

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE DEPARTMENT OF ADMINISTRATION**

IN THE MATTER OF: )

S E )  
\_\_\_\_\_ )

OAH No. 08-0214-TRS<sup>1</sup>  
Agency No. TRH2008-0226

**ORDER GRANTING SUMMARY ADJUDICATION**

S E is a retiree under the Teachers' Retirement System ("TRS") and is entitled to benefits of the AlaskaCare Retiree Health Plan ("Plan"). On September 26, 2007, Mr. E underwent radical retropubic prostatectomy surgery at the Mayo Clinic. Mr. E's urologist, Dr. Matthew Gettman, prescribed "Cialis, 20 mg, one-half tablet on a therapeutic schedule of two times per week for six weeks" and after six weeks as needed.<sup>2</sup> Dr. Gettman's medical opinion in this case is that "...the regular use of Cialis following radical prostatectomy surgery promotes rehabilitation of sexual function, an important quality of life issue. For this reason we recommend that this prescription be considered a medical necessity and covered by insurance."<sup>3</sup>

Mr. E requested reimbursement from the plan for the cost of Cialis. His claim was denied at all levels of appeal and reconsideration allowed by the plan. On March 19, 2008, the Director of the Division of Retirement and Benefits declined Mr. E's request for reimbursement:

Unfortunately, I am unable to accommodate your request. The Retiree Insurance Information Booklet provides on page 54 that services, therapy, drugs or supplies for sexual dysfunction or inadequacies, including supplies for a prosthesis in connection with impotency are excluded from coverage under the Plan. *This exclusion applies regardless of the purpose for which the drug has been prescribed.*<sup>4</sup>

On April 21, 2008, Mr. E filed his appeal of the denial. The appeal was referred to the Office of Administrative Hearings on May 2, 2008. The Administrator of the Public Employees' Retirement System ("Administrator") moved for summary adjudication on May 21, 2008. A

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<sup>1</sup> Mr. E is a retiree under TRS. Prior filings in the case were identified as OAH No. 08-0214-PER. The case should have been identified as a TRS case from the onset.

<sup>2</sup> Cialis is a prescription drug manufactured by Eli Lilly and Company and used to treat erectile dysfunction. *Patient Information*, Eli Lilly and Company (2008) and *Prescribing Information for Cialis*, Eli Lilly and Company (2008)

<sup>3</sup> R. 53.

<sup>4</sup> R. 5(emphasis added).

telephonic conference was held on May 30, 2008. Mr. E participated. Ms. Jessica Srader, Assistant Attorney General, participated on behalf of the Administrator. During the telephonic conference, the parties reached agreement that it would be best to address the pending motion for summary adjudication early in this appeal. Mr. E timely filed his opposition to summary adjudication on June 4, 2008.

The parties do not dispute that 2 AAC 64.250 (a) gives the Office of Administrative Hearings (“OAH”) authority to grant summary adjudication if a genuine dispute does not exist between the parties on an issue of material fact. To defeat a motion for summary adjudication, the opposing party may not rely on mere denial and must show by affidavit or other evidence that a genuine dispute exists on a material fact for which an evidentiary hearing is required.<sup>5</sup>

Mr. E asserts that reimbursement for Cialis should be allowed by the Plan, particularly when his doctor has prescribed the drug for therapeutic and healing purposes. The Administrator may or may not share Mr. E’s reasonable opinion, but it is an immutable, material fact that Cialis is a drug excluded from coverage under the Plan. Mr. E does not like the exclusion, but rationally observes in his opposition that “(I)t is indeed clear that the Plan does not allow payment for Cialis, Viagra or other drugs administered for erectile dysfunction.” The Administrator’s denial of Mr. E’s claim does not give rise to a disputed material fact.

The Plan is a contract to which Mr. E is a party. The Plan must be interpreted in the same manner as any other insurance contract.<sup>6</sup> Mr. E now agrees with the Administrator that Cialis is excluded from coverage under the Plan.<sup>7</sup>

Mr. E is of the strong opinion that Cialis should be covered by the Plan because his doctor prescribed it for him. Mr. E’s opinions and future actions may be the catalyst for changes to the Plan. However, the Commissioner of Administration has the plenary authority to establish Plan coverage.<sup>8</sup> As noted above, it is very clear and not subject to interpretation that Cialis is presently excluded from coverage under the Plan.

For the reasons set forth above, the Administrator’s motion for summary adjudication is GRANTED, the Administrator’s decision of March 19, 2008 to deny coverage for Cialis is

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<sup>5</sup> 2 AAC 64.250(b)

<sup>6</sup> See *State v. Arbuckle*, 941 P.2d 181, 184 (Alaska 1997) (interpreting an insurance contract which cover a state employee).

<sup>7</sup> Mr. E’s opposition dated June 4, 2008 and filed June 6, 2008.

<sup>8</sup> AS 39.30.090 and .091 require that the Commissioner provide a group health plan for employees who have retired under the provisions of the TRS.

AFFIRMED, the formal hearing now set for August 5, 2008 is VACATED, and this appeal is DISMISSED without prejudice to any other rights which Mr. E may have.

DATED this 13<sup>th</sup> day of June, 2008.

By: Signed  
James T. Stanley  
Administrative Law Judge

**Certificate of Service:** The undersigned certifies that on the 13<sup>th</sup> day of June, 2008, a true and correct copy of this document was mailed to the following: S E; Jessica Srader, AAG.

By: Signed  
Linda Schwass/Kim DeMoss

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