

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

In the Matter of:)	
)	
H S)	OAH No. 13-0701-MDS
_____)	Agency No.

DECISION

I. Introduction

H S, through his mother, K S, requested pre-authorization for payment of travel costs from his home in Anchorage to Fairbanks, for the purpose of dental care. The Division of Health Care Services denied the request and Mr. S appealed.

The assigned administrative law judge conducted a hearing on July 2, 2013. Mr. S was represented by attorney Mark Regan and the division was represented by Assistant Attorney General Bride Seifert. Ms. S testified on behalf of her son and Jeri Powers, a division employee, testified on behalf of the division.

Mr. S argues that the cost of travel is a covered expense because the requested services were not available in Anchorage, and that even if not covered, the division must provide payment because the division had previously authorized treatment from a Fairbanks provider. Because the requested services were not reasonably available in Anchorage at the time the travel authorization was requested, the division's decision is reversed.

II. Facts

H S is a ten year old boy who lives in Anchorage. His pediatric dentist, Dr. E X, removed two of his teeth and recommended that H obtain braces to ensure that appropriate spacing is maintained.¹ In addition, H has a significant overbite that is correctible by orthodontia.² H will require braces for about 18 months, and the treatment must be completed by the time he is 12 or 13, when his adult teeth will come in.³ Because the condition of his teeth creates pressure on his jaw that causes headaches, his dentist has recommended that treatment

¹ Testimony of J. S. See 10/31 Recording (Williams).
² Testimony of J. S.
³ Testimony of J. S.

begin sooner, rather than later.⁴ H will be twelve on February 1, 2015,⁵ and thus ideally his treatment needed to begin by August 1, 2013.

H has autism spectrum disorder.⁶ His condition makes it difficult for him to adjust to changes in his environment, and he has a low pain threshold.⁷ Typically, H is medicated prior to any dental consultations or procedures in order to relieve his anxiety.⁸ Still, his behavior during treatment can be problematic, as he may engage in disruptive behavior or behavior that makes treatment difficult.⁹ In order to avoid or minimize these kinds of behaviors, the choice of care providers involves assessing the provider's capacity to engage successfully with him, and the selection of a provider is important to the success of treatment.

After Dr. X recommended braces, on October 29, 2012, K S called the claims administrator and inquired about obtaining coverage for orthodontic services for her son. She was informed that to obtain coverage, an orthodontist would need to determine that the procedure was medically necessary.¹⁰ The administrator provided Ms. S with a list of Medicaid-approved providers in Anchorage.¹¹ Ms. S then contacted all of the listed orthodontists, and none of them had an opening for a new patient (other than an Alaska Native) prior to 2014.¹² On October 31, Ms. S informed the administrator of that circumstance and was provided a list of orthodontists statewide, which, outside of Anchorage, consisted of one in Eagle River, one in Ketchikan, and two in Fairbanks.¹³ Ms. S was informed by one of the Fairbanks providers, Dr. U V, that he would be accepting new patients in January and that she should call back in late November or early December to schedule an appointment.¹⁴ In late November, Ms. S again contacted Dr. V's office and was told to try again in early January.¹⁵ In the meantime, Ms. S had made an appointment with Dr. K T in Seward, for December 14.¹⁶

⁴ Testimony of J. S.

⁵ See Ex. E, p. 1 ("DOB: 02 01 03").

⁶ Testimony of J. S.

⁷ Testimony of J. S.

⁸ Testimony of J. S.

⁹ Testimony of J. S. Ms. S described instances during pediatric care in which it was necessary to restrain H, or to drag him out from under a table.

¹⁰ 10/29 Recording (I); Testimony of J. S.

¹¹ *Id.*

¹² See S Supp. Ex.

¹³ 10/31 Recording (I).

¹⁴ See S Supp. Ex. (referring to "L", office manager).

¹⁵ See S Supp. Ex. ("11/28 Call back in Early Jan. Frustrating!").

¹⁶ See S Supp. Ex.; 12/7 Recording (Curtis).

On December 7, 2012, Ms. S contacted the claims administrator and asked about coverage for the appointment she had scheduled with Dr. T.¹⁷ She was informed that Medicaid would not cover an initial consultation.¹⁸ Apparently for that reason, Ms. S did not keep the appointment she had scheduled with Dr. T. However, on January 7, she again contacted Dr. V's office and made an appointment for an initial consultation on February 4, 2013.¹⁹

Because the initial consultation was not covered, on February 4 H and his mother travelled to Fairbanks for the initial consultation at their own expense. Dr. V examined H and determined that he would be able to provide the necessary services. Dr. V submitted a treatment plan for a course of treatment and submitted a request for prior authorization of treatment to the claims administrator.²⁰ H was scheduled for an initial treatment appointment on May 9.

Having met with Dr. V, obtained authorization for a course of treatment from him, and scheduled the initial treatment, on April 29 Ms. S called the claims administrator and was informed that prior authorization for treatment from Dr. V had been granted. Ms. S called the travel agency handling Medicaid travel arrangements and was informed that she needed a separate authorization for travel and that the provider would need to make that request.²¹ Ms. S called Dr. V, who filed the necessary request.²² On May 1, 2013, the claims administrator issued a formal notice of denial of prior authorization for travel to Fairbanks on May 9, on the ground that the requested services were available in Anchorage.²³

Ms. S contacted two Anchorage providers who had been identified by the claims administrator on April 29 as available to provide the requested services.²⁴ First, Ms. S made an appointment for H to have an initial consultation with Dr. N P on May 2.²⁵ The appointment did not go well, and Dr. P (who is not an orthodontist) declined to provide the requested treatment.²⁶ Next, Ms. S contacted Dr. E Q, who had worked with patients with autism and whom she had contacted initially in October, at which time he was not accepting patients.²⁷ Dr. Q was now accepting patients, and he had an opening for an appointment for an initial consultation on June

¹⁷ 12/7 Recording (Curtis).

¹⁸ 12/7 Recording (Curtis); Testimony of J. S.

¹⁹ Testimony of J. S. Her notes suggest that the appointment with Dr. V was originally scheduled for March 5, 2013. S Supp. Ex.

²⁰ Testimony of J. S.

²¹ Testimony of J. S.

²² Testimony of J. S. *See* Ex. E.

²³ Ex. D.

²⁴ Testimony of J. S.

²⁵ Testimony of J. S.

²⁶ Testimony of J. S.

²⁷ Testimony of J. S.

4, and, assuming he accepted H as a patient, he could have begun treatment in late August or September, 2013.²⁸

At this point, having been waiting to obtain treatment since the fall of 2012, having had an unsuccessful appointment with Dr. P, and mindful of the need to begin treatment in time to complete it before H aged out of the appropriate treatment window, Ms. S made the decision to proceed to treatment with Dr. V rather than to wait any longer.²⁹ On May 9, 2013, the Ss travelled to Fairbanks at their own expense for H's initial treatment appointment. That same day, division staff spoke with five Anchorage providers, four of whom accepted Denali Kidcare patients. Of those four, one had no openings, one planned to add to the waiting list in July, and two (Dr. Q and Dr. S E, in the same office) were accepting new patients with appointments in July.³⁰

H had a subsequent follow-up appointment on June 26, at which Dr. V attempted to insert H's lower brace. The procedure was painful, and H reacted with tears and assumed a fetal position. Dr. V and his staff, with his mother, were able to calm him, but Dr. V was unable to insert the brace. Another appointment was scheduled for early August, at which it was anticipated that the brace would be inserted. Follow-up appointments will occur approximately every six to eight weeks for about eighteen months thereafter.³¹ At the time of the hearing in July, two or three Anchorage providers (including Dr. Q) had informed the division that they were adding to their waiting lists, or accepting new patients for appointments later in the summer.³²

III. Discussion

In general, the division will pay for travel required in order to obtain medically necessary services, if those services are not available in the recipient's community.³³ In this case, there is no dispute that the services requested were medically necessary. At issue is whether they were available in Anchorage. As the appealing party, H S has the burden of proof.³⁴

The service to be provided on May 9 was orthodontic treatment, not simply an initial consultation. There is no evidence that an Anchorage provider was available to provide

²⁸ Testimony of J. S.

²⁹ As Ms. S succinctly put it, "I was done."

³⁰ Exhibit F (list of providers "spoke to (5/9/13)"); Testimony of J. Powers.

³¹ Ms. S testified as to the preceding facts.

³² Testimony of J. Powers.

³³ See 7 AAC 120.405(a)(1), (b)(1).

³⁴ See 2 AAC 64.290(e).

orthodontic treatment to H on May 9. Rather, the evidence is that one Anchorage provider, Dr. Q, was available for an initial consultation on June 4. Dr. Q, if he accepted H as a patient, would not have been available to provide orthodontic treatment to him until late August or early September. One other provider contacted by the division on May 9, Dr. E, was available for an appointment in July.³⁵ A third provider, Dr. N L, was going to open his wait list in July or August, but there is no evidence as to when he would have been available to provide treatment to H.³⁶

To be “available”, according to the dictionary, means to be “present or ready for immediate use.”³⁷ A service is not available, in that sense, if it is contingently available at some indefinite future time. As used in the relevant regulation, 7 AAC 120.405(b)(1), a service must, at the least, be available; that is, “present or ready for immediate use” within a reasonable time. In some cases, it may be reasonable to defer treatment for a relatively long time. But in other cases, treatment cannot reasonably be delayed without adversely affecting patient health. In this particular case, the evidence indicates that in order to effectively provide the requested treatment, H needed to begin actual treatment by August 1, 2013. Dr. Q could not have begun treatment by that time, and more likely than not Dr. E could not have either: Dr. V, Dr. P and Dr. Q had all required an initial consultation before beginning treatment, and in that light it is reasonable to assume that Dr. E would have, too. The preponderance of the evidence, then, is that there was no orthodontist available in Anchorage to provide the requested services within the indicated medical time frame. Moreover, H’s history as a patient suggests that it would be reasonable to anticipate possible delays in the provision of services from either Dr. Q or Dr. E, just as occurred with Dr. V, who was unable to insert H’s lower brace as originally scheduled. Lastly, because H’s condition was causing him headaches, his dentist had recommended that treatment begin sooner, rather than later. Under these circumstances, it is fair to say that the requested treatment was not available in Anchorage on May 9. Travel authorization for that date, therefore, should have been provided.

Because Ms. S did not submit a request for prior authorization for the June 26 travel, whether the services provided at that time were available in Anchorage is not at issue in this case. There is substantial evidence in this case, however, that none of the orthodontists contacted on May 9 were available for treatment prior to July, and hence that none of them could have

³⁵ Exhibit F.

³⁶ Exhibit F.

³⁷ Webster’s Ninth New Collegiate Dictionary, p. 119 (1990).

provided those services. Similarly, because at the time of the hearing no request for prior authorization for travel to Fairbanks for the August 4 appointment had been submitted, whether the services to be provided at that time would have been available in Anchorage is not at issue in this case. There is substantial evidence in this case, however, that as of May 9, and at the time of the hearing in July, other providers in Anchorage would have been able to provide the follow up services needed in August.

At the hearing Ms. S argued that because the division had authorized treatment from a Fairbanks provider, it was obligated to pay for travel to Fairbanks. However, a patient may choose to obtain a provider in another location for reasons of personal preference, regardless of the availability of services in their community of residence. Thus, as the division's regulations make clear, authorization for services and authorization for travel are entirely separate matters, and approval of services from a provider outside a recipient's community of residence neither implies nor requires approval of travel to that location. Ms. S also argued that H's condition mandates continuing care from his original provider, given the difficulty he has in adjusting to changes and the level of comfort he has established with Dr. V. This is, in effect, an argument that continuing treatment by the same provider is medically necessary.

With respect to the treatment provided on May 9, whether continuing treatment from the same provider is medically necessary is a moot issue, because the May 9 services are covered. For future guidance, however, some observations on the evidence as presented in this case are appropriate. Preliminarily, it was undisputed in this case that in general it is not medically necessary for the provider who inserts braces to also provide follow up care.³⁸ Nonetheless, for this particular patient, there is substantial evidence that a change in the care provider can be problematic, and it was undisputed that H had substantial difficulties when he saw another provider, Dr. P, on May 2. However, that H had problems with one provider does not necessarily mean that he would have similar difficulties with another, and there no evidence was presented that Dr. P had any specific prior experience with autistic patients, while Dr. Q, who was available in June, did have that experience. Moreover, H's comfort level with Dr. V at the time of the hearing in July was the result of continued visits over time, including treatment on May 9 and June 26, rather than of the single initial consultation. As matters stood prior to May 9, that H had seen Dr. V for an initial consultation does not mean that he could not have established a comfortable relationship with another provider prior to insertion of his braces. As

³⁸ Testimony of J. Powers.

matters stood at the time of the hearing, appointments for follow up care subsequent to insertion of braces would likely entail some adjustments to the braces, but Ms. S did not prove that adjustments would be equally painful or traumatic as the initial insertion of braces. In addition, Ms. S did not provide any evidence from a primary care physician or other medical professional that continuing treatment from the same dental care provider is medically necessary with respect to H's mental or emotional health. In short, while transitioning to a new provider for the initial insertion of braces or thereafter may entail some additional stress, the evidence in this case does not establish that for this particular patient maintenance of the same care provider beginning with the initial consultation and continuing thereafter throughout the course of treatment was medically necessary.

IV. Conclusion

The preponderance of the evidence in this case is that it was medically necessary to begin a course of treatment (insertion of braces) by August 1, 2013, and that there was no Anchorage provider available to provide those services in that timeframe. Accordingly, the division's decision to deny travel authorization for the services provided by Dr. V on May 9, 2013 is reversed. Because authorization or payment for services after May 9 is not at issue in this case, whether maintenance of the same care provider for treatment after May 9 is medically necessary need not be determined at this time.

DATED September 9, 2013.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of October, 2013.

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