

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of	)	
	)	
X E. N	)	OAH No. 16-0053-PER
<hr style="width: 40%; margin-left: 0;"/>	)	Agency No. 2015-0615

**FINAL<sup>1</sup> DECISION AND ORDER OF DISMISSAL**

In this retiree health coverage appeal, Mr. N challenged the partial denial of his health insurance claims for two services rendered by Alaska Heart and Vascular Institute (AHVI)<sup>2</sup> in September of 2014. The two partial denials disallowed a total of \$899 of Mr. N’s billings from AHVI. Mr. N and his wife had dual coverage, such that any amounts not disallowed were reimbursed at 100 percent.<sup>3</sup>

The central issue in the appeal was the Retiree Health Plan’s use of “Recognized Charge” provision in a plan booklet that purportedly<sup>4</sup> became effective on January 1, 2014. AHVI was an out-of-network provider, and for such providers the Plan applied the supposed “Recognized Charge” provision by using numbers somehow generated by an entity called FAIR Health, Inc. Mr. N believes the way this was done violates the Recognized Charge provision in the 2014 plan booklet. Alternatively, if the use of the FAIR Health numbers was in compliance with the Recognized Charge provision in the 2014 plan booklet, Mr. N believes the Recognized Charge provision unconstitutionally reduces his retirement benefits.<sup>5</sup>

The main issue in the appeal was briefed in connection with a Motion to Establish Law of the Case from Mr. N. Mr. N filed his reply brief June 6, 2016. The same day, the Administrator of the Retiree Health Plan agreed to pay Mr. N the full \$899 in dispute, and moved to dismiss this case as moot.

Mr. N agrees that he has been made financially whole on the two claims at issue, but nonetheless opposes dismissal. First, he contends that since the underlying legal issues will not

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<sup>1</sup> This decision has been modified from an earlier proposed decision, in response to proposals for action submitted by the parties pursuant to AS 44.64.060(e).

<sup>2</sup> The provider was then known as Alaska Heart Institute.

<sup>3</sup> The 100% reimbursement of allowed charges can be seen at R. 58 and R. 62.

<sup>4</sup> The term “purportedly” has been used because another Office of Administrative Hearings decision held that the booklet did not become effective. *In re T.O.T.*, OAH No. 15-1204-PER (August 23, 2016) (published on the OAH website); *see also* note 8, *infra*. It is not clear whether any appeal has been filed in *T.O.T.* This decision should not be construed as an endorsement or rejection of the holding in *T.O.T.*

<sup>5</sup> Mr. N has suggested that there is an additional issue relating to the dual coverage of Mr. N and his wife. However, this issue appears to be purely derivative, not an independent basis on which payment has been denied. If the AHVI billings are not reduced by application of the Recognized Charge provision, there appears to be no dispute that dual coverage applies and 100% of the AHVI charges must be covered in full.

have been decided, the case is not moot. Second, he contends that even if the case is moot, it falls within the public interest exception to the mootness doctrine for matters that are capable of repetition but evading review.

There is no question that the case is moot. A case is moot if “the party bringing the action would not be entitled to any relief even if they prevail.”<sup>6</sup> The only relief to which Mr. N would have been entitled had he prevailed is the \$899 he has now received. The Office of Administrative Hearings has been given no authority to render declaratory judgments in cases of this type, and thus there is no relief that could have been granted beyond a monetary award.

The case also does not fit within the public interest exception to the mootness doctrine. Three factors are considered in deciding whether this exception applies:

(1) whether the disputed issues are capable of repetition, (2) whether application of the mootness doctrine will repeatedly circumvent review of the issues, and (3) whether the issues are of important public interest.<sup>7</sup>

Here, the issue is indeed capable of repetition, to be sure. It could arguably evade review as well, if the Administrator were to pay off claimants just as their appeals became ripe, effectively avoiding an adverse ruling while continuing to deny a correct application of the Plan to all members who lack the resources, savvy, or patience to navigate the appeals process. But that is not the situation here. On August 23, 2016, a final decision was entered in a case brought by another Plan member whose 2014 procedure at AHVI was denied full reimbursement on the same basis Mr. N was denied.<sup>8</sup> The Plan member prevailed, establishing that the 2014 Recognized Charge provision should not have been applied at all and that the AHVI charge was fully allowable. There is no basis to disregard the mootness doctrine in order to revisit the directly parallel issue in this case. Accordingly, the Administrator’s motion to dismiss is granted.

DATED: October 21, 2016.

By: Signed \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

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

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<sup>6</sup> *O’Callaghan v. State*, 920 P.2d 1387, 1388 (Alaska 1996).

<sup>7</sup> *Clark v. State*, 156 P.3d 384, 387 (Alaska 2007), quoting *Taylor v. Gill St. Invs.*, 743 P.2d 345,347 (Alaska 1987).

<sup>8</sup> *In re T.O.T.*, *supra*. The Administrator submitted no Proposal for Action objecting to the *T.O.T.* decision, and has not sought to revisit the reasoning of that decision in this case.