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THOMAS LASH

v.

Docket No. 35-88-147

12/20/88

OHIO COUNTY BOARD OF EDUCATION

DECISION

Thomas Lash, grievant, is professionally employed by the Ohio County Board of Education. He filed a level one grievance when coverage was disallowed for his son's prosthetic device under the school board's dental insurance plan. As grievant did not prevail at the lower grievance levels, he filed a level four appeal on August 1, 1988 and a hearing was conducted October 20, 1988.¹ The parties submitted proposed findings of fact and conclusions of law on November 15 and 18, 1988.

¹ Grievant's representative indicated that he intended to supplement the record below. A transcript of the June 15, 1988 level two hearing had been submitted prior to the level four proceeding.

Grievant and his family are participants in the school board's optical/dental insurance plan. The plan's dental care benefits include orthodontic and various non-orthodontic procedures, with varying levels of coverage and some deductibles. Total benefits per participant are limited to a maximum amount per calendar year of \$1000 and a maximum amount per lifetime of \$1000 for orthodontic charges. Non-orthodontic coverage includes certain preventive, diagnostic, therapeutic, restorative and prosthetic services and supplies. Prosthetic services specifically listed are "full, partial dentures, fixed bridges, or adding teeth to an existing denture, if required because of loss of natural teeth."

Grievant's teenage son Tom had a dental problem which involved five or six congenitally missing teeth. He had been under the care of his family dentist, Dr. Daniel Alexander, a dental surgeon, since age three. In addition, Tom also received treatment from Dr. Robert Brossman, an orthodontist, commencing approximately at age twelve and concluding at seventeen, at which time the two dental professionals concurred that Tom should be fitted with a permanent prosthetic device to replace missing left and right maxillary lateral incisors. Dr. Alexander recommended to grievant that this be accomplished with tooth implants. On or about January 29, 1988, Dr. Alexander submitted a dental claim of \$2300 for the implant procedures for pre-treatment review by the McDonough Caperton agency who administers the

benefit plan for the school board. Dr. Alexander noted on his statement that alternatives were not viable for Tom as there was too little space and lack of bone to support a partial denture plate and four virgin teeth would require cutting for fixed bridge prosthetics.

McDonough Caperton declined to pass judgement on whether coverage should be allowed for the claim. In February 1988, Dr. Alexander's statement and a consulting query were forwarded for review to the American Dental Examiners, Inc. (ADE), a private agency which provides professional, expert opinion to insurance carriers/administrators. The questions to be considered were whether replacement of congenitally missing teeth should be covered and, if so, if implants would not be covered, "would a prothesis be suitable for this patient?"

ADE recommended that the "treatment plan" (implants) submitted by Dr. Alexander was "accepted." The recommendation continued that, if the "Co." decided not to cover congenitally missing teeth, "no benefits"; if coverage was allowed for congenitally missing teeth, but not implants, that a fixed bridge or Maryland bridge were acceptable alternatives (with code numbers for each procedure) and if implants were allowed, the code numbers for the procedure were supplied. Additional data were furnished about congenital defects, implants and "Maryland Bridge Benefits."

The school superintendent, Dr. Henry Marockie, ultimately decided to allow coverage for replacement of the congenitally missing teeth but disallowed the implant procedure. In a letter to grievant dated May 20, 1988, Dr. Marockie stated "our policy only covers dentures and bridges." He also informed grievant that,

However, since our policy does address "alternate services which are available for treatment which are the least expensive services for professionally adequate treatment", we could allow for the Maryland bridge which was recommended by the American Dental Examiners, Inc. ..., as an "alternative" to the implant procedure.

Coverage for this procedure was \$400 per tooth or \$800 total less the deductibles. Dr. Marockie stated that the benefit amount for the bridge could not be paid for implants since the policy "does not address this type of substitute procedure."

According to Dr. Alexander, costs for implants and fixed bridges are very similar while the Maryland bridge is much cheaper than a fixed bridge since full crowns are not required to cap natural teeth which serve as supporting structures on either side of the replacement tooth or teeth. Likewise, abutment (supporting) teeth require very little cutting as attachment of the replacement tooth is done via acid etch bonding techniques and clasps on the inner surfaces of the supporting teeth. Dr. Alexander did not consider the Maryland bridge suitable due to Tom's age and activity level and felt such a recommendation could be malpractice on his part. (T.__).

Grievant argues that the respondent board has erroneously disallowed the coverage for the implant because the policy plan

- 1) does not include or exclude the tooth implant procedure;
- 2) allows for the least expensive alternate services for professionally adequate treatment; and
- 3) provides for dental prosthetic devices and the implant is a fixed prosthetic device.

He urges that since medical professionals deemed the implants to be the only adequate treatment available for his son, coverage should be allowed up to the maximum \$1000 yearly benefit.

The respondent board does not contest whether the implant was the proper course of treatment for grievant's son, but argues that benefits should not be paid for implants since implants are not specifically covered in the dental plan. Further, that the implant procedure is partially cosmetic in nature and is therefore excluded by the plan's specific language. It argues that the benefit program is self-funding and enhancement of benefits in a benefit year beyond those contemplated when the funding for the plan was adopted would create a harsh financial impact on the plan.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant~~y~~ is an employee of the respondent board of education; he and his family are covered under the board's optical/dental insurance plan.

2. The plan does not allow for any charge for listed services and supplies in excess of the charge customarily made "where alternative services or supplies are customarily available for such treatment, for the least expensive service or supply resulting in professionally adequate treatment."

3. Grievant's seventeen-year old son Tom had been under dental care since age three for congenitally missing teeth.

4. In early 1988, Tom's family dentist, Dr. Daniel Alexander, a dental surgeon, and Tom's treating orthodontist, Dr. Robert Brossman, determined that Tom should be fitted with permanent replacements for missing incisor teeth (teeth on either side of the two front teeth).

5. The two attending dentists concurred that a partial plate or a fixed bridge would not be professionally adequate due to Tom's age, active lifestyle and particular dental needs

and recommended a tooth implant for each missing tooth for a total cost of \$2300. A pre-determination statement on this matter was sent to McDonough Caperton, who administrates the plan for the respondent board, for review.

6. The school board's dental plan does not specifically allow for replacement of congenitally missing teeth. Likewise, the only listed prosthetic services and supplies to replace lost natural teeth are "full, partial" dentures and fixed bridges. One type of fixed bridge requires that supporting teeth be cut extensively to receive a crown. A crown is fused to both sides of the replacement tooth and the entire device is permanently attached to the prepared supporting teeth. Another type of fixed bridge, the Maryland bridge, utilizes bands on the replacement tooth which are then affixed to the insides of the minimally prepared supporting teeth. Costs for the former type of fixed bridge are comparable to an implant and are over twice that of a Maryland bridge.

7. McDonough Caperton sought the advice of an consulting agency on the question of coverage for congenitally missing teeth, implants and alternatives to implants. The agency noted Dr. Alexander's treatment plan "accepted," and made no comment

on the charge. Additionally, information about congenital dental anomalies, implants and the Maryland bridge was supplied to the school board's superintendent, Dr. Henry Marockie, who was to make the final decision on coverage.

8. Dr. Marockie made an administrative decision to expand/enhance the plan's stated benefits, which allowed only for replacement of teeth lost by damage or injury, to include replacement of Tom's congenitally missing teeth.

9. Dr. Marockie disallowed replacement of Tom's teeth by the implant method and stated as his reason that implants were not covered by the plan.

10. Dr. Marockie stated that he would approve payment for an alternative prosthetic device, a Maryland bridge. He cited as his reason the plan's provision for "alternative services ...which are the least expensive services for professionally adequate treatment." This clause specifically addresses alternatives to charges "in excess of the charge customarily made," but no pronouncement was made by the Superintendent as to whether the charge for the implants was deemed to be in excess of customary charges for the procedure.

11. The plan disallows coverage for dental services and supplies partially or wholly cosmetic in nature. Any restorative or prosthetic dentistry performed on front teeth, such as was needed by grievant's son, will ultimately be partially cosmetic in result, but not necessarily partially cosmetic in nature. The cosmetic value of an implant versus that of a fixed bridge was not considered or cited by the respondent board when it declined to cover the costs of implants for grievant's son.

12. Enhancement of the board's coverage to include replacement of congenitally missing teeth with professionally adequate prosthetic devices could not subject the plan to a harsh financial impact since a maximum \$1000 benefit amount for any covered participant in a given year is built into the coverage plan and the cost of implants was comparable to certain types of fixed bridges specified by the plan.

CONCLUSIONS OF LAW

1. A county board of education may interpret its own policies, so long as it does so in a manner not unreasonable, arbitrary or capricious. Fairchild v. Boone County Board of Education, Docket No. 03-88-160 (December 7, 1988). Accordingly, it may also enhance employee benefits in a likewise reasonable, non-arbitrary manner.

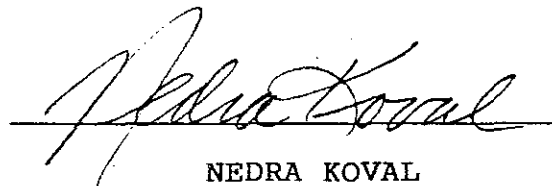
2. In this instance, when the superintendent expanded coverage of the school board's dental plan, an employee benefit, to allow for replacement of congenitally missing teeth with the least expensive professionally adequate treatment, he was then reasonably bound to allow coverage for treatment deemed professionally adequate by the dental experts familiar with the insured's specific needs.

3. Disallowance of insurance coverage by the respondent board for charges for tooth implants to replace congenitally missing teeth, deemed the only professionally adequate treatment for grievant's son by his two attending dental professionals, was unreasonable and arbitrary under the circumstances in the instant grievance.

Accordingly, the grievance is GRANTED and the board is Ordered to pay grievant an amount up to the maximum allowable benefit, \$1000, for his son's dental treatment of implants.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

DATED: December 29, 1988


NEDRA KOVAL
Hearing Examiner