

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

In the Matter of:)
)
 E C) OAH No. 13-1123-MDS
) Agency No.

DECISION

I. Introduction

Through his health care provider, E C requested pre-authorization of travel from his home in No Name to Anchorage, for the purpose of medical care. The Division of Health Care Services partially denied the request and Mr. C appealed.

The assigned administrative law judge conducted a hearing at which Mr. C participated and testified, representing himself. Angela Ybarra represented the division, and Terry Langford, a division employee, testified on behalf of the division.

The underlying issue in this case is whether, under the circumstances of this particular case, the division erred in denying pre-authorization for the cost of an additional seat for medically necessary travel. Mr. C established by a preponderance of the evidence that the air carrier required him to use two seats. Therefore, the division's denial of the request for prior authorization is reversed.

II. Facts

E C lives in No Name. He has been a recipient of Medicaid services for several years. For the past several years he has been receiving medically necessary treatment in Anchorage and Seattle. He travels to his appointments by airplane.

Over the course of the eighteen months, from when he had bariatric surgery in December, 2011, through around January, 2013, Mr. C, who is six feet, two inches tall, reduced his weight from 430 pounds to 270 pounds.¹ On his regular flights to Anchorage over that period of time, Mr. C's medical provider routinely requested and was granted pre-authorization for two seats, on the ground that due to his obesity, the air carrier required that Mr. C occupy two seats, even after his weight had gone down to 270 pounds.²

Mr. C was scheduled for medically necessary pain management treatment in Anchorage on July 16, 2013. The treatment was not available in No Name, and it was therefore necessary

¹ Testimony of E. C.
² Testimony of E. C.

for him to travel to Anchorage for the treatment.³ Mr. C's medical provider requested prior authorization for two seats. Prior authorization was granted for one seat but, for the first time, the request for a second seat was denied.

Mr. C went to the airport to board his scheduled flight. Mr. C has a 48-inch waist, which is two inches large than the standard seatbelt length of 46 inches, and use of a seatbelt extension is not a viable substitute for a person who cannot fit comfortably into a single seat with the seatbelt down.⁴ Due to his girth, Mr. C was unable to fit into his assigned seat with the armrest down.⁵ A flight attendant took Mr. C aside and informed him that the airline's policy is that persons unable to fit comfortably in a single seat with the armrest down must purchase a second seat unless a seat is available with an adjacent empty seat.⁶ The information provided by the attendant was consistent with the air carrier's written policy, which states:

Alaska Airlines requires the purchase of an additional seat for any customer who cannot comfortably fit within one seat with the armrests in the down position. We are unable to guarantee travel for those who require additional seat space on a given flight unless a second seat is purchased in advance.

If all flight segments between origin and destination depart with an empty seat, customers who have purchased a second seat can receive a refund of the second seat charge for that portion of their trip.^[7]

Because the seat adjacent to Mr. C's assigned seat was occupied, but the airplane was not fully booked, the attendant was able to find another seat with an empty adjacent seat and Mr. C occupied that seat on the flight.⁸ On the return flight, the same thing happened: Mr. C was required to occupy two seats and was able to do so without paying for a second seat.⁹

III. Discussion

In general, in considering a request for prior authorization,¹⁰ the division will authorize travel required in order to obtain medically necessary services.¹¹ However, the division will deny payment that is excessive or inappropriate.¹² As the appealing party, Mr. C has the burden of proof.¹³ In this case, the division does not dispute that the purpose of Mr. C's trip to

³ Testimony of T. Langford.

⁴ Supp. Ex., p. 2.

⁵ Testimony of E. C.

⁶ Testimony of E. C.

⁷ Supp. Ex, p. 1.

⁸ Testimony of E. C.

⁹ Testimony of E. C.

¹⁰ 7 AAC 120.410(a).

¹¹ See 7 AAC 120.405(a)(1).

¹² 7 AAC 120.405(c)(1).

¹³ See 2 AAC 64.290(e); 7 AAC 49.135.

Anchorage was to obtain medically necessary treatment that was not available in No Name. Thus, in order to prevail in this case, Mr. C needed to show that the cost of the travel (two seats, rather than one) was neither excessive nor inappropriate.

Mr. C established, by a preponderance of the evidence, that his provider's request for prior authorization for travel in the form of two airplane seats was neither excessive nor inappropriate. The evidence is undisputed that the division had previously approved the use of two seats for Mr. C on multiple occasions, including after his weight was reduced to his current 270 pounds. The evidence is undisputed that it is the policy of Alaska Airlines to require the use of two seats when a person is unable to sit comfortably in a single seat with the armrest down. The evidence is undisputed that Mr. C was unable to sit comfortably in a single seat with the armrest down. In fact, the evidence is undisputed that he could not sit in a single seat with the armrest down, at all. Mr. C's testimony that he could not do so is consistent with the fact that the seatbelt is 46 inches long, while his waist is 48 inches and a seatbelt extension is not a viable substitute for a person of size. Moreover, the evidence is undisputed that it is the policy of Alaska Airlines to permit a person who requires two seats to occupy an adjacent unoccupied seat whenever the flight is not booked full, and to obtain a refund for the cost of the second seat. Thus, for a person of size who is unable to sit comfortably in a single seat, authorization for two seats will not necessarily result in payment for two seats (and would not have in this case). But to deny authorization for two seats would create the risk of a denial of boarding if the flight booked full, with attendant additional costs and missed appointments. Thus, providing prior authorization for two seats for a person who is unable to fit comfortably in a single seat is neither excessive nor inappropriate, at least under the policy of Alaska Airlines.

IV. Conclusion

The division expressed concern that to provide prior authorization for two seats could result in requests for authorization for two seats for persons who do not, in fact, require two seats. But it is surely within the administrative capacity of the division to use physical characteristics such as weight and girth to prevent such abuse. In any event, a person whose request for prior authorization for two seats has been denied is entitled to a hearing to establish whether or not their request was excessive or inappropriate. The preponderance of the evidence

in this particular case is that Mr. C's request was neither. The division's determination is therefore reversed.

DATED November 22, 2013.

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 19th day of December, 2013.

By: *Signed* _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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