

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

In the Matter of )  
 )  
D D ) OAH No. 19-0776-MDX  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

Medical Group, a medical provider in City A, submitted a travel authorization request to the State of Alaska, Division of Health Care Services (Division) on behalf of D D for travel between City B and City A. The Division denied that request on the basis that the services were available within Mrs. D’s own community. Mrs. D requested a hearing. A hearing was held on September 6, 2019. Mrs. D represented herself and testified on her own behalf. Because the issues are similar, Mrs. D’s hearing was held in conjunction with her husband, Mr. D. He testified and questioned witnesses on her behalf. He also called Carrie Silvers, the Division’s operations supervisor, to testify on their behalf. The Division’s position was represented by Laura Baldwin, Julius Goslin, Medicaid Director; Charles Semling, Pharmacist for Alaska Medicaid; Maria Pokorny, Medicaid Transportation Manager; and Brenda Vincent, Operations Manager, all testified on behalf of the Division.

At the time the Division denied the travel request, it only had a letter from Q S. K, MD at City B Memorial Hospital, indicating that he would provide a bridge or tapering regime for Mrs. D. The Division did not speak with any providers in City B. The Division concluded, based on Dr. K’s letter, that this was the equivalent medical service that Mrs. D would receive with Dr. M at Medical Group in City A.

Based on the testimony presented at the hearing it was clear that the treatment provided in City B differed substantially from that provided in City A. Mr. & Mrs. D’s testimony showed by a preponderance of the evidence that the medical services that the Division agrees are medically necessary are not available in her community, and therefore the Division’s decision is reversed.

**II. Facts**

The following facts were established by a preponderance of the evidence.

D D lives in City C.<sup>1</sup> Mrs. D has pain in her lower back and left knee, and has chronic pain syndrome.<sup>2</sup> She was receiving pain management services from Spine Clinic in City B until they closed in April 2019.<sup>3</sup> Mrs. D looked for a new provider.<sup>4</sup> The only provider she found who would see her is M D. M, MD at Medical Group in City A.<sup>5</sup> The Division approved travel to City A to receive medical services there, with a warning that this approval was only an interim approval while she sought another provider in City B.<sup>6</sup>

After this short-term approval, Mr. D spoke with the four providers in City B that were on a list provided by MedExpert on behalf of himself and Mrs. D.<sup>7</sup> This is the entity contracted with the State to assist Medicaid recipients to find a provider.<sup>8</sup> The only provider on the list who would see Mrs. D was Q S. K, MD.<sup>9</sup> Mrs. D learned from an appointment with Dr. K that he would not provide pain medication on a regular basis.<sup>10</sup> The only acceptable treatment plan to Dr. K would be to taper off opioids completely, and then he would provide steroid injections four times per year and three days of pain medication following injections.<sup>11</sup> Mrs. D has received steroid injections in the past and they were not very effective in managing her pain.<sup>12</sup> Dr. K wrote a letter providing in its entirety:

To Whom It May Concern: Please be advised that our clinic is not accepting new patients for the sole purpose of continuation or maintenance of schedule II opioids for chronic nonmalignant conditions, except in the capacity of bridge or tapering regimes.<sup>13</sup>

When Mrs. D saw Dr. M in June 2019, she was receiving 150 MME's of opioids.<sup>14</sup> Dr. M began her on a tapering regime to get below 90 MME's in accordance with CDC guidelines to

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<sup>1</sup> Exhibit D at 1.

<sup>2</sup> Exhibit F at 3 & 7.

<sup>3</sup> Exhibit F at 1 and Exhibit G at 1. Notes from Dr. M, and testimony of Mr. & Mrs. D, suggest that she may have been discontinued from services at AA Spine rather than their closing. The actual reason she no longer receives services at Spine & Pain Clinic is irrelevant to this decision. *See, ITMO K.X.*, OAH No. 13-0247-MDS (Commissioner of Health and Social Services 2013).

<sup>4</sup> Testimony of C D; Testimony of D D.

<sup>5</sup> Testimony of C D; Testimony of D D.

<sup>6</sup> Exhibit G at 1.

<sup>7</sup> Testimony of C D.

<sup>8</sup> Testimony of Brenda Vincent.

<sup>9</sup> Testimony of C D; Testimony of D D.

<sup>10</sup> Testimony of C D; Testimony of D D.

<sup>11</sup> Testimony of C D; Testimony of D D.

<sup>12</sup> Exhibit F at 5, Testimony of C D.

<sup>13</sup> Exhibit F at 1.

<sup>14</sup> Testimony of Charles Semling.

reduce the risk of overdose and death.<sup>15</sup> At the time of the hearing she was receiving 60 MME's.<sup>16</sup>

Based on Dr. K's letter alone, the Division concluded that he would prescribe the same pain management regime as Dr. M in City A.<sup>17</sup> The Division does not dispute that Mrs. D's current pain management regime is medically necessary.<sup>18</sup> The Division agrees with the tapering regime offered by Dr. M.<sup>19</sup> The Division denied travel on the basis that the same services are available to Mrs. D locally, from Dr. K.<sup>20</sup>

### III. Discussion

Mrs. D has the burden of proof to show that the Division's decision to deny travel was incorrect.<sup>21</sup> The department may place minimum or maximum quantities on a service before the recipient receives the requested service to maintain the financial integrity of the department and the Medicaid program.<sup>22</sup> Medicaid pays for recipient travel, so long as, among other things, the services are "provided to assist the recipient in receiving medically necessary services" and "those services are not available in the recipient's community . . . ."<sup>23</sup> Nonemergency transportation services must be preauthorized "before the time that the service is provided."<sup>24</sup>

The sole issue in this case is whether the services that Mrs. D requests to receive in City A are available within her community. The parties both agree that the relevant community is City B. The Division argues that Dr. K will provide the same services in City B as Dr. M is providing in City A. No one from the Division has spoken to Dr. K directly. Mrs. D has met with him and testified that she would not provide comparable services.

The Division's witnesses were credible, but their decision was based on assumptions made from Dr. K's letter. Their assumptions may be warranted, but were credibly contradicted by Mr. & Mrs. D's testimony. Mr. & Mrs. D testified that they would prefer to receive medical services in City B. When she travels for treatment, D D spends approximately four hours driving between her home and to and from the City B airport, along with time on the plane and in transit

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<sup>15</sup> Exhibit F at 7, Testimony of Charles Semling.

<sup>16</sup> Testimony of Charles Semling.

<sup>17</sup> Testimony of Dr. Julius Goslin and Charles Semling.

<sup>18</sup> Testimony of Dr. Julius Goslin.

<sup>19</sup> Testimony of Charles Semling.

<sup>20</sup> Testimony of Dr. Julius Goslin.

<sup>21</sup> 7 AAC 49.135.

<sup>22</sup> 7 AAC 105.130(c).

<sup>23</sup> 7 AAC 120.405(a)(1) & 7 AAC 120.405(b)(1).

<sup>24</sup> 7 AAC 120.410(a).

in City A. She is in pain during this trip and it is not an enjoyable day. There is no reason to believe that she simply wants free travel. She clearly wants pain medication to continue at the highest level possible, but her treating physician, Dr. M, has her on a tapering regime that he deems appropriate. The Division's witnesses agree it is appropriate.

In conclusion, the testimony shows that the services offered to Mrs. D in City A are substantially different than those available in City B. Because the Division agrees that the services in City A are medically necessary, and because Mrs. D can only receive them in City A at this time, the Division's decision is reversed.

#### **IV. Conclusion**

Mrs. D has attempted to find appropriate medical services in City B. Despite reaching out to the Division's available resources to assist her in finding a provider, she has failed to find someone in City B who will take her as a new client for pain management. She has found a provider in City A. Because these services are medically necessary and not available in City B, Mrs. D's travel to City A should be approved until such time that she can find a provider within her community who will provide the same or substantially similar services.

Dated: September 27, 2019

*Signed* \_\_\_\_\_  
Elizabeth Smith  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 15<sup>th</sup> day of November, 2019.

By: *Signed* \_\_\_\_\_  
Name: Laura Russell  
Title: Project Coordinator  
Agency: Office of the Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]