

## Non-Adoption Options

D. Under a delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), I reject, modify, or amend the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Although I am not overruling the legal analysis in this decision, I decline to adopt it due to the precise circumstances of this case. In my view, it is clear and credible that Ms. N did everything that she was asked to do, and given that the Medicaid helpline never informed her (through her son) that she could or should obtain assistance directly from the Division, this decision puts the Department at risk of unnecessary, prolonged litigation that would expose it to significantly higher costs in staff time and attorney services than the \$188.00 at issue, and the risk of an unfavorable result concerning future application of the Division's policies and procedures.

This concern is supported by *Allen v. State, Dep't of Health and Soc. Serv., Div. Pub. Ass.*, 203 P.3d 1155, 1167 (Alaska 2009) where the Alaska Supreme Court signaled that it would apply very close scrutiny to Department decisions denying benefits to applicants who have "a 'brutal need' for the benefit at issue."

The interpretation of the regulation at issue in the proposed decision, while not wrong, is very strict under these particular circumstances. The Division is correct that the regulation prohibits payment to an unenrolled provider. However, reversing this decision will not result in reimbursement being paid to an unenrolled provider. Rather, the reimbursement will be paid to a client who took enough reasonable steps to effectively satisfy the requirements for reimbursable accommodations. The Division testified that on a "case-by-case" basis, the Division has reimbursed clients for these types of "out-of-pocket expenses." The circumstances of this case are no doubt unusual and merit the rare "case-by-case" treatment described in the record.

Accordingly, in order to avoid potential unnecessary, prolonged litigation that would expose the Department to significantly higher costs in staff time and attorney services than the \$188.00 at issue, and to ameliorate possible risk of an unfavorable result concerning future application of the Division's policies and procedures, I reject the proposed decision. The Division is ordered to reimburse Ms. N exactly the amount that would have been reimbursed by Medicaid under these circumstances if the Ns had obtained lodging at an enrolled Medicaid provider, which I understand to be \$188.00. This decision is an exercise of discretion in the public interest, based on the facts of this decision only, and shall not be a precedent for the interpretation of the regulation or regulations at issue in any future cases.

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 15th day of December, 2015.

By: Signed  
Jared C. Kosin, Executive Director  
Office of Rate Review, DHSS

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

In the Matter of )  
 )  
D N ) OAH No. 15-1313-MDX  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

D N was pre-approved for travel to Anchorage for a medically-necessary surgical procedure. She was unable to find hotel accommodation at a hotel that would accept her Medicaid voucher. She and her escort stayed at a hotel that was not an enrolled Medicaid provider. The Division of Health Care Services denied her request for reimbursement for some or all of the hotel expense, and she requested a fair hearing to dispute the denial. Because the regulations prohibit payment for accommodation services at a hotel that is not an enrolled-Medicaid provider, the Division’s decision is affirmed.

**II. Facts**

D N is a 63-year-old resident of No Name. She has had a serious heart condition for some time. When first attempting to find medical care for heart condition, she had difficulty finding a doctor in No Name who understood her complaint regarding the pain she felt every time she drew a breath. After she established a relationship with Anchorage heart doctor B T, however, she felt that she began getting the care she needed. Although she was Medicaid eligible, for many years she did not use Medicaid for travel reimbursement other than taxi service. She was able fly to Anchorage for her appointments at a very low cost—paying only the taxes—because she had a relative who worked for the airlines. She did not need hotel because she was able to return during the same day.<sup>1</sup>

In late spring 2015, her doctors determined that she needed to undergo surgery to install a cardiac catheter and implant a dual-chamber cardiac defibrillator.<sup>2</sup> Without these procedures, she would be at high-risk for sudden cardiac death. For this procedure, Ms. N would need accommodation because she would have to stay overnight for two days, June 22-24, 2015. Her doctor applied on her behalf for Medicaid authorization for her travel. Medicaid approved the request, and she was issued vouchers for accommodations, travel, taxi, and food for herself and

<sup>1</sup> D. N testimony.

<sup>2</sup> N Exhibit I.

an escort. She was informed, however, that Medicaid would not approve any travel assistance in the future because cardiac care was available in No Name.

Ms. N had been relying on her doctor's assistant to make the travel arrangements, which she had done for previous travel. After receiving the vouchers, however, Ms. N learned that she would have to book her own hotel. Her son, K N, called the three hotels on the original list of enrolled Medicaid provider hotels that he had been provided by his mother's doctor. All three declined to take a Medicaid reservation during the mid-June time period. This was the height of tourist season, and the rooms could command a much higher price than the \$80 that would be reimbursed by Medicaid. At least one of the hotels on the list, Millennium, was no longer an enrolled Medicaid provider.

Mr. N then called the Medicaid help line number that was listed on the voucher. He received a list of additional hotels that were enrolled Medicaid providers. He was informed, however, that Medicaid would not assist him in making the reservation—that was his responsibility.<sup>3</sup>

The only Medicaid-enrolled hotel that had any availability was the Golden Lion Hotel, which had a room available for only one of the two nights they needed. Even it would not accept the voucher. Because Mr. N was concerned that no hotel space would be available if he waited, he called Millennium Hotel (which did have some limited space) back on June 4, and reserved a room for two nights.<sup>4</sup>

Mr. N testified that he did not give up. He called the Medicaid help line again, but did not receive any further assistance. He called Providence Hospital, which was on the list of enrolled accommodations providers. Providence explained that it had some rooms for recovering patients, but they would not be assigned until the patient was in Anchorage. This was no help to Mr. N, who needed to be sure that he had a room reserved for himself and his sick mother.<sup>5</sup>

Ms. N had the surgery on June 23, 2015. The Ns stayed at the Millennium, and Mr. N paid the bill (\$310 per night before tax) with his credit card. After returning home, Ms. N returned the unused vouchers. She called the Medicaid helpline to request reimbursement for her hotel expenses. Medicaid denied her request.<sup>6</sup>

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<sup>3</sup> K. N testimony.

<sup>4</sup> *Id.*

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

<sup>6</sup> D. N testimony.

On September 27, 2015, Ms. N wrote a letter to the Division, explaining the situation regarding the denial of reimbursement, and asking whether she could have a fair hearing to appeal the denial.<sup>7</sup> The Division processed her request for a hearing as if it were timely. A telephonic hearing was held on October 26, 2015.

### **III. Discussion**

The Ns have asked that they be paid the money that Medicaid would have paid if the Medicaid voucher had been used at a Medicaid-enrolled hotel—\$89 per night. Given that none of the eligible hotels could accommodate them, and that they did everything they could to comply with the rules, the Ns believe this result would be fair. Further, it would not cost Medicaid any more than it would have paid anyway.

The Division, however, explained that it cannot reimburse the Ns for their hotel expense. Under regulations, it cannot pay a provider of services unless the provider is an enrolled-Medicaid provider. Millennium Hotel is not an enrolled provider.

In addition, the Division argued that Mr. N's action in booking a room at the Millennium Hotel was unreasonable. The Division explained that the correct process was to keep calling the Medicaid help line. By the third call, the Medicaid helpline personnel are instructed to refer the caller to the Division. At the Division, Sarah Harlamert is assigned the responsibility for assisting those who cannot find available rooms. Ms. Harlamert testified that she frequently must help people who, like the Ns, cannot obtain a Medicaid-eligible hotel room in Anchorage during tourist season. The Medicaid voucher is for only \$89 per night, and a hotel room in Anchorage during tourist season will rent for much more. Ms. Harlamert stated that she will find a room for the Medicaid client at Medicaid rates, even during tourist season, by calling around and being persuasive. If all else fails, she has called the University and found dorm space.<sup>8</sup>

This decision finds, however, that the Ns did act reasonably. They did call the Medicaid helpline and they were never told to call the Division.

The parties dispute whether, and how often, Mr. N called the helpline. Mr. N said it was at least three times, but he was unable to obtain his telephone records to prove his calls. The Division asserted that the telephone records of its agent, Xerox Medical, did not show any call from Mr. N's number during the relevant time period. Yet, Mr. N was a credible witness. His testimony that he did everything he could to obtain a qualifying hotel room is credible. He did

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<sup>7</sup> Division Exhibit C.

<sup>8</sup> Harlamert testimony.

call the Medicaid helpline and he did have an email from Medicaid that gave him the list of qualifying hotels. The Division's argument that Mr. N should have called Ms. Harlamert is not applicable here because the Division never provided him with notice that he had the option or obligation to call Ms. Harlamert.

The problem for the Ns, however, is that the regulations are very strict. The governing regulation is 7 AAC 120.400. This regulation sets out an absolute requirement of enrollment in order to be paid by Medicaid for accommodation services:

To be eligible for payment under 7 AAC 105 – 7 AAC 160 for providing transportation and accommodation services, the provider must  
(1) Enroll with the department as a provider of transportation or accommodation services in accordance with 7 AC 105.210.<sup>9</sup>

Here, the Ns stayed at the Millennium. The Millennium is not an enrolled provider. Even though the Ns did everything they reasonably could do, the regulation prohibits payment for accommodation at the Millennium, *even of only the amount that Medicaid would have paid*. Although this result is harsh, in an insurance context, the issue is not fairness or harshness—in an insurance context, the issue is whether the cost is a covered cost that is compensable. If the cost is not within the list of covered expenses, it is not compensable. Here, because of regulation 7 AAC 120.400(1), no Medicaid payment can be provided to the Ns as partial compensation for their procurement of accommodations from a hotel that is not an enrolled Medicaid provider.

#### **IV. Conclusion**

The Division's decision denying reimbursement for some or all of D N's June 22-24 hotel expense is affirmed.

DATED this 17<sup>th</sup> of November, 2015.

By: Signed \_\_\_\_\_  
Stephen C. Slotnick  
Administrative Law Judge

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

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<sup>9</sup> 7 AAC 120.400.