

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

In the Matter of)
)
C D) OAH No. 19-0777-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 C D for travel between City B and City A. The Division denied that request on the basis that the services were available within Mr. D’s own community. Mr. D requested a hearing. A hearing was held on September 6, 2019. Mr. D represented himself and testified on his own behalf, he also called Carrie Silvers, the Division’s operations supervisor, to testify. 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 Mr. 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 Mr. 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 that could be provided in City B differed substantially from that provided in City A. Mr. D showed by a preponderance of the evidence that the medical services that the Division agrees are medically necessary are not available in his community, and therefore the Division’s decision is reversed.

II. Facts

The following facts were established by a preponderance of the evidence. C D lives in City Z.¹ Mr. D has pain in his mid-back, neck, and knee, and has chronic pain syndrome.² He was receiving pain management services from Spine Clinic in City B until they closed in spring

¹ Exhibit D at 1.

² Exhibit F at 3 & 7.

2019.³ Mr. D looked for a new provider.⁴ The only provider he found who would see him is Y D. M, MD at Medical Group in City A.⁵ The Division provided travel to City A to receive medical services there, with a warning that this approval was only an interim approval while he sought another provider in City B.⁶

After this short-term approval, Mr. D spoke with the four providers in City B that were on a list provided by MedExpert.⁷ This is the entity contracted with the State to assist Medicaid recipients to find a provider.⁸ The only provider on the list who would see Mr. D was Q S. K, MD.⁹ Mr. D learned from an appointment with Dr. K that he would not provide pain medication on a regular basis.¹⁰ 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.¹¹ Mr. D has received steroid injections in the past and they were not very effective in managing his pain.¹² 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.¹³

When Mr. D saw Dr. M in June 2019, he was receiving 165 MME's of opioids.¹⁴ Dr. M began him on a tapering regime to get below 90 MME's in accordance with CDC guidelines to reduce the risk of overdose and death.¹⁵ Dr. M also tapered Mr. D on his Oxycodone prescription to half what he was receiving when first visiting him.¹⁶

³ Exhibit G at 1. Notes from Dr. M and testimony of Mr. D suggest that he may have been discontinued from services at AA Spine rather than their closing. The actual reason he 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).

⁴ Testimony of C D.

⁵ Testimony of C D.

⁶ Exhibit G at 1.

⁷ Testimony of C D.

⁸ Testimony of Brenda Vincent.

⁹ Testimony of C D.

¹⁰ Testimony of C D.

¹¹ Testimony of C D.

¹² Exhibit F at 5, Testimony of C D.

¹³ Exhibit F at 1.

¹⁴ Exhibit F at 7.

¹⁵ Exhibit F at 7, Testimony of Charles Semling.

¹⁶ Testimony of Charles Semling.

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.¹⁷ The Division does not dispute that Mr. D's current pain management regime is medically necessary.¹⁸ The Division agrees with the tapering regime offered by Dr. M.¹⁹ The Division denied travel on the basis that the same services are available to Mr. D locally, from Dr. K.²⁰

III. Discussion

Mr. D has the burden of proof to show that the Division's decision to deny travel was incorrect.²¹ 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.²² 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"²³ Nonemergency transportation services must be preauthorized "before the time that the service is provided."²⁴

The sole issue in this case is whether the services that Mr. D requests to receive in City A are available within his 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. Mr. D has met with him and testified that he 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. D's testimony. Mr. D testified that he would prefer to receive medical services in City B. When he travels for treatment, he spends approximately four hours driving between his home and to and from the City B airport, along with time on the plane and in transit in City A. He is in pain during this trip and it is not an enjoyable day. There is no reason to believe that he simply wants free travel. He clearly wants pain medication to continue at the highest level possible, but

¹⁷ Testimony of Dr. Julius Goslin and Charles Semling.

¹⁸ Testimony of Dr. Julius Goslin.

¹⁹ Testimony of Charles Semling.

²⁰ Testimony of Dr. Julius Goslin.

²¹ 7 AAC 49.135.

²² 7 AAC 105.130(c).

²³ 7 AAC 120.405(a)(1) & 7 AAC 120.405(b)(1).

²⁴ 7 AAC 120.410(a).

his treating physician, Dr. M, has him 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 Mr. 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 Mr. D can only receive them in City A at this time, the Division's decision is reversed.

IV. Conclusion

Mr. D has attempted to find appropriate medical services in City B. Despite reaching out to the Division's available resources to assist him in finding a provider, he has failed to find someone in City B who will take him as a new client for pain management. He has found a provider in City A. Because these services are medically necessary and not available in City B, Mr. D's travel to City A should be approved until such time that he can find a provider within his 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 15th 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.]