 8 are the large upper teeth in the front of the mouth. Without the veneer, there was a sizable gap in the front of her mouth which interfered with her biting and chewing; i.e. functionality. The fact that it also had a cosmetic affect does not negate the fact that it was placed on the tooth to increase strength to preserve the tooth and functionality of the tooth.

27. Both Petitioner and her husband stated that she contacted BCBSNC customer service prior to December 1, 2011 and was informed that coverage would be provided if due to an accident. Petitioner acknowledged that no one at BCBS told her that a root canal, resin restoration, or a veneer would be covered by the State Health Plan, simply that the procedures would be covered if due to accident. Petitioner could not provide the dates, times or full names of the BCBSNC representatives that she spoke to when she made calls to BCBSNC.

28. Mrs. Williams testified that BCBSNC maintains records of all customer service calls and that she reviewed the records of calls made by Petitioner, her providers, or anyone on her behalf, as part of her appeal. Mrs. Williams testified that that there was no record of any BCBSNC representative informing Petitioner, her providers, or anyone else who called on her behalf, that the specific dental services she was going to receive from Dr. McArthur on December 1, 2011 would be covered by the State Health Plan. It is not known whether or not the records are full transcriptions of the conversations or exactly in what form the records are maintained.

29. In rendering the decision herein, it is not necessary to determine what if anything Petitioner may have been told in telephone conversations with Respondent' agents.

30. Petitioner acknowledges that she read her benefit booklet, including the specific exclusions regarding dental treatment covered under her medical benefit and the "What is Not Covered Section," before she received the treatment from Dr. McArthur.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case and the parties thereto.

2. In N.C. Gen. Stat. Chapter 135, the General Assembly created a State Health Plan for the benefit of its state employees, retired employees and certain of their eligible dependants. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide comprehensive medical coverage under a group plan and benefits are to be provided under contracts between the Plan and the claims processor.

3. Petitioner has the burden of proof in this matter by a preponderance of the evidence regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).

4. Respondent's State Health Plan Benefit Booklet for the Standard PPO Plan sets forth the benefits available to members.

5. A preponderance of the evidence and a reasonable interpretation of the State Health Plan PPO benefit booklet shows that there was coverage for the dental treatment received by Petitioner from Dr. McArthur on December 1, 2011.

6. Petitioner met her burden of proving that Respondent deprived Petitioner of property, failed to use proper procedure, acted erroneously, and substantially prejudiced Petitioner's rights when it denied the Petitioner's claim for dental treatment.

FINAL DECISION

NOW THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. It is hereby **ORDERED** that Respondent's denial of Petitioner's request for payment of claims for dental services be **REVERSED.**

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to the Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires services of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 16th day of January, 2013.

_____

Donald W. Overby
Administrative Law Judge