

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

In the Matter of)

N N)

) OAH No. 15-1118-MDX
) Agency No.

DECISION

I. Introduction

N N is a Medicaid recipient. Ms. N’s physician requested that the Medicaid program provide her with authorization for a “suspension of breast” procedure. The Division of Health Care Services (Division) denied the request.¹ Ms. N requested a hearing.²

Ms. N’s hearing was held on September 17, 2015. Ms. N represented herself and testified on her own behalf. Angela Ybarra represented the Division. Dr. K W. T, M.D., employed by Qualis Health, testified on the Division’s behalf.

The evidence in the record does not show that a suspension of breast procedure is medically necessary for Ms. N. Therefore, the Division’s decision denying prior authorization is upheld.

II. Facts

At the hearing, Ms. N explained that she had lost 280 pounds as a result of success with a gastric bypass, and consequently she has extra skin all over her body. This extra skin gets in the way of her clothing and causes rashes. Ms. N uses Nystatin on these folds of extra skin.³ A bra will not contain all the extra folds of skin in her breasts. Medical records from her doctor, H D, M.D., reflect that a breast examination showed bilateral grade 3, or advanced, breast ptosis, or sagging.⁴

The Division explained at the hearing that the Division had approved a request for skin removal and muscle tightening for Ms. N for her abdomen, but had denied the request for a mastopexy, or suspension of breasts procedure, because the Division determined that the procedure for Ms. N was not medically necessary.⁵

¹ Exhibit A.
² Exhibit C.
³ Hearing Record.
⁴ Exhibit E, page 5.
⁵ Hearing Record.

Ms. N testified that she has excess folds of skin everywhere on her body. Her breasts are flat and sagging, and she gets irritations under her breasts, which is an ongoing problem. Ms. N explained that she is 37 years old but the deformity caused by her weight loss makes her look like she is 78 years old. She uses Nystatin in all of her folds to treat rashes. These problems with her extra skin are the result of her weight loss surgery, and she explained that it would be less expensive to do all of the surgery to deal with the excess skin at one time, because there would be only one surgical procedure and one hospital stay.⁶

Ms. N's mother, S N, testified at the hearing. S N explained that she had observed the issues that her daughter has with the extra skin on her breasts as a result of the weight loss. S N has observed that this skin has an odor and has rashes and infections as a result of the chaffing caused by the sagging of her breasts. She testified that she had seen Ms. N's body within the last month and that these problems were ongoing.⁷

Dr. K W. T, M.D. testified that he had reviewed Ms. N's medical records that were submitted to the Division for review of the authorization request. Dr. T explained the basis for the determination there was not a medical necessity for Ms. N's a suspension of breast procedure. He explained that he concluded that the purpose of the procedure was cosmetic rather than to address a serious medical condition that was being treated.

Dr. T testified that serious medical conditions creating a medical necessity for this procedure would include a severe recurring infection; cellulitis, or breast abscess. He further testified that he found no documentation within the medical records that he reviewed indicating that Ms. N had a serious medical condition that was being treated as a result of breast ptosis - he found no documentation indicating that there was infection or abscess beneath the breasts or around the breasts, and specifically no documentation in the notes from Ms. N's primary care doctor about infections related to the breasts. Dr. T also reported that the two reviewers who had looked at Ms. N's medical records had not found a medical justification for the requested surgery, as opposed to cosmetic reasons.

At the hearing, Dr. T's attention was drawn to exhibit E, page 3, which are medical records from Ms. N's medical providers. Dr. T noted that the medical records reflect treatment for rashes under skin folds due to moistness and yeast infection through antifungal and steroid

⁶ Hearing Record.

⁷ Hearing Record.

ointments. Dr. T explained that in his view, surgical treatment for the breast conditions described in those records would be cosmetic.

While none of the medical records specifically address the issues of breast-related irritation and infection experienced by Ms. N, she explained that she thinks this is because the yeast infection and rash issue is the same for all of the areas on her body that have folds, including her breasts. Ms. N explained at the hearing that she had been using Nystatin on her breasts and other parts of her body for two years – she uses the medication in a preventative manner when she starts to get a yeast infection under her breasts.⁸

Ms. N characterized the excess skin on her breasts as a deformity that was caused by the gastric bypass surgery Medicaid had paid for, and she asked Dr. T if correction for that condition should not also be paid for by Medicaid. He responded that he did not have input into the Medicaid coverage rules, but he was not aware of any provision for Medicaid coverage for a deformity caused by gastric bypass surgery. Dr. T acknowledged that there were situations where a deformity would create a medical necessity for surgery and Medicaid would cover that surgery. He gave the example of a cleft pallet which leads to functional problems, as well as being a severe deformity that would have an impact on one's ability to function in society in general. Dr. T also noted that there is a federal statute specifically requiring coverage for reconstructive surgery for those with breast cancer who have had a mastectomy.⁹

Ms. N also inquired whether the rash and irritation under her breasts and the treatment with Nystatin created a medical need for the breast surgery. Dr. T testified that the bar for this type of surgery was high, so in his view, a significant, severe infection leading to hospitalization would be required to support a finding of medical necessity for the surgery. He explained that many people experience intermittent skin irritation and skin rashes from skin folds and do not get corrective surgery. Dr. T indicated that surgery is a relatively extreme solution for skin irritation problems. He also pointed out, regarding the approved surgery for Ms. N's abdominal skin folds, that there was an abdominal muscle gap that could potentially cause a hernia that was being taken care of with the same surgery. Dr. T indicated that this difference provided the medical necessity for surgery that was not found in the request for breast surgery.¹⁰

⁸ Hearing Record.

⁹ Hearing Record.

¹⁰ Hearing Record.

III. Discussion

The Division's position is that Ms. N has not shown that the breast surgery procedure is needed to address a serious medical condition that is being treated, and therefore the procedure is not medically necessary. Ms. N argued that the procedure is needed to address ongoing rashes and irritation. Ms. N also argued that the procedure should be approved because the need for it is the result of her having received another covered procedure, namely the gastric bypass, which resulted in her weight loss.

The Alaska Medicaid program requires prior authorization for the procedure Ms. N's doctor has recommended.¹¹ Authorization can only be approved if the procedure is medically necessary. Neither the federal Medicaid Act nor the accompanying regulations define medical necessity. The responsibility for defining medical necessity is left to each state.¹² Alaska regulations and statutes also do not contain a broad definition that sets out when procedures of this type are medically necessary. However, pertinent portions of the Alaska regulation on services not covered by Medicaid, 7 AAC 105.110, provides:

Noncovered services

Unless otherwise provided in 7 AAC 105 - 7 AAC 160, the department will not pay for a service that is

(1) not reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system, as determined upon review by the department;

(4) for or in connection with cosmetic therapy or plastic or cosmetic surgery, including rhinoplasty, nasal reconstruction, excision of keloids, augmentation mammoplasty, silicone or silastic implants, facio-plasty, osteoplasty (prognathism and micronathism), dermabrasion, skin grafts, and lipectomy; however, coverage is available if required for the following corrective actions if performed within the normal course of treatment or otherwise beginning no later than one year after birth or the event that caused the need for the corrective action:

(A) repair of an injury;

(B) improvement of the functioning of a malformed body member;

(C) correction of a visible disfigurement that would materially affect the recipient's acceptance in society

Evidence in the record does not show that there is a medical necessity for the procedure that was denied. Rather, the evidence shows that the rashes and yeast infections that Ms. N experiences are being controlled by other treatments, including the Nystatin that Ms. N is currently using. The fact that this condition was created or aggravated by treatment, a gastric

¹¹ 7 AAC 105.100(6).

¹² See *Thie v. Davis*, 688 N.E.2d 182 (Ind.App.1997).

bypass, which was covered by Medicaid, would not require that surgery that is not medically necessary be covered by Medicaid. The apparent inconsistency in approving coverage for surgery to remove excess skin in Ms. N's abdominal area but declining coverage for a similar procedure for her breasts was persuasively reconciled by Dr. T's explanation, i.e., that the medical records show the abdominal procedure will also rectify the medical condition regarding the gap in her abdominal muscles.

Ultimately, the evidence showed that, unfortunately, Ms. N's condition is of the type of plastic surgery that is excluded from Medicaid coverage under 7 AAC 105.11(1) & (4).

IV. Conclusion

Ms. N did not provide evidence that showed that it was medically necessary for her to receive a suspension of breast procedure. Therefore, the Division's decision to deny her prior authorization request for that procedure is UPHELD.

DATED this 1st day of November, 2015.

Signed _____

Andrew Lebo
Administrative Law Judge

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 17th day of November, 2015.

By: *Signed* _____

Name: Lawrence A. Pederson
Title: Administrative Law Judge, OAH

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