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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED]) OHA Case No. 10-FH-2305
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Medicaid. On June 7, 2010 she submitted a cost reimbursement claim for emergency transportation services. (Ex. D p. 3) The Division of Health Care Services (Division) denied the claim, but the file does not clarify the date of notice to Claimant. (Ex. D, p. 6; Notice of Fair Hearing August 23, 2010) On August 23, 2010, Claimant requested a fair hearing. (Ex. C)

This office has jurisdiction pursuant to 7 AAC 49.010 -.020.

The Division scheduled a hearing for September 30, 2010. This Office held the hearing on that date. The Claimant did not attend. The Claimant's mother attended the hearing telephonically, representing the Claimant and testifying on her behalf. [REDACTED] also attended the hearing telephonically and testified on Claimant's behalf. [REDACTED] Hearing Representative for the Division, attended the hearing in person, representing and testifying on behalf of the Division. Division employees [REDACTED], Medical Assistance Administrator II, and [REDACTED], Project Coordinator, testified on behalf of the Division.

¹ Claimant is a minor. She has been represented throughout this process by her mother, [REDACTED].

The parties agree regulation 7 AAC 120.415 controls this case:

(a) The department will pay for medically necessary emergency air or ground transportation to the nearest facility that provides emergency care. . . .

(b) A claim submitted to the department for payment of costs for emergency transportation service, including ground ambulance and air ambulance service, must be accompanied by written justification of the medical emergency, including medical documentation. A ground ambulance service's documentation of a recipient's medical status and medical services provided may serve as adequate written justification to support a claim for emergency transportation services by a ground ambulance service.

The Alaska Medicaid regulations do not define the term “medically necessary.” 7 AAC 120.400-490.

Courts have determined that what is “medically necessary” is a decision to be made by a treating physician. *Vista Hill, Inc. V. Hecklar*, 767 F.2d 556, 561 (9th Cir. 1985)(citing *Beal v. Doe*, 432 U.S. 438 (1977)), *See also, Pinneke v. Preisser*, 623 F.2d 546, 550 (8th Cir. 1980). These cases were cited in an Alaska Superior Court decision, *Arzola v. State of Alaska, Dep’t of Health and Social Services*, (3AN-92-10386CI, September 28, 1993). The *Arzola* Court stated “the determination of what is ‘necessary medical treatment’ is to be made by the treating physician, not the agency.” (*Arzola*, at 13)

“Emergency transportation” is defined as “transportation necessary immediately when a sudden, unexpected occurrence creates a medical emergency.” 7 AAC 120.490(2)

ANALYSIS

The issue in this case is whether the Division was correct when, on July 13, 2010, it denied Claimant’s cost reimbursement claim for emergency ambulance transportation because it determined the service was not medically necessary.

Regulation 7 AAC 120.415(b) states a recipient must submit a claim to the department for emergency transportation services. The regulation further states the claim must be “accompanied by written justification of the medical emergency, including medical documentation.” This regulation clearly indicates that Claimant has the burden to prove or justify the medical necessity of the ambulance transport.

In this case, at the time in question, there was no actual medical doctor present. However, treating physicians can include any trained professional treating the patient. Originally, the Claimant was found by a police officer. That police officer chose to call the ambulance service for transportation. Once the ambulance service came on the scene, those attendants became responsible for Claimant’s care.

The ambulance service attendants were the treating professionals available. What is “medically necessary” is to be determined by the treating physician. *See, Vista Hill, Inc. (cited in, Arzola)* The ambulance attendants determined that the only treatment needed was basic life support. (Ex. D, p. 4) They then transported Claimant from the scene, under “code one,” which was routine transportation, with no lights and sirens. (Ex. D, p. 4; testimony of [REDACTED]) This indicates the treating professionals did not consider the transport to be a medical emergency.

The Claimant was required to provide “justification to support a claim for emergency transportation services.” 7 AAC 120.414(b). There must be a “medical emergency” in order for transportation to be considered an emergency. 7 AAC 120.490 In this case, when the ambulance arrived, the Claimant’s vital signs were stable, she had no respiratory issues, no trauma, and her lungs were clear. (Ex. D, p.4) While in the emergency room, the Claimant received an i.v. and lab work. She was not admitted and was held in the emergency room for approximately four hours. (Ex. E, p.3) These are not conditions which would describe a “medical emergency.”

The Claimant has failed to prove by a preponderance of the evidence that the transportation she received on May 1, 2010 was for a medically necessary emergency. Since the Division can only pay for medically necessary emergency transportation costs, it acted properly when it denied Claimant’s costs for transportation.

CONCLUSIONS OF LAW

The Claimant has failed to meet her burden of proof by a preponderance of the evidence that:

1. The treating professionals in this case, the ambulance attendants, determined it was not medically necessary emergency transportation for Claimant to be transported by ambulance service.
2. Therefore, the Division was correct when it denied Claimant’s ambulance emergency ground transportation service of May 1, 2010.

DECISION

The Division was correct when, on July 13, 2010, it denied Claimant’s claim for payment of the May 1, 2010, ambulance transportation costs.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Health Care Services
Department of Health and Social Services
4501 Business Park Boulevard, Suite 24

Anchorage, AK 99503-7167

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this 18th day of November, 2010.




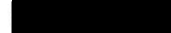



Patricia Huna
Hearing Authority


CERTIFICATE OF SERVICE

I certify that on this 18th day of November 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy sent via e-mail to the following:

 Director
 Fair Hearing Representative
, DPA Director's Office
 Policy & Program Development
 Staff Development & Training


J. Albert Levitre, Jr.
Law Office Assistant I