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

In the Matter of)	
)	
██████████,)	OHA Case No. 10-FH-2424
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) is a Medicaid recipient. On October 25, 2010, the Claimant requested the Medicaid program pay for the rental of a hospital bed for his use for a one month period, from October 22, 2010 through November 21, 2010. (Ex. E, pp. 1 - 3) On October 27, 2010, the Division of Health Care Services (Division) denied the Claimant's request. (Ex. D, pp. 1 - 2) The Claimant requested a fair hearing on December 1, 2010. (Ex. C)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on December 13, 2010. The Claimant, who is a minor, was represented by his parents, ██████████, who attended telephonically and testified on his behalf. ██████████, a Health Program Manager III employed with the Division of Health Care Services, appeared in person; he represented and testified on behalf of the Division. ██████████, who is employed by the Division as a Medical Assistance Administrator III, appeared in person and testified on behalf of the Division.

ISSUE

Was the Division correct when it, on October 27, 2010, denied the Claimant's October 25, 2010 request for a one month rental of a hospital bed?

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The Claimant has severe cerebral palsy. (Ex. E, p. 2)

2. In 2009, the Medicaid program purchased a Pedicraft bed with canopy for the Claimant's use. (Ex. F, pp. 1 – 2)

3. On or about October 6 or 7, 2010, the Claimant's family moved out of the family home temporarily so that remodeling work could be done in the home. (Ms. ██████ testimony). The home remodeling consisted of environmental modifications for the Claimant's benefit, which were authorized and paid for by the Division. *Id.*

4. The Claimant's Pedicraft bed stayed in the home while the remodeling work was being performed. (Ms. ██████ testimony) It was not possible for the Claimant's family to take the Pedicraft bed with them to their temporary housing because the bed is large, difficult to take apart and move; there are also warranty issues if the bed is taken apart and moved. *Id.*

5. After the Claimant's family had been out of the home and the Claimant was using an ordinary bed (actually a bunk bed), it became apparent that the Claimant needed a hospital bed because of safety concerns expressed by the Claimant's nursing and other caregivers, which included lifting the Claimant in and out of the bed. (Mr. and Ms. ██████ testimony)

6. On or about October 25, 2010,¹ the Claimant requested the Medicaid program authorize a hospital bed rental for a one month period from October 22, 2010 through November 31, 2010. (Ex. E, pp. 1 - 3) That request contained a physician's statement that the Claimant "has severe [Cerebral Palsy] with debilitating dystonia. . . . Currently he is living at another location temporarily while home is under construction." (Ex. E, p. 2) The physician's statement further stated "Hospital Bed rental urgent, emergency request." *Id.*

7. One month is the minimum rental time period for the hospital bed. (Ms. ██████ testimony)

8. The Division denied the Claimant's request on October 27, 2010, stating the following:

Alaska Medical Assistance purchased a Pedicraft bed for the recipient in 2009 thereby meeting recipient's needs. Per 7 AAC 12.220(A)(1). (sic) purchase or rental of request item would only be considered if the bed purchased for the recipient has exceed its reasonable useful lifetime.

(Ex. D, p. 2)

9. The home remodeling was completed on October 26, 2010 (Ms. ██████ testimony) The family did not manage to move back into the home until several weeks later. (Mr. and Ms. ██████ testimony)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska

¹ The Certificate of Medical Necessity, p. 2, contains the type written date of October 5, 2010. (Ex. E, p. 1) However, the document itself is date stamped as having been received on October 25, 2010.

1985); *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003) (quoting from *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

The Alaska Medicaid regulations that control payments for durable medical equipment, such as hospital beds, are contained in 7 AAC 120.200 – 299.

The term “durable medical equipment” is defined as follows:

- (3) “durable medical equipment” means equipment that
 - (A) can withstand repeated use;
 - (B) is primarily and customarily used to serve a medical purpose;
 - (C) generally is not useful to an individual in the absence of an illness or injury; and
 - (D) is appropriate for use in the home, school, or community;

7 AAC 120.299(3).

Alaska Medicaid regulation 7 AAC 120.220, entitled “Replacement of Items” reads, in pertinent part:

- (a) Subject to applicable requirements of 7 AAC 120.200 – 7 AAC 120-299, the department will pay for the purchase or rental of replacement durable medical equipment, prosthetics, orthotics, and noncustomized-fabricated orthotics if the
 - (1) replacement is necessary to replace an item that has been in continuous use by the recipient for the item’s reasonable useful lifetime and the department determines that the item is lost or irreparably damaged;

* * *

- (c) If an item is not irreparably damaged, the department may authorize the replacement of the item if the department determines that the cost of replacement would be more cost-effective than repair.

“Environmental modifications . . . make physical adaptations to the recipient’s home . . . and are necessary to ensure the health, welfare, and safety of the recipient.” 7 AAC 130.300(b). They must be preapproved by the department. 7 AAC 130.300(a).

ANALYSIS

The issue in this case is whether Division was correct to deny the Claimant’s October 25, 2010 request for a one month hospital bed rental. Because this case involves the Claimant requesting an additional Medicaid benefit, the hospital bed rental, the Claimant is the party seeking to change the status quo. He, therefore, has the burden of proof by a preponderance of the evidence.

The undisputed facts in this case are as follows:

1. The Claimant had to move out of his home for a short period of time while it was being remodeled with environmental modifications, which were authorized and paid for by the Department.
2. He could not take his Pedicraft bed with him because the bed is large and difficult to take apart and move. There are also warranty issues if the bed is taken apart and moved.
3. It was not safe for him to use an ordinary bed and his physician stated that it was medically necessary for him to rent a hospital bed.

The Division did not present any evidence disputing these facts. Instead, the Division presented a purely legal argument, stating that the pertinent Alaska regulation, 7 AAC 120.220(a)(1), prohibited it from paying for the rental of a hospital bed because the Claimant already had a hospital bed, the Pedicraft bed, in his home.

The regulation cited by the Division, 7 AAC 120.220(a)(1), is clear that the department is not authorized to pay for or rent **replacement** durable medical equipment (in this case, a hospital bed), unless the previous equipment is “lost or irreparably damaged.” In other words, the regulation forbids a **complete replacement** of the durable medical equipment, if it is not lost or damaged beyond repair. However, the regulation does not address the present situation where the equipment (hospital bed) is **temporarily** unavailable to the Claimant, or otherwise **temporarily** unusable by the Claimant.

It is important to note that the unavailability of the bed was actually due to environmental modification remodeling, preapproved by the Department, that was “necessary to ensure the [Claimant’s] health, welfare, and safety.” See 7 AAC 130.300(a) and (b). In other words, the bed was not unavailable due to remodeling at the family’s option, such as a cosmetic kitchen remodel.

It also needs to be noted that the Division’s interpretation of the regulation would not allow the Claimant to rent a hospital bed if his Pedicraft bed was out for repair. Thus, the regulation relied upon by the Division only addresses the complete and permanent replacement of equipment because it is lost or cannot be repaired; the regulation does not address the circumstances of this case.

The Claimant’s request was not for a different bed that permanent and completely **replaced** his Pedicraft bed. Instead, it was a request for a one month rental of a hospital bed, because his Pedicraft bed was not available for his use. This request did not involve the permanent and complete **replacement** of his bed. Instead, it provided him with a short term substitute due to the unavailability of his bed.

The Claimant had the burden of proof by a preponderance of the evidence in this case. He met his burden and showed that it was medically necessary for him to have a temporary hospital bed rental because his normal Pedicraft bed was not available for his use. This was not a **complete replacement** of the Pedicraft bed. The Claimant's request was therefore not barred by the applicable regulation, 7 AAC 120.220(a)(1), and the Division was not correct when it denied his request.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence. He satisfied his burden of proof and established that his Pedicraft bed was not available for his use while his home was being remodeled, and it was medically necessary for him to temporarily rent a hospital bed for his use while he was away from his home.
2. The applicable Medicaid regulation, 7 AAC 120.220(a)(1), forbids the **complete and permanent replacement** of durable medical equipment unless that durable medical equipment is lost or beyond repair. The regulation, does not, however, forbid the rental of a temporary substitute for the durable medical equipment when that equipment is not available.
3. As a result, the Division was not correct when it, on October 27, 2010, denied the Claimant's October 25, 2010 request for a one month rental of a hospital bed

DECISION

The Division was not correct when it, on October 27, 2010, denied the Claimant's October 25, 2010 request for a one month rental of a hospital bed.

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:

Kimberli Poppe-Smart, Director
Division of Health Care Services
4501 Business Park Blvd., Suite 24
Anchorage, AK 99503-7167

If the Claimant appeals, the 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.

