

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	OAH No. 14-0105-MDS
N X	)	Division No.
_____	)	

**DECISION**

**I. Introduction**

N X (N) is a disabled young adult who receives Medicaid Home and Community-Based Waiver (Waiver) services. He requested an amendment to his 2013 – 2014 Plan of Care (POC) that would add 7.5 hours per week of Supported Employment Services (SES) to that POC. The Division of Senior and Disabilities Services (Division) denied the amendment. Mr. X requested a hearing to challenge that denial.

N’s hearing was held on March 13, 2014. E X, N’s father and legal guardian, represented him. Angela Ybarra, a Medical Assistance Administrator employed by the Department of Health and Social Services, represented the Division.

The evidence shows that the SES requested for N do not duplicate services he is already being provided through the No Name School District. Consequently, the Division’s decision denying him the requested SES is reversed.

**II. Facts**

N is a disabled young adult (age 19) who lives with his father. He is a student with the No Name School District, where he receives vocational training through the Adult Community Transition/Adult Career Education (ACT/ACE) program. This training consists of volunteer unpaid work at the No Name two days per week, which occurs only during ACT/ACE hours. The ACT/ACE program is held on Monday through Friday from the morning through, at the latest, 2 p.m. in the afternoon. It does not operate or provide support on the evenings or weekends.<sup>1</sup>

N obtained a part-time paid job working with non-disabled persons at a concession stand at the No Name. His work hours are on the evenings and weekends, which are times that the

---

<sup>1</sup> Ex. 1; N S testimony.

ACT/ACE program does not provide support. N requires a job coach for that job because disabled persons do not easily transfer job skills from one work situation to another.<sup>2</sup>

N requested that his POC be amended to allow him to have it provide for SES, in the form of a job coach, for 7.5 hours per week for his part-time job at the concession stand. The duration of the requested SES was for 18 weeks, from November 1, 2013 through March 7, 2013.<sup>3</sup>

The Division denied N's request. Its reasoning was that N was already receiving services through ACE/ACT and that the Waiver program could not pay for services that were available through the Individuals with Disabilities Education Act.<sup>4</sup> The Division did not assert that N did not require a job coach for his job.

### III. Discussion

The Medicaid program has a number of coverage categories. One of those coverage categories is the Waiver program.<sup>5</sup> The Waiver program pays for specified individual services to Waiver recipients, if each of those services is "of sufficient amount, duration, and scope to prevent institutionalization."<sup>6</sup> The Division must approve each specific service as part of the Waiver recipient's POC.<sup>7</sup>

The *specific* type of Waiver services at issue here, "Supported Employment Services," are defined by regulation in relevant part as follows:

(b) The department will consider services to be supported-employment services if the services

\* \* \*

(2) provide support, if needed to enable a recipient to be employed, at a worksite where

(A) individuals without disabilities are employed;<sup>[8]</sup>

---

<sup>2</sup> E X testimony; N S testimony.

<sup>3</sup> Ex. F, p. 4.

<sup>4</sup> The Division's denial letter quoted verbatim from 7 AAC 130.270(c)(6), which references both the Individuals with Disabilities Education Act and the Rehabilitation Act (Ex. D, p. 2). However, the Division's explanation in both its denial letter (Ex. D) and its witness' testimony (Keith Masker) focus solely on the ACT/ACE program, which would also include the Disabilities Education Act. The conclusion is that the Division was not referencing the Rehabilitation Act as a specific prohibition, but was instead only denying the services based upon a perceived duplication between the ACT/ACE program/Individuals with Disabilities Education Act and the requested SES for N's after school hours job.

<sup>5</sup> 7 AAC 100.002(d)(8); 7 AAC 100.502(d).

<sup>6</sup> 7 AAC 130.230(f)(1).

<sup>7</sup> 7 AAC 130.230(f).

<sup>8</sup> 7 AAC 130.270.

SES are not available to a person if they are “available under a program funded under 20 U.S.C. 1400 – 1482 (Individuals with Disabilities Education Act).”<sup>9</sup>

The facts in this case show that N’s ACT/ACE services do not duplicate the requested SES. The ACT/ACE services are for N’s volunteer work experience which only happens during the school week, during school system hours. N has obtained a wage-paying job working with non-disabled persons, which occurs outside school system hours. For that reason, the requested SES does not duplicate services available under a program funded under the Individuals with Disabilities Education Act, where services are provided through school district education programs.

N had the burden of proof in this case because he was requesting an increase to his Waiver POC services.<sup>10</sup> He has met his burden of proof. N requires SES, in the form of a job coach, for his part-time job. Those needs are not duplicated by the services he receives from the ACT/ACE program, which are only for his volunteer activities during school hours.

#### **IV. Conclusion**

The Division’s decision to deny N’s request for SES in the form of a job coach for 7.5 hours per week is reversed.

DATED this 25<sup>th</sup> day of March, 2014.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

---

<sup>9</sup> 7 AAC 130.270 (c)(6).

<sup>10</sup> 7 AAC 49.135.

## Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11<sup>th</sup> day of April, 2014.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication.]