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

In the Matter of	)	
	)	
F Q	)	OAH No. 12-1009-MDS
	)	Agency No.

DECISION

I. Introduction

F Q has challenged the Division of Senior and Disability Services's denial of her request for Personal Care Assistance (PCA) services while traveling and receiving treatment for her cancer in Florida. A hearing was held February 21, 2013 and the record remained open to provide Ms. Q with an opportunity to respond to questions from the tribunal regarding the necessity of Ms. Q receiving treatment in Florida. The record closed upon receipt of Ms. Q's response. The division's regulations are clear. PCA services in excess of 30 days may not be provided while the recipient is away from their personal residence unless additional time is required, based on "documented medical necessity."[1] Ms. Q has not presented documentation to support the necessity of her receiving treatment away from her personal residence. The division's decision is upheld.

II. Facts

Ms. Q's principal place of residence is No Name, Alaska. She suffers from several medical conditions, including cancer, diabetes, and coronary heart disease. Her recent medical history includes a stroke and an adverse reaction to previous cancer treatments received in Alaska. After her adverse reaction, her primary care provider suggested she receive treatment at one of the leading facilities for Ms. Q's type of cancer. It was fortuitous that the facility was close to her daughter's home in Florida. Ms. Q is very pleased with the Florida facility's team approach to her care and the support she receives from her family. She has received treatment down there over the past several years. The division has never questioned Ms. Q's request in prior years. Ms. Q returns to Alaska when she is able.

It is undisputed that Ms. Q is eligible for PCA services received in her personal place of residence, Alaska. It is also undisputed that she needs medical treatment and oversight for her

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[1] 7AAC 125.050(a), (c).

cancer and other conditions. What is in dispute is whether Ms. Q is eligible to receive PCA services in Florida, or whether she must first establish that the services are not available in her principal place of residence.

III. Discussion

Ms. Q has the burden of proof in this matter, as she requested the hearing and is seeking a regulatory exception or additional benefits.[2] She argues that the division's reading of the regulation is "grammatically nonsensical;" her cancer treatment is medically necessary; and the division has allowed her to receive PCA services in Florida in the past, accepting the documentation she provided so the division can neither legally or equitably terminate those services.

In support of her position, Ms. Q submitted several nondescript letters from providers indicating that she would be out of Alaska for continuing ongoing medical care.[3] She also presented a letter from a Florida provider, emphasizing that Ms. Q's variety of conditions requires a "team approach," and that trust in her medical provider as well as being surrounded by family and friends enhance her chances for a positive outcome.[4] Finally, she presented a "To Whom It May Concern" letter signed by five of her providers regarding her treatment in Florida. Four of the providers are based in Florida and one provider, Matthew Corbett, M.D., practices in Alaska at the Alaska Heart Institute. This letter focused on the difficulty of receiving treatment in Alaska. However, the letter did not address why the Florida providers could coordinate with one Alaska provider and not with others.

This tribunal provided Ms. Q with an opportunity to obtain additional information from Dr. Corbett, a physician familiar with Alaska facilities and offerings, regarding whether Ms. Q could receive treatment in Alaska, but Ms. Q felt the information sought was beyond the scope of what is required by regulation.[5]

The regulation at issue provides in relevant part:

> (a) Personal care services may be provided only to a recipient who is living in the recipient's personal residence and meets the requirements of this section.

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[2] 2 AAC 64.290(e).

[3] *See e.g.*,Exh. 6 page 2.

[4] Exh. 6 page 3.

[5] Order Reopening the Record for Further Inquiry Regarding the Medical Necessity of Receiving Treatment in Florida (April 11, 2013). Ms. Q subsequently sought to extend the deadline set in this order and elected not to seek additional information from Dr. Corbett. *See* May 14, 2013 Letter From Q to Administrative Law Judge (ALJ Pauli).

> (c) The department will not pay for transportation, room, or board for a personal care assistant to travel with a recipient away from the recipient's municipality of residence. However the department will pay for a recipient's approved services for up to 30 days annually while the recipient is away from the recipient's municipality of residence, unless additional time is required based on documented medical necessity or for education not available in this state, if
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> > (1) the department authorizes the travel before it begins; and
> >
> > (2) as specified in the recipient's personal care service level authorization, the need cannot be met during the travel period by any means other than by being accompanied by a personal care assistant.
>
> (d) … 'personal residence' means the dwelling that the recipient considers to be the recipient's established or principal home and to which, if absent, the recipient intends to return …."[6]

Ms. Q challenges the division's reading of the regulation and asserts that she need only demonstrate the medical necessity of her treatments, not the availability of local treatment options. She refers to the division's reading of the regulation as grammatically nonsensical and an improper attempt to create a meaning where none was intended. Ms. Q's argument fails for several reasons.

First, there is no definition of medical necessity in the regulations. Second, the regulation contemplates that a state benefit will be provided to a resident of Alaska at their principal place of residence. It is undisputed that Ms. Q considers Alaska her principal place of residence. Therefore, under 7 AAC 125.050(a), the division may only provide PCA services to a recipient who is "living in" the recipient's personal residence. Ms. Q seeks PCA services while living in her daughter's home in Florida. For this reason alone Ms. Q is ineligible to receive PCA services in Florida beyond 30 days. Third, it is well settled that statutes or regulations should be read together as a harmonious whole.

Reading subsection (c) in harmony with the other subsections of this regulation and considering the emphasis on receiving services while living in the recipient's personal residence a rational reading of the regulation to require that the treatment must not be available in Alaska.[7]

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[6] 7 AAC 125.050.

[7] Whenever possible, a court interprets each part or section of a statute with every other part or section, so as to create a harmonious whole. *Rydwell v. Anchorage Sch. Dist*, 864 P.2d 526, 530-31 (Alaska 1993). This is equally applicable to interpreting regulations.

Another way to harmonize the sections of this regulation is to include within the phrase "medically necessary" the necessity to receive treatment out of state.

As to Ms. Q's assertion that her treatment is medically necessary, the division agrees that the medicine is necessary, but that Ms. Q has not established that she is unable to obtain her treatment in Alaska.

Finally, under the doctrine of equitable estoppel, a state agency may be barred from taking an adverse action if: (1) the agency asserted a position; (2) the applicant reasonably relied on the assertion; (3) the applicant was prejudiced as a result; and (4) estoppel serves the interests of justice by limiting the public injury.[8] Assuming Ms. Q could establish the first three elements, the benefit she seeks would not serve the interest of justice by limiting the public injury. Rather, to require the Alaska PCA program to pay for PCA services provided in Florida could injure the public by removing resources to be expended in Alaska.

IV. Conclusion

Ms. Q has not established that it is more likely than not that the division misapplied its regulation or that she is eligible to receive more than 30 days of PCA services away from her personal place of residence. The decision of the Division is affirmed.

DATED this 28th of May, 2013.

By: *Signed*
Rebecca L. Pauli
Administrative Law Judge

[8] *See, e.g.*, Mortvedt v. State, Department of Natural Resources, 858 P.2d 1140, 1142-1144 (Alaska 1993); Crum v. Stalnaker, 936 P.2d 1254, 1256-1258 (Alaska 1997).

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 11th day of June, 2013.

By: *Signed*
Name: Rebecca L. Pauli
Title: Administrative Law Judge, DOA/OAH

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