

Coverage was denied on the basis of the above exclusion. Mr. G. appealed to the Third Party Administrator of the plan, and subsequently to the Plan Administrator. These appeals were unsuccessful, and the present appeal followed.

III. Discussion

The Administrator has moved for summary adjudication. Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁵ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.⁶

Mr. G. was given an opportunity to respond in writing to the motion for summary adjudication and to submit any evidence he desired. He elected not to do so. Nonetheless, the administrative law judge held oral argument on the motion. At the oral proceeding, Mr. G. opposed the motion on the grounds discussed below.

In this case, Mr. G. has conceded that the insurance contract between him and the plan contains a “blanket exclusion” (his words) for drugs to treat sexual dysfunction. He argues nonetheless that he “didn’t see the drug Levitra specifically listed, so, understandably, a reasonable person might assume it was covered by the plan.”⁷ He has not asserted, nor submitted any evidence, however, that he himself actually did so assume. On the contrary, in his original appeal to the plan’s Third Party Administrator, he acknowledged that Levitra was “not covered” but requested “an exemption from the exclusion of coverage.”⁸ Moreover, the record shows that when Levitra was first prescribed to him in 2006, four years before the claim at issue in this case, Mr. G. was informed that “This medicine is . . . used to treat sexual function problems such as impotence or erectile dysfunction.”⁹

In insurance contracts, Alaska law gives effect to “a policyholder’s reasonable expectations of coverage.”¹⁰ There is no basis in the record to conclude that Mr. G. could reasonably have expected coverage for Levitra, in light of the plain exclusion of drugs in that class.

⁵ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁶ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁷ Recording of oral argument.

⁸ R. 31.

⁹ R. 33.

¹⁰ *INA Life Ins. Co. v. Brundin*, 533 P.2d 236, 242 (Alaska 1975).

Mr. G. has also argued that “I think it’s time for a major revision . . . changing the blanket exclusion.”¹¹ The Office of Administrative Hearings cannot revise the plan. Mr. G. can address this policy argument to those who do have authority to consider such revisions, but any such prospective revision would not affect this case.

Mr. G. waited until the rebuttal phase of his oral argument to raise two additional issues, devoting approximately a sentence to each. First, he asserted that he is “disabled” as a result of sexual dysfunction and that the claim administrator has “discriminated against me in my disability”.¹² There is no evidence in this case that the Administrator has offered different benefits to Mr. G. from those offered to other members, and thus there is no evidence of discrimination for any reason. Similarly, Mr. G. asserted that “people are guaranteed rights for equal protection.” However, to the extent that this might generously be construed as a claim that the Administrator has somehow denied him equal protection under the laws, he has not submitted any evidence to support such a claim.

IV. Conclusion

The Administrator’s decision of November 22, 2010, rejecting Mr. G.’s request for coverage of his Levitra prescription, is affirmed.

DATED this 17th day of March, 2011.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹¹ Recording of oral argument.

¹² *Id.* (to his credit, Mr. G. acknowledges that in making this argument he “may be stretching it”).

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 15th day of April, 2011.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

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