

university in student residential services. T's babysitters are students who live in the university dormitories. His maternal grandmother works in an elementary school nurse's office.⁶

T's pediatrician requested that the Medicaid program provide him with prescription coverage for Synagis.⁷ Synagis is a medication used for the "prevention of serious lower respiratory tract disease caused by respiratory syncytial virus (RSV) in pediatric patients at high risk of RSV disease"⁸ On November 19, 2012, T's pediatrician wrote a letter that recited T's need for an apnea monitor until October 5, 2012, his receipt of caffeine therapy while in the neonatal intensive care unit, the family history of allergies, his mother's frequent occupational exposure to illness, and concluded that it is "cost effective and needed for THIS patient to receive [S]ynagis during our annual season."⁹

The request for Synagis coverage for T was denied because the "[p]atient does not meet criteria based on age and risk factors."¹⁰ At hearing, the Division clarified the reason for the denial was because T's birth date was 00/00/12, which was before the beginning birthdate contained in the Alaska Medicaid guidelines for Synagis coverage.¹¹ Those guidelines require that for an infant, without chronic lung disease or significant congenital heart disease, who was born prematurely, at a gestational age of 29 weeks to less than 32 weeks, to be approved for Synagis, the infant would need to have been born after May 28, 2012. Those guidelines were based upon an estimate that the RSV season would begin on November 28, 2012.¹² Alaska lab test results show that the RSV season did not start earlier than November 28, 2012.¹³

III. Discussion

The Alaska Medicaid program has a number of medications which require prior authorization.¹⁴ Synagis is one of those medications.¹⁵ In determining whether to grant prior authorization for a medication, the "factors that the department will consider include the

⁶ Mr. and Ms. J testimony.

⁷ Ex. E, p. 2.

⁸ Ex. F, p. 1. "Respiratory syncytial virus (RSV) causes mild, cold-like symptoms in adults and older children. However, it can cause serious problems in young babies, including pneumonia and severe breathing problems. In rare cases it can lead to death. Premature babies and those with other health problems have the highest risk." <http://www.nlm.nih.gov/medlineplus/respiratorysyncytialvirusinfections.html> date accessed January 10, 2013.

⁹ Ex. E, p. 1 (emphasis in original).

¹⁰ Ex. D, p. 1.

¹¹ Mr. Kim testimony.

¹² Ex. F.

¹³ Mr. Kim testimony; Ex. G, p. 1.

¹⁴ 7 AAC 105.130(a)(13); 7 AAC 120.130(a)(1).

¹⁵ Ex. G., p. 3.

service’s medical necessity, clinical effectiveness, cost-effectiveness, and likelihood of adverse effects”¹⁶

T was denied prior authorization for Synagis due to a strict application of the Division’s Synagis guidelines. If T had been born after May 28, 2012 instead of on May 20, 2012, he would have been eligible under the guidelines for coverage due to his premature birth at 31 weeks gestation. The Division’s Synagis guidelines are not themselves a regulation, nor are they adopted by reference by a regulation. The applicable regulation, 7 AAC 105.130(c), is therefore what controls.¹⁷ It identifies medical necessity as a factor.

When the regulatory factors are taken into account, T has met his burden. T’s pediatrician opined that his receipt of Synagis was necessary. “The Medicaid statute and regulatory scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.”¹⁸ An administrative law judge must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician.¹⁹ The facts do not provide “clear and convincing” reasons for rejecting the pediatrician’s medical necessity opinion. Instead, the facts corroborate the pediatrician’s medical necessity opinion, due to the risk factor of apnea, and the risk factor that T’s parents and caregivers are frequently exposed to communicable diseases.

IV. Conclusion

T met his burden of proof in this case and established that it was medically necessary to receive Synagis. The Division’s decision to deny his prior authorization request is REVERSED.

DATED this 17th day of January, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁶ 7 AAC 105.130(c). When the words “include” or “including” are part of the text of a law, they are “construed as though followed by the phrase ‘but not limited to.’” AS 01.10.040(b).

¹⁷ An agency interpretation of a regulation that supplements, revises, or makes a regulation more specific, is itself a regulation, and in order to be followed must be adopted pursuant to the Administrative Procedure Act. *Jerrel v. State, Dept of Natural Resources*, 999 P.2d 138, 144 (Alaska 2000) (reh. den.).

¹⁸ *Weaver v. Reagan*, 886 F.2d 194, 200 (8th Cir. 1989).

¹⁹ *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).

Adoption

The undersigned, by delegation from 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 31st day of January, 2013.

By: Signed _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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