

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

In the Matter of )  
 )  
K-N L ) OAH No. 19-0367/0368-MDX  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

K-N L is a transgender Medicaid recipient who lives outside City A. She made two requests that the Medicaid program authorize payment for her to travel to City A on April 26, 2019 to attend two separate appointments. One appointment was for a routine eye examination, there being no optometrist in her home community. The other was to meet with a urologist for a consultation regarding an orchiectomy.<sup>1</sup> The Medicaid program denied both requests.

As discussed in detail below, the denial of her request for travel authorization for her eye examination is reversed and the denial of her request for travel authorization for her consultation is upheld. Because Ms. L’s travel authorization requests were for two appointments on the same day, April 26, 2019, in the same town, because one of those denials was reversed, her travel authorization request is approved.

**II. Procedural Matters**

Ms. L requested a hearing regarding the denial of her travel requests. That hearing was held on May 20, 2019. At hearing, the Division requested that this case be stayed due to the pendency of an existing class action suit, *Being v. Crum*, District of Alaska Case No. 3:19-CV-00060-HRH, in which the validity of the Alaska Medicaid regulation excluding Medicaid coverage for gender reassignment related treatments, 7 AAC 105.110(12), is challenged.<sup>2</sup> Ms. L objected to a stay. The stay was denied on the record, and the hearing proceeded as scheduled.

Ms. L represented herself and testified on her own behalf. Laura Baldwin, a Fair Hearing Representative with the Division of Health Care Services (Division), represented the Division. Maria Pokorny, the Division’s Medicaid transportation manager, testified on behalf of the Division.

---

<sup>1</sup> An orchiectomy is the surgical removal of one or both testes. *The American Heritage Stedman’s Medical Dictionary* 583 (Houghton Mifflin Company 2002).

<sup>2</sup> As of June 17, 2019, the court docket for *Being v. Crum* does not show any motions for injunctive relief proscribing the application of 7 AAC 105.110(12) having been filed or granted.

### III. Facts

Ms. L is a transgender female, who is anatomically male. She lives in a small community outside City A.<sup>3</sup>

Ms. L made a request that the Medicaid program pay for her travel to City A on April 26, 2019 for two separate appointments. One appointment was for a routine eye exam at Vista Optical. The other appointment was for a consultation with a urologist regarding a potential bilateral orchiectomy.<sup>4</sup>

The Division denied Ms. L's request for travel coverage for both appointments. The reasoning it provided for the denial of eye exam travel coverage was that Medicaid would not pay for a "service that is incurred for an evaluative or periodic checkup, examination or immunization."<sup>5</sup> The reasoning the Division provided for the denial of the consult with the urologist was that Medicaid "will not pay for service that is for treatment, therapy, surgery or other procedures related to gender reassignment."<sup>6</sup>

Ms. L's community does not have a resident optometrist. While there are optometrists who periodically visit her community, she has not been able to see an optometrist during one of those visits, because she only recently obtained Medicaid coverage. Ms. L's urologist who handles her transgender health issues is in City A.<sup>7</sup>

### IV. Discussion

Ms. L has the burden of proof, by a preponderance of the evidence, in this case because she is requesting Medicaid coverage for her travel.<sup>8</sup>

#### A. Eye Examination

There are two regulations that address Ms. L's request for a travel authorization for an eye examination. 7 AAC 105.110 provides, in pertinent part, that Medicaid will not pay for "an evaluative or periodic checkup, examination, or immunization (A) that is in connection with the participation, enrollment, attendance, or accomplishment of a program or activity unrelated to

---

<sup>3</sup> Ms. L's testimony.

<sup>4</sup> Ex. C, p. 1; Ex. E, pp. 1 – 2; Ms. Pokorny's testimony; Ms. L's testimony.

<sup>5</sup> The Division initially stated that it was also denying coverage for the eye exam because No Name Optical was not enrolled with Medicaid. (Ex. D, p. 1). However, at hearing, the Division clarified that it was no longer asserting that No Name Optical was not an enrolled provider, because it determined that the optician Ms. L was seeing was an enrolled Medicaid provider.

<sup>6</sup> Ex. D, p. 1.

<sup>7</sup> Ms. L's testimony.

<sup>8</sup> 7 AAC 49.135.

the recipient’s physical or mental health or rehabilitation.”<sup>9</sup> This regulation, on its face, does not apply to Ms. L’s request for a routine eye examination given that there is no evidence that the examination is needed regarding her “participation, enrollment, attendance, or accomplish of a program of activity unrelated to [her] physical or mental health or rehabilitation.” Consequently, her routine eye examination is covered by Medicaid.

The second regulation, 7 AAC 120.405(b)(1), generally disallows payment for travel costs to receive a service unless the “services are not available in the recipient’s community.”<sup>10</sup> Ms. L’s uncontroverted testimony established that eye examinations are only occasionally available in her community. Given that fact, she should not have to wait until the next time an optometrist travels to her home community. As a result, the Division should not have denied her request for travel authorization for the eye examination. That denial is reversed.

*B. Consultation regarding Orchiectomy*

The Alaska Medicaid regulations specifically prohibit payment “for treatment, therapy, surgery or other procedures related to gender reassignment.”<sup>11</sup> Ms. L’s appointment was to consult with her doctor prior to having an orchiectomy. Having an orchiectomy is undeniably part of the gender reassignment process. As such, a planning consultation would be a “procedure related to gender reassignment.”

Ms. L argued that inasmuch as she is female in all aspects of her life and person, except for being anatomically male, that she is not in the process of gender reassignment. However, aligning her anatomy, via an orchiectomy, to align with her gender would be part of the gender reassignment process as it is conventionally understood. As such, travel expenses incurred to consult with her doctor regarding an orchiectomy are related to gender reassignment, which is not covered by the Medicaid program. The denial of that travel request is upheld.

**V. Conclusion**

Ms. L made two separate requests for Medicaid to cover her travel expenses for appointments both of which were to occur on April 26, 2019. One of those requests, the one for the eye examination should have been granted. One of those requests, the one to consult with her doctor regarding an orchiectomy, was properly denied. However, given that both

---

<sup>9</sup> 7 AAC 105.110(3).

<sup>10</sup> 7 AAC 120.405(b)(1).

<sup>11</sup> 7 AAC 105.110(12).

appointments were to occur in the same town on the same day, the denial of her travel request is REVERSED.

Dated: June 18, 2019

*Signed*  
\_\_\_\_\_  
Lawrence A. Pederson  
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 8<sup>th</sup> day of July, 2019.

By: *Signed*  
\_\_\_\_\_  
Name: Jillian Gellings  
Title: Project Analyst  
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.]

: