

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

In the Matter of:)
)
 X T) OAH No. 16-0085-MDX
) Agency Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Health Care Services (Division) was correct to deny a request, by Mr. T' physician, a physical therapist, and a local equipment supplier, for prior authorization of a Group 4 power chair for Mr. T. The Division denied the request for prior authorization on the grounds that the power chair was "not properly prescribed or medically necessary in accordance with criteria established under 7 AAC 105 - 7 AAC 160 or by standards of practice applicable to the prescribing provider."¹

I find that Mr. T proved, through the medical records of his physician and physical therapist, and through the testimony of his witness at hearing, that the power chair and accessories at issue *are* medically necessary for him because of his quadriplegia.² Accordingly, the Division erred in denying Mr. T' prior authorization request for the power chair at issue. The Division's determination, denying Mr. T' prior authorization request, is therefore reversed.

II. Facts

A. Material Facts

Mr. T is 39 years old and is quadriplegic.³ In 1996, Mr. T sustained spinal injuries to his C4, C5, and C6 vertebrae which completely paralyzed his trunk and both legs, and which partially paralyzed both of his arms. He has thoracic kyphosis, right-side convex scoliosis, and a posteriorly tilted pelvis. He has pain in his cervical spine and in both shoulders, rated at seven on a scale of one to ten. He is unable to stand and is non-ambulatory. He requires total assistance with all his activities of daily living.

¹ Ex. D. At hearing, the Division also asserted that the power chair could not be authorized because Mr. T had not proven that the power chair could not be obtained through the Medicare program. However, as discussed in Section III, below, this argument was not raised in the Division's notice and is thus not a valid basis for denial.

² Although the standard of proof applicable to this case is the comparatively low "preponderance of the evidence" standard, I find that the evidence of medical necessity presented by Mr. T was strong enough to satisfy the "beyond a reasonable doubt" standard applicable to criminal cases.

³ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

Mr. T is six feet, three inches tall and weighs about 178 pounds.⁴ He is unable to operate a manual wheelchair because his arms are weak and his legs are paralyzed. It is also difficult for him to operate a standard power wheelchair joystick because he has no active finger movement and his hands are contracted. His sitting balance is poor, and his trunk muscles and arm muscles are too weak to assist with balance. Because of Mr. T's size, it is difficult for his caregivers to move him. Without a power wheelchair, Mr. T would be bed-bound.

Mr. T spends about 12 hours in his wheelchair each day.⁵ Mr. T currently uses a Pride C300 power wheelchair, which he received in 2006. The chair is equipped with a power seat elevator, power tilt-in-space, power recline, power elevating leg lift, chest strap, goal-post joystick, and a deep contour cushion. Seat-to-seat transfers require the use of a slide board or mechanical lift, plus caregiver assistance. However, once in the chair, Mr. T can operate the chair independently. Unfortunately, the chair has been discontinued by its manufacturer.

Mr. T is employed as a GIS operator⁶ for a local borough.⁷ He has a wheelchair-accessible van, which is used to transport him to work, and to medical appointments; his caregiver drives, and he rides in his wheelchair. At work, he had been using a different power wheelchair, with a standing function, to position himself so he could perform his employment duties. However, that chair has failed mechanically and has been discontinued by the manufacturer.

Mr. T's current wheelchair's standing function both positions his body so he can perform his job duties at work, and helps with his bladder and bowel functions.⁸ The chair's power recline feature and power elevating leg rest help with relieving spasticity and avoiding pressure sores.

In or before June 2015, Mr. T's then-current wheelchair failed, leaving him dependent on his caregivers, and on an even older power chair, for mobility.⁹ On June 23, 2015, Mr. T was seen by Duane P, D.O., concerning his need for a new power chair.¹⁰ Although Dr. P's handwritten notes are difficult to read, it is clear that he agreed that Mr. T needed a new power chair, because he referred Mr. T for a detailed evaluation by a physical therapist.

⁴ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

⁵ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

⁶ GIS technicians make maps and customized geographic information systems (GIS). They read and interpret maps, manipulate and understand digital land data, and manage data entered into a GIS database.

⁷ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

⁸ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

⁹ All factual findings in this paragraph are based on Exs. E16 - E19 unless otherwise stated.

¹⁰ All factual findings in this paragraph are based on Exs. E11 - E12 unless otherwise stated.

Later on June 23, 2015, Mr. T' specific power chair needs were assessed by J C, P.T. of Providence Rehabilitation Services' wheelchair and seating clinic.¹¹ An assistive technology professional from No Name Pharmacy also attended the assessment.¹² Ms. C (a licensed physical therapist) concluded, after speaking with Mr. T and examining Mr. T and his current power chair, that "a new power wheelchair with power tilt-in-space, power recline, power elevating leg rest, and a power stander is the most reasonable and cost-effective alternative in meeting his needs."¹³ Ms. C's written assessment includes six single-spaced pages of detailed findings concerning Mr. T' specific mobility needs, and the power chair accessories necessary to satisfy those needs.¹⁴ Briefly, Ms. C's assessment found that:

1. Mr. T' mobility needs cannot be safely met by a cane, walker, manual wheelchair, standard power wheelchair, or scooter.
2. Mr. T needs a *custom-sized* power chair because of the amount of time he spends in it.
3. The power chair must be *front wheel drive or mid-wheel drive* for maneuverability and weight distribution.
4. The power chair must have a *tilt and tilt-in-space function* in order to relieve pressure on various parts of Mr. T' body.
5. The power chair must have a *headrest with removable adjustable hardware* because Mr. T cannot support his head and neck against the force of gravity.
6. The power chair must have a *solid backrest* because Mr. T' trunk is paralyzed.
7. The power chair must have *chest support* because, since Mr. T' trunk is paralyzed, he could otherwise collapse forward and fall out of his power chair.
8. The power chair must have a *joystick with a goal post handgrip* because Mr. T' grip strength and finger dexterity are so bad that he cannot use a standard joystick handle.
9. The power chair must have an *expandable controller*, and a *harness for expandable electronics*, so that all tilt and drive functions can be controlled by the joystick, because otherwise Mr. T will not be able to reach the joystick due to his limited upper-body functioning.

¹¹ All factual findings in this paragraph are based on Exs. E13 - E22 unless otherwise stated.

¹² No Name has an assistive technology professional (ATP) on staff (K Z' hearing testimony). The ATP attends the assessment with the patient and the physical therapist. *Id.* The ATP brings information on a variety of wheelchairs to the assessment appointment to help the physical therapist determine which chair is most appropriate for the patient. *Id.*

¹³ Ex. E18.

¹⁴ All factual findings in this paragraph are based on Exs. E16 - E22.

10. The power chair must have a *multiple actuator interface box*, which allows the wheelchair and seat functions to be operated from a centralized location on the joystick, because Mr. T does not have enough control over his arms to move them back and forth between multiple switches.

11. The power chair must have a *remote switch* so that the tilt-in-space function can be operated while the wheelchair's power is off.

12. The power chair must have a *power seat elevator* to position Mr. T at the right height to engage in various activities, and to place Mr. T at the best height to perform transfers without injuring himself or his caregiver.

13. The power chair must have a *power elevating leg rest* because Mr. T has edema in his legs, and it is necessary to raise his legs above his heart periodically for better lymph drainage, as well as for pain control.

14. The power chair must have *maintenance-free gel batteries* because Mr. T cannot maintain a conventional lead-acid battery.

15. The power chair must have a power stander to improve Mr. T's circulation and bowel function, to manage his spasticity, to increase his range of motion, and to decrease the amount of assistance he requires from his caregivers.

On September 2, 2015, Dr. P wrote a "power mobility device 7-element prescription" for Mr. T for a "power chair and all accessories."¹⁵ Attached to the prescription was a two-page form listing 23 specific accessories or features, including those identified by Ms. C, each with its own part number and diagnosis code. Dr. P wrote that the power chair was necessary due to Mr. T's quadriplegia, and that Mr. T would need such a wheelchair for the rest of his life.

On September 9, 2015, an employee of No Name Pharmacy conducted a "home environment assessment" of Mr. T's home to obtain information necessary for selection of an appropriate wheelchair.¹⁶ The assessment reported that Mr. T lives in the ground level of a two-story house, and that the house could be accessed via ramps to the back door and to a garage entrance. The assessment further stated that the living room, bedroom, and kitchen are all wheelchair-accessible; the assessment did not state whether the bathroom was similarly accessible.

On December 31, 2015, No Name submitted a prior authorization request for Mr. T's new power chair, as well as a certificate of medical necessity, to Xerox State Healthcare, LLC (Xerox).¹⁷ The two-page certificate listed the 23 specific accessories or features previously identified by Dr. P

¹⁵ All factual findings in this paragraph are based on Exs. E23 - E26 unless otherwise stated.

¹⁶ All factual findings in this paragraph are based on Exs. E27 - E28 unless otherwise stated.

¹⁷ Exs. E6 - E7. Xerox reviews requests for prior authorization for the Division under a contract with the Department of Health and Social Services (DHSS) (Ex. D1).

and Ms. C, as well as a specific diagnosis code and a line-item price for each accessory. The cost of the power chair, with all requested accessories, totaled \$53,666.00.

B. Relevant Procedural History

On January 11, 2016, the Division's contractor, Xerox State Healthcare, LLC, notified Mr. T that his prior authorization request for the power chair had been denied.¹⁸ The denial letter stated in relevant part:¹⁹

The request for Group 4 power chair is denied. The Department will not pay for a service that is not properly prescribed or medically necessary in accordance with criteria established under 7 AAC 105 - 7 AAC 160 or by standards of practice applicable to the prescribing provider. 7 AAC 105.110(2).

Mr. T requested a hearing to contest the Division's decision on January 28, 2016.²⁰ Mr. T' hearing was held on February 18 and March 2, 2016. Mr. T participated in the hearing by phone, represented himself, and testified on his own behalf. K Z of No Name Pharmacy participated in the hearing by phone and testified on Mr. T' behalf. Terri Gagne participated by phone and represented the Division. Program Manager Kristina Rice testified by phone on the Division's behalf. The record closed at the end of the hearing.

III. Discussion

A. Applicable Burden of Proof and Standard of Review

Because Mr. T seeks new Medicaid-funded equipment, Mr. T bears the burden of proof in this case.²¹ The standard of review in a Medicaid "Fair Hearing" proceeding, as to both the law and the facts, is *de novo* review.²² Under this standard, the administrative law judge may independently weigh the evidence and reach a different conclusion than did the Division's staff, even if the original decision is factually supported and has a reasonable basis in law.

B. The Regulations Applicable to Durable Medical Equipment

In its denial notice, the Division cited state Medicaid regulation 7 AAC 105.110(2) as supporting its denial of authorization for the power chair. That regulation, titled "Noncovered Services," (emphasis added), states in relevant part that "[u]nless otherwise provided in 7 AAC 105

¹⁸ Ex. D.

¹⁹ Ex. D1.

²⁰ Ex. C.

²¹ 42 CFR § 435.930, 7 AAC 49.135.

²² See 42 CFR 431.244; *Albert S. v. Dept. of Health and Mental Hygiene*, 891 A.2d 402 (2006); *Maryland Dept. of Health and Mental Hygiene v. Brown*, 935 A.2d 1128 (Md. App. 2007); *In re Parker*, 969 A.2d 322 (N.H. 2009); *Murphy v. Curtis*, 930 N.E.2d 1228 (Ind. App. 2010).

- 7 AAC 160, the department will not pay for a *service* that is . . . (2) not properly prescribed or medically necessary in accordance with criteria established under 7 AAC 105 - 7 AAC 160 or by standards of practice applicable to the prescribing provider" (emphasis added).

Initially, 7 AAC 105.110(2) is not the regulation governing Medicaid authorization for medical *equipment* such as the power chair at issue here. By its own terms, the regulation applies only to Medicaid *services*, and a wheelchair is not a "service." The regulations which apply to the power chair at issue here²³ are set forth at 7 AAC 120.200 - 7 AAC 120.299 ("Durable Medical Equipment and Medical Supplies; Related Services"). Regulation 7 AAC 120.200(b) states:

Subject to the applicable provisions of 7 AAC 120.200 - 7 AAC 120.299, the department will pay a provider for medically necessary durable medical equipment... furnished to a recipient, if

(1) the item: (A) is prescribed by the attending physician, physician assistant, advanced nurse practitioner, physical therapist, occupational therapist, or speech-language pathologist, acting within the scope of that person's license; (B) is appropriate for use in the recipient's home, school, or community; and (C) is not provided by, or under arrangements made by, a home health agency;

(2) the provider furnishes orientation and training to the recipient regarding the proper use of the item, and includes proof of compliance with this paragraph in its records; the provider shall submit this proof to the department upon request; and

(3) prior authorization, if required under 7 AAC 120.210, is obtained from the department.^[24]

Because the power chair at issue in this case is a replacement for a previous power chair, 7 AAC 120.220, titled "Replacement of Items," also applies.²⁵ That regulation states in relevant 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)

²³ The power chair at issue here is classified generally as "durable medical equipment" or "DME" under 7 AAC 120.299(3), which states that "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." More specifically, although no testimony was given on the issue, the power chair is probably "customized durable medical equipment" under 7 AAC 120.299(2), which states that "customized durable medical equipment" means "durable medical equipment that is uniquely constructed or substantially modified for a specific recipient in accordance with the description and orders of a physician, a physician assistant, or an advanced nurse practitioner, and that is so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes."

²⁴ 7 AAC 120.210(b)(14) requires prior authorization for "the purchase of durable medical equipment if the charge to the department is over \$1,000." The cost of the power chair requested by Mr. T is well over \$1,000.00, so prior authorization was properly required in this case.

²⁵ The Division did not assert 7 AAC 120.220 as a basis for denial in this case. However, there is ample evidence in the record demonstrating that the requirements of 7 AAC 120.220(a-b) are satisfied here.

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; (2) item is not covered by a manufacturer's warranty; and (3) provider replaces the item with a like item, and if the original item was rented, continues renting the replacement in accordance with 7 AAC 120.225.

(b) A replacement that is needed because of item wear or a change in the recipient's condition must be supported by current documentation of medical necessity.

C. The "Failure to Exhaust Medicare Resources" Argument was Neither Properly Raised nor Supported by the Evidence

At the first hearing held in this case, the Division asserted that the power chair requested by Mr. T could not be authorized because Mr. T had not demonstrated that the power chair could not be obtained through the *Medicare* program. This argument fails for two reasons.

First, the bases for denial of Mr. T' prior authorization request are limited, as a matter of law, to the reasons expressed in the Division's denial letter dated January 11, 2016.²⁶ The Division did not include its "failure to exhaust Medicare resources" argument in its denial letter.²⁷

Second, even had the argument been properly raised, it fails on its merits. Initially, it is true that Mr. T is eligible for Medicare.²⁸ It is also true that the Medicaid program is intended to be the funding source of last resort, to be utilized only after all other available resources have been exhausted.²⁹ However, the evidence clearly shows that Mr. T submitted his request for a new power chair to Medicare, and that Medicare denied his request on November 2, 2015.³⁰ The Medicare denial letter specifically states, at the top of the second page, that "ADMC decisions do not have appeal rights." Accordingly, Mr. T satisfied the exhaustion requirement in this case.

²⁶ See 42 CFR 431.241(a) (only matters to be considered at a Medicaid hearing are those pertaining to the agency's action); compare *Algonquin Gas Transmission Company v. FERC*, 948 F.2d 1305, 1312 n. 12 (D.C. Cir.1991) (an administrative determination "must stand or fall on the grounds articulated by the agency" in that determination); *In Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074, 1078 (10th Cir. 2004), cert. denied, 546 U.S. 812, 126 S.Ct. 333, 163 L.Ed.2d 46 (2005), (agency action must be upheld, if at all, on the basis articulated by the agency); *American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490, 539, 101 S.Ct. 2478, 69 L.Ed.2d 185 (1981) (an agency's post hoc rationalizations are an insufficient basis for agency action); 2 Charles H. Koch, Jr., *Administrative Law & Practice* § 8.22 (2nd Edition 1997) ("[t]he number of cases rejecting agency efforts to justify actions after the fact shows the strength of the prohibition against post hoc rationalization").

²⁷ Ex. D.

²⁸ Individuals who are eligible for both Medicaid and Medicare are commonly referred to as "dual-eligible beneficiaries." See 42 U.S.C. §§ 1395v, 1396a(a)(10)(E) & 1396d(p); 42 C.F.R. §§ 407.40–407.50.

²⁹ *Wesley Health Care Center, Inc. v. DeBuono*, 244 F.3d 280 (2nd Cir. 2001); *Rehabilitation Association of Virginia, Inc. v. Kozlowski*, 42 F.3d 1444 (4th Cir. 1994); *Miller v. Gorski Wladyslaw Estate*, 547 F.3d 273 (5th Cir. 2008); *Caremark, Inc. v. Goetz*, 480 F.3d 779 (6th Cir. 2007); *Ahlborn v. Arkansas Department of Human Services*, 397 F.3d 620 (8th Cir. 2005).

³⁰ Ex. 1.

D. The Facts Show that the Power Chair is Medically Necessary for Mr. T

The Division asserts that the Group 4 power chair at issue is not medically necessary for Mr. T.³¹ However, the Division has no regulation specifying the criteria to be considered in determining the medical necessity of a power wheelchair. The Division did not, either in its notice letter or at hearing, identify *why* the power chair is not medically necessary for Mr. T (who is a quadriplegic), or identify any specific criteria or standards of practice which would be contravened by authorization of the power chair. Excerpts from the hearing testimony are illustrative:

Division witness: "The Division is not disputing Mr. T' need for a wheelchair. It is clear from the documentation supplied that Mr. T has a medical need for a wheelchair. The . . . [Medicare] advance determination of medical coverage [ADMC] indicates only that Medicare will not pay for the specific type of wheelchair in question due to not showing evidence-based clinical justification. The ADMC does not indicate that the recipient is not eligible for any wheelchair. The ADMC simply indicates that, based on Medicare's advance review of the submitted certificate of medical necessity, taking into consideration the patient's clinical needs, that Medicare will not pay for the requested Group 4 wheelchair. In an independent review of the documentation submitted with the service authorization request by the provider, in addition to the ADMC, the Department concurs with the determination, outlined by Medicare, that the specifically requested Group 4 wheelchair is not medically necessary based on Mr. T' clinical scenario as gauged against nationally recognized standards. Group 4 power wheelchairs have added capabilities over Group 3 wheelchairs, that are not needed for use in the home. There was insufficient documentation to indicate that these added capabilities are medically necessary. Therefore, the Department maintains that the specific wheelchair requested was denied appropriately based on 7 AAC 105.110(2)"

. . . .

ALJ: "Where are those standards that we are judging it [the medical necessity of the power chair] by?"

Division witness: "There are nationally recognized standards. We use in our reviews . . . either criteria that Medicare has listed, or . . . evidence-based clinical justifications through McKesson-Interqual."^[32]

³¹ In its denial letter (Ex. D), the Division also asserted that the power chair was "not properly prescribed." However, the record contains a prior authorization request, in due form, signed by a licensed physician. Nothing in the Division's denial letter explains what it was about Dr. P's prescription, or the prior authorization request, that was not "proper." Likewise, the Division did not identify the criteria by which the propriety of the doctor's prescription is to be judged. Finally, the Division's witness did not provide any testimony regarding the "not properly prescribed" argument at hearing. Under these circumstances, I find that the Division waived this argument. However, even if the argument is not treated as waived, the documents contained in Ex. E make out a *prima facie* case that the power chair was properly prescribed, and the Division failed to present any evidence to rebut Mr. T' *prima facie* case. Stated differently, the Division failed to identify the criteria it used in determining whether the wheelchair was "properly prescribed," and then failed to prove any facts showing that Mr. T failed to satisfy those phantom criteria.

³² McKesson Corporation is an American company which sells pharmaceuticals and medical supplies and which provides health information technology and care management tools. In 2012 it was the 11th highest revenue generating company in the United States with sales of \$122 billion. See McKesson Corporation website at <http://www.mckesson.com> (accessed April 12, 2016). "InterQual" is McKesson Corporation's name for the authorization criteria it has

ALJ: "Where would I find . . . the criteria or standards for when a Group 3 power chair is medically necessary versus when a Group 4 wheelchair is medically necessary?"

Division witness: "You can locate it on the Noridian Healthcare Solutions website . . . "

ALJ: "At this point we don't have that in the record . . . which of these items for the Group 4 wheelchair doesn't Mr. T satisfy?"

Division witness: "The Group 4 power chair, as far as Medicare is concerned, they don't have . . . qualifying criteria in place If you try to bill for a Group 4 power wheelchair, it gets denied as not reasonable and necessary because [Medicare says] that there are added capabilities on a Group 4 power wheelchair that are not necessary."

ALJ: "What sort of things on the Group 4 power chair doesn't Mr. T need?"

Division witness: "I don't know Medicare says that have added capabilities that are not . . . necessary for use within the home But they [Medicare] don't have any criteria set because they don't pay for them."

Several things are clear from the foregoing testimony. First, the Division denied Mr. T' request in part simply because Medicare had previously denied Mr. T' request. However, the Division did not identify any provision of law allowing it to base its decision on Medicare's decision, nor could the Division's witness identify the criteria Medicare used to make its decision; the witness ultimately stated that Medicare has no applicable criteria.

Second, the Division claimed to have performed its own independent review of Mr. T' prior authorization request. However, even when specifically asked, the Division's witness could not identify the criteria used by the Division in determining the medical necessity of a Group 4 power chair. The Division's witness first indicated that those criteria are on the McKesson Corporation's website. Later, the Division's witness stated that the criteria are on the Noridian Healthcare Solutions website.

Criteria appropriate for determining the medical necessity of a Group 4 power chair may in fact exist on some website, somewhere. However, the simple fact is that the Division did not, either in its denial notice or at hearing, identify the applicable criteria, identify how those criteria are incorporated into regulation, or explain why Mr. T' prior authorization request failed to meet those criteria. On the record presented here, the Division's decision was completely arbitrary.

On the other hand, there is ample and persuasive evidence in the record showing that the power chair and accessories requested are in fact medically necessary for Mr. T. First, there is the seven-page evaluation report by physical therapist J C (Exhibit E, pages 15 through 22) which states

developed for various medical services and equipment, which are then utilized by governmental entities and insurance companies. According to McKesson Corporation, "InterQual Criteria are the standard for evidence-based clinical decision support." See McKesson Corporation website at <http://www.mckesson.com/health-plans/decision-management/decision-management-interqual/interqual-criteria/> (accessed April 12, 2016).

in detail why a Group 4 power chair, and every accessory requested on behalf of Mr. T, is medically necessary. Second, the record contains a prescription, written by Dr. P and incorporating Ms. C's assessment findings, for a "power chair and all accessories." Finally, Ms. Z, Rehabilitation Lead for No Name since July 2015, testified at hearing that a Group 4 power chair was appropriate for Mr. T.³³

The medical records / reports of Dr. P and Ms. C, attesting to the medical necessity of the wheelchair requested in this case, appear credible on their face, and the Division submitted no evidence contesting any of Ms. C's specific findings. Under applicable Medicaid law, the opinions of medical professionals who have actually evaluated and treated a claimant, like Dr. P and Ms. C did in this case, are entitled to substantial weight.³⁴ An administrative law judge may generally reject the opinion of a treating or examining physician *only* "for specific and legitimate reasons that are supported by substantial evidence in the record."³⁵ The opinion of a Division employee, who has never examined Mr. T, is not sufficient to overcome the findings and conclusions of a physician and physical therapist who both personally examined Mr. T.

IV. Conclusion

Mr. T satisfied his burden and proved, by a preponderance of the evidence, that a Group 4 power chair, including the options / accessories included in his prior authorization request, is medically necessary for him due to his quadriplegia. Accordingly, the Division erred in denying Mr. T' prior authorization request for the power chair at issue. The Division's determination, denying Mr. T' prior authorization request, is therefore reversed.

Dated this 20th day of April, 2016.

Signed
Jay Durych
Administrative Law Judge

³³ In response to the Division's assertion that a Group 3 power chair would be sufficient for Mr. T, Ms. Z testified that "[t]he reason we can't do a Group 3 power chair for Mr. T is because of the actuators for the standing capabilities; they won't go on a Group 3; there's not a Group 3 power chair out there that will allow us to put those [actuators] on it..." She also stated that "[w]e've had you guys [Alaska Medicaid] pay for Group 4s in the past, so I don't know what's changed." In response, the Division's witness testified that she had come across one Group 3 power chair which can accommodate the accessories prescribed for Mr. T, but she could not recall either the model or the manufacturer of this power chair.

³⁴ See *Rush v. Parham*, 625 F.2d 1150, 1156 (5th Cir. 1980); *Weaver v. Reagan*, 886 F.2d 194, 200 (8th Cir. 1989); *Holman v. Ohio Dept. of Human Services*, 757 N.E.2d 382 (Ohio App. 7th Dist. 2001).

³⁵ See *Lester v. Chater*, 81 F.3d 821, 830 - 831 (9th Cir.1996).

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 9th day of May, 2016.

By: Signed
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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