

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

In the Matter of:)	
)	
E Q)	OAH No. 12-1008-MDS
)	HCS Case No.
_____)	Medicaid ID No.

DECISION

I. Introduction

The issue in this case is whether the Division of Health Care Services (Division) was correct to deny E Q’s request for prior authorization of Medicaid-funded travel to an out-of-state medical provider not enrolled with Alaska Medicaid. The Division denied Ms. Q’s request for prior authorization on the basis that the medical provider to whom Ms. Q sought to travel was not enrolled with Alaska’s Medicaid program.¹

Alaska’s Medicaid regulations prohibit Medicaid payment for travel to medical providers not enrolled with Alaska Medicaid. Documentation provided by the Division proves, by a preponderance of the evidence, that the provider at issue is not enrolled with Alaska’s Medicaid program. The Division, therefore, was correct to deny Ms. Q’s request for prior authorization for the medical travel at issue on that basis.

II. Facts

A. Ms. Q’s Medical Condition and Medicaid Travel Request

The relevant facts in this case are not in dispute.² Ms. Q’s income is approximately \$700.00 per month and she depends on Medicaid for necessary medical services. One of Ms. Q’s kidneys has a cancerous tumor. A physician from Seattle attempted to remove the affected kidney, but the surgery was not successful.

Following the failed surgery Ms. Q’s oncologist, Dr. S, referred Ms. Q to Dr. William Clark for another possible surgery. Dr. Clark’s office then contacted Alaska Medicaid to obtain prior authorization for Medicaid-funded travel to Springfield, Missouri, where the kidney surgery /

¹ The notice of denial asserted a second basis for denial, but the division later dropped the second basis.

² All facts stated in this section are from E Q’s hearing testimony unless otherwise indicated.

treatment was to be performed by Dr. Jianto Ding.³ The request for prior authorization was made by phone, and no medical documentation was submitted in support of the request.⁴

B. Relevant Procedural History

On December 19, 2012 Xerox State Healthcare, LLC notified Ms. Q that it had denied her prior authorization request.⁵ The denial letter⁶ stated in relevant part:

Based on the information provided . . . the request is denied for the following reasons, based on the following legal authority:

The receiving provider, Dr. Jianto Ding, is not enrolled with State of Alaska Medicaid. State of Alaska Medicaid does not pay for travel to providers who are not enrolled in the Alaska Medicaid program. 7 AAC 120.405(c)(4). The requested treatment is available within the State of Alaska and/or the recipient’s community of residence. 7 AAC 120.405(b).

Ms. Q requested a hearing to contest the Division’s decision.⁷ Ms. Q’s hearing was held on January 7, 2013. Ms. Q participated in the hearing by phone, represented herself, and testified on her own behalf. Gerry Johnson participated in the hearing by phone and represented the Division. Following the end of the hearing, the record was left open for 30 days, at Ms. Q’s request, to allow her time to submit additional medical documentation. Ms. Q did not submit any additional documents. The record closed on February 6, 2013.

III. Discussion

In its denial notice dated December 19, 2012, the Division’s contractor asserted both that the doctor/clinic in Springfield, Missouri is not enrolled as a provider with Alaska Medicaid, and that the medical services required by Ms. Q are available within Alaska. At hearing, the Division dropped the second argument and relied solely on the first. For this reason, only the “enrolled provider” argument need be addressed in this decision.

Alaska state Medicaid regulation 7 AAC 120.405(c) provides in relevant part that “[t]he department *will not pay for* . . . (4) transportation for a recipient or an authorized escort to travel to

³ During the first minutes of the hearing Ms. Q indicated that she was seeking to travel to Springfield, Missouri for surgery. Later in the hearing she seemed to indicate that she did not want surgery and that she was seeking some alternative treatment in lieu of surgery. Because this case is decided based on other, undisputed facts, it is not necessary to resolve this discrepancy.

⁴ Gerry Johnson hearing testimony. At hearing Ms. Q asserted, on one hand, that her other doctors have not provided Dr. S with medical documentation relevant to her cancer treatment and prior authorization request. On the other hand, Ms. Q asserted that, if the Division would just talk to Dr. S, he could provide the Division with the information necessary to approve her Medicaid travel request. Again, because this case is decided based on other, undisputed facts, it is not necessary to resolve this discrepancy.

⁵ Ex. D.

⁶ Ex. D1.

⁷ Ex. C.

a health care provider or Medicaid service provider that is not enrolled as a Medicaid provider by the department at the time the travel occurs . . . ” (emphasis added). The Division provided documentation indicating that the doctor/clinic in Springfield, Missouri is not enrolled as a Medicaid provider with the Department of Health and Social Services (DHSS).⁸ Ms. Q did not dispute this. Instead, she focused her arguments on countering the Division’s assertion (which the Division abandoned at hearing) that the surgery or treatment she needs is available in Alaska.

Under the Division’s regulations, the “treatment not available in Alaska” and the “not an enrolled Medicaid provider” arguments are *independent alternative bases* for denying a request for prior authorization.⁹ Therefore, even if Ms. Q prevailed on the “treatment not available in Alaska” argument, the Division was still correct to deny Ms. Q’s request for prior authorization based on the undisputed fact that the doctor/clinic in Springfield, Missouri is not enrolled with DHSS as a Medicaid service provider.

At the hearing Ms. Q asserted that the U.S. Constitution gives her the right to obtain the medical treatment and provider of her choice, that the Division’s prior authorization regulations interfere with that right, and that the Division’s prior authorization regulations could possibly result in the death of a Medicaid patient whose request for approval is denied.

Ms. Q’s arguments are basically that Medicaid regulations or policies which in any way restrict her access to health care are unconstitutional. This is not correct. “Medicaid was designed to provide *basic* medical care for those without sufficient income or resources to provide for themselves . . .”.¹⁰ There is no constitutional right to a minimum level of Medicaid benefits.¹¹ States have broad discretion under Medicaid to adopt standards for determining the extent of medical assistance, with the Medicaid Act requiring only that the standards be reasonable and consistent with the objectives of the Medicaid Act.¹² Ms. Q has provided no evidence or legal authority indicating that the regulations applied by the Division are unreasonable or inconsistent with Medicaid’s goal of providing basic medical care to the poor.¹³

⁸ Exs. E2, E3, E4.

⁹ See 7 AAC 120.405(b) and 7 AAC 120.405(c)(4).

¹⁰ *Ramey v. Reinertson*, 268 F.3d 955, 958 (10th Cir. 2001).

¹¹ *Greely v. Commissioner, Department of Human Services*, 748 A.2d 472 (Me. 2000).

¹² *Pharmcare Oklahoma, Inc. v. Oklahoma Health Care Authority*, 152 P.3d 267 (Ok. 2007). Ms. Q did not specify which constitutional provision(s) she asserts are violated by the Division’s prior authorization regulations.

¹³ Administrative regulations are presumed to be valid, and the person challenging a regulation bears the burden of demonstrating that the regulation is invalid. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

IV. Conclusion

The Division did not dispute that Ms. Q needs the medical services she seeks. However, the Division's regulations prohibit Medicaid payment for travel to medical service providers not enrolled with Alaska Medicaid. It is undisputed that the Springfield, Missouri provider at issue is not enrolled with DHSS as a Medicaid service provider. The Division was thus correct to deny Ms. Q's request for prior authorization of the travel at issue, and the Division's decision is affirmed.

Dated this 8th day of March, 2013.

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 19th day of March, 2013.

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

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