

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

In the Matter of:	)	
	)	
E U V and	)	OAH No. 12-0793-MDS
<u>M T, minors, and K D.</u>	)	HCS Case No.

**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Health Care Services (DHCS or Division) was correct to deny K D's request for prior authorization of, or reimbursement for, certain air travel which was undertaken after Ms. D missed her originally scheduled flight. The air travel at issue involved Ms. D and her two minor children, and was for non-emergency travel from No Name to No Name which occurred on Tuesday, October 9, 2012. The Division denied Ms. D's authorization / reimbursement request based on a regulation preventing reimbursement for travel that is excessive, inappropriate, or inconsistent with medical needs.

The preponderance of the evidence indicates that the travel was appropriate and medically necessary, but Ms. D's need to reschedule it was based on circumstances within her control. Accordingly, the Division could potentially have denied Ms. D's prior authorization request under 7 AAC 120.410(d). However, the Division's notice of adverse action based the denial solely on 7 AAC 120.405(c)(1). The regulation cited does not support the denial. Accordingly, the Division was not correct to deny Ms. D's request for prior authorization of rescheduled medically-related travel.

**II. Facts**

**A. *The Travel at Issue***

Ms. D and her minor children E U V and M T live in No Name, Alaska.<sup>1</sup> Ms. D has used Medicaid-funded travel for herself and her two children on at least three occasions prior to the trip at issue here.<sup>2</sup>

Ms. D and her two children flew from No Name to No Name so that the children could receive medical/dental services on October 4 and 5, 2012.<sup>3</sup> Ms. D accompanied the children as their escort.<sup>4</sup>

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<sup>1</sup> K D hearing testimony.

<sup>2</sup> Ex. F1.

<sup>3</sup> K D hearing testimony at 16:30 - 17:40.

Because flights back to No Name were either unavailable or were already full from Friday, October 5th through Sunday, October 7th, Ms. D and her children had to stay in No Name for the weekend.<sup>5</sup> They were scheduled to fly back to No Name on Monday, October 8th.<sup>6</sup>

On October 8, 2012 Ms. D and her two children arrived at the Wright Air boarding area for their return trip to No Name. The flight was scheduled to depart at about 8:00 a.m.<sup>7</sup> Ms. D testified that she believed they were on time, but when she arrived at the boarding area, the airline claimed she was late and had already given away her daughter's seat on the return flight.<sup>8</sup> Records of the Division's Medicaid travel agent indicate that Ms. D and her children "showed up late for check-in and [their] seats were given away."<sup>9</sup> In any event, Ms. D could not fly home with her son and leave her daughter alone in No Name.<sup>10</sup> Accordingly, Ms. D contacted ERA Aviation and made reservations for herself and her children to return to No Name on a flight leaving No Name at 8:45 a.m. the next morning.<sup>11</sup>

Ms. D then contacted U.S. Travel (the Division's Medicaid travel agent) and requested prior authorization to change the return flight from the missed flight on October 8th to the next available flight on October 9th.<sup>12</sup> The U.S. Travel representative initially informed Ms. D that authorization for the travel change would be approved, but the next day the representative advised Ms. D that her request had been denied and that she would not be reimbursed for tickets she had purchased herself.<sup>13</sup>

Ms. D and her children ultimately returned to No Name on October 9, 2012 using airline tickets purchased by Ms. D.<sup>14</sup> The cost of the airline tickets was \$120.00 per person, for a total of \$360.00.<sup>15</sup>

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<sup>4</sup> Under 7 AAC 120.430(a), the department will approve transportation and accommodation services for an authorized escort to accompany a recipient, during travel authorized by the department for medical treatment, if the recipient is 17 years of age or younger.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> K D hearing testimony at 21:00 - 21:20.

<sup>8</sup> K D hearing testimony at 16:00 - 19:00 and 22:00 - 22:30.

<sup>9</sup> Ex. F1.

<sup>10</sup> *Id.*

<sup>11</sup> K D hearing testimony at 16:40 - 17:50.

<sup>12</sup> K D hearing testimony at 18:40 - 19:40.

<sup>13</sup> K D hearing testimony at 19:00 - 19:50; *see also* Ex. F1.

<sup>14</sup> K D hearing testimony at 16:00 - 22:30; *see also* Ex. F1.

<sup>15</sup> Ex. 1 pp. 1-3.

**B. Relevant Procedural History**

On October 26, 2012 the Division issued a letter to Ms. D formally denying her request for authorization of travel date changes / request for reimbursement.<sup>16</sup> The basis for denial, as stated in the Division's notice, was as follows:

You did not check yourself and your kids in before the flight in time, so you missed your flight. The request to extend your travel another day without a medical reason is denied. The requested extension of travel is excessive or inappropriate for the distance travelled or is inconsistent with the medical needs of the recipient. 7 AAC 120.405(c)(1).

Ms. D requested a hearing on October 18, 2012 to contest the Division's decision.<sup>17</sup> Ms. D's hearing was held on December 6, 2012. Ms. D participated in the hearing by telephone, represented herself, and testified on her own behalf. Medical Assistance Administrator III Gerry Johnson participated in the hearing by telephone and represented the Division. Medical Assistance Administrator III Sandy Ahlin participated in the hearing by telephone and testified on behalf of the Division. The hearing was concluded, and the record closed, on December 6, 2012.

**III. Discussion**

**A. The Relevant Medicaid Travel Regulations**

The Alaska state Medicaid regulations governing medical transportation and accommodation services are located primarily at 7 AAC 120.400 - 7 AAC 120.490. Only three of those regulations are directly applicable to this case. The first, 7 AAC 105.130, titled "Services Requiring Prior Authorization," provides in relevant part as follows:

(a) Except as otherwise provided in 7 AAC 105 - 7 AAC 160, the department will not pay for the following services unless the department has given prior authorization for the service:

(1) nonemergency, medically necessary transportation and accommodation services . . . .

. . . .

(b) Except as provided in 7 AAC 140.320, failure to obtain the required prior authorization may result in nonpayment, regardless of the eligibility of the recipient or the appropriateness of the services.

(c) For prior authorization, factors that the department will consider include the service's medical necessity, clinical effectiveness, cost-effectiveness, and likelihood of adverse effects, as well as service-specific requirements in 7 AAC 105 - 7 AAC 160 . . . .

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<sup>16</sup> Ex. D.

<sup>17</sup> Ex. C.

The second pertinent regulation, and the only regulation cited in the Division's denial notice, is 7 AAC 120.405, which provides in relevant part as follows:

(c) The department will not pay for (1) transportation or accommodations that the department determines to be excessive or inappropriate for the distance traveled or inconsistent with the medical needs of the recipient . . . .

The third pertinent regulation, 7 AAC 120.410, potentially supports the Division's denial, *but was not cited in the Division's notice*. It states in relevant part as follows:

(d) The department will pay for nonemergency transportation and accommodation services provided without prior authorization if (1) a recipient is forced to change authorized travel plans for reasons beyond the recipient's control, including the cancellation of an airline flight due to weather conditions or the closing of an airport for security reasons; or . . . .

***B. Was the Travel at Issue Excessive, Inappropriate, or Inconsistent With the Medical Needs of Ms. D and her Children?***

At hearing, the Division's witness stated that the Division's denial was based solely on the fact that Ms. D missed her pre-authorized flight because she was late ("[t]his is what we're going on - they showed up late for check-in . . . .").<sup>18</sup> Thus, the issue to be determined is whether this factual predicate supports denial of Ms. D's travel change / reimbursement request under 7 AAC 120.405(c)(1), the only regulation cited in the Division's denial notice. That regulation requires the department to deny preauthorization or reimbursement for transportation that is excessive or inappropriate for the distance traveled or inconsistent with the medical needs of the recipient.

A return flight to No Name was not excessive or inappropriate for the distance, nor inconstant with medical needs. Return travel by air *had already been preauthorized by Medicaid*.<sup>19</sup> It was merely the second half of a round trip from the family's home in No Name to No Name and back.

At hearing, the Division's representative stated that the Division's denial was supported by 7 AAC 120.410(d) as well as by 7 AAC 120.405(c)(1) (discussed above). The former regulation limits the department's obligation to reimburse for nonemergency transportation services provided without prior authorization to certain specified situations, such as where "a recipient is forced to change authorized travel plans for reasons beyond the recipient's control."

It is possible that 7 AAC 120.410(d) would support the Division's action had it been cited in the Division's October 26, 2012 denial notice. However, it was not. Alaska "Fair Hearings"

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<sup>18</sup> Sandy Ahlin hearing testimony at 23:50 - 24:10.

<sup>19</sup> Ms. D has not sought reimbursement for any additional food or lodging expenses incurred as a result of the extra day spent in No Name.

regulation 7 AAC 49.070 provides in relevant part that “[u]nless otherwise specified in applicable federal regulations, written notice to the client must detail the reasons for the proposed adverse action, including the statute, regulation, or policy upon which that action is based.”<sup>20</sup> 7 AAC 120.410(d) cannot serve as a basis for the Division's action because it was not cited in the Division's October 26, 2012 denial notice.<sup>21</sup>

#### **IV. Conclusion**

Because the Division did not cite the applicable regulation in its denial notice, the Division’s denial cannot be upheld. The Division's decision is therefore reversed.

Dated this 31st day of December, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

### **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 9<sup>th</sup> day of January, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

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

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<sup>20</sup> The Department of Health and Social Services’ “Fair Hearings” regulations apply to the Medicaid Program. See 7 AAC 49.010(a). . 7 AAC § 49.070 was applied by the Alaska Supreme Court in *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008) and *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009). In the same vein are federal Medicaid regulations 42 C.F.R. § 431.201, 42 C.F.R. § 431.206, and 42 C.F.R. § 431.210.

<sup>21</sup> See also *Rodriguez By and Through Corella v. Chen*, 985 F.Supp. 1189, 1195 - 1196 (D. Ariz.1996), a Medicaid case in which the federal district court stated:

The reasons for denial stated in the notice "should be accurate and tailored to the individual case. This way the applicant can understand why the government took the adverse action in order to prepare his or her appeal.

. . . .

Most importantly, the law cited must be accurate . . . . Providing incorrect, cryptic or inaccessible citations without further guidance to low-income individuals is providing no any guidance at all. While citing to the general provisions is rudimentary, the applicable provision as applied to the particular case is mandatory.