

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

In the Matter of)

D J)
_____)

OAH No. 19-0572 MDX

DECISION

I. Introduction

D J is a Medicaid recipient living outside City A. The Division of Health Care Services (Division) authorized Mr. J to have an escort to accompany him to his City A medical appointment. However, the Division then denied authorization for the specific escort Mr. J identified. Mr. J requested a hearing to challenge the denial of his proposed escort. Following the presentation of evidence, the Division’s decision is reversed.

II. Facts

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

Mr. J’s doctor requested preauthorization for a medical escort to assist Mr. J with a medical appointment in City A.¹ The Division initially denied preauthorization, but after it received additional information, it found that an escort was medically necessary for Mr. J and authorized an escort to travel with him.² After the Division concluded an escort was medically necessary for Mr. J, Mr. J proposed S M, his partner of 19 years, as his escort.³ Mr. J has adult children, but they are unable to travel with him for medical appointments because of their schedules; he has no one else to assist him as an escort.⁴ Ms. M previously travelled with her sister, a Medicaid recipient, to medical appointments.⁵

Mr. J has not previously had a Medicaid escort.⁶ On prior occasions while travelling to City A, he has gotten confused and missed appointments because he cannot navigate the systems on his own.⁷

¹ Ms. Pokorny testimony.

² Ms. Pokorny testimony; Exhibit D; Exhibit E; Exhibit F.

³ Ms. Pokorny testimony; Mr. J testimony; Ms. M testimony.

⁴ Mr. J testimony.

⁵ Ms. M testimony.

⁶ Mr. J testimony; Ms. Pokorny testimony; Exhibit F at 58, 60.

⁷ Mr. J testimony; Exhibit F at 58.

While at home, Ms. M accompanies Mr. J to his local medical appointments because he has difficulties understanding medical personnel.⁸ At the appointments, she communicates on his behalf, reads Mr. J the documents and helps him fill out paperwork.⁹

The Division, however, denied Ms. M as an escort.¹⁰ Although the Division did not provide a written notice explaining why it rejected Ms. M as Mr. J's escort, Ms. Pokorny, the Division's Medicaid travel coordinator, explained that the Division believed that Ms. M had an alcohol abuse problem, making her unable to perform her duties as a medical escort. It cited to 3 instances supporting its conclusion as the basis of its denial were cited.¹¹ The first incident identified by the Division alleged Mr. J had a DUI in City A in 1995; Ms. Pokorny corrected this in her testimony and identified the charge as a driving without a valid license charge, which did not involve alcohol, or Ms. M.¹² Ms. Pokorny next cited a DUI conviction for Mr. J from 2018; this again did not involve Ms. M.¹³ The third incident identified by Ms. Pokorny was an incident in June 2019.¹⁴ Mr. J sustained an injury while he and Ms. M were allegedly intoxicated. While the medical note indicates the couple was drinking, the same records provide conflicting versions of who caused injury to Mr. J.¹⁵ Both Mr. J and Ms. M deny Ms. M caused the injury.¹⁶ No convictions or charges of any alcohol related incidents involving Ms. M were presented.¹⁷ Based on these examples, the Division concluded Ms. M would not be a suitable escort for Mr. J because it could not be assured she would get him to and from his appointments.¹⁸

Mr. J's hearing was held on July 24, 2019. Mr. J appeared telephonically with S M. Each testified. Also telephonic were Laura Baldwin, who represented the Division, and Maria Pokorny, Medicaid Travel Manager, who testified on behalf of the Division. Exhibits A-F were admitted without objection.

⁸ Ms. M testimony; Mr. J testimony; Exhibit F at 58, 60.

⁹ *Id.*

¹⁰ Ms. Pokorny testimony.

¹¹ No evidence was presented that Ms. Pokorny is an expert for the purpose of diagnosing an individual with substance abuse issues.

¹² Ms. Pokorny testimony; Mr. J testimony; (3XX-95-000000)

¹³ Mr. J pled guilty to 3XX-18-00000CR, but it appears there is a probation violation so there is a current warrant outstanding. Mr. J was advised of his 5th Amendments rights against self-incrimination.

¹⁴ Exhibit F at 57-58 outlines a superficial stab wound on Mr. J's left side. Ms. Pokorny testified Ms. M stabbed Mr. J. After being advised of their 5th Amendment rights against self-incrimination, Ms. M and Mr. J testified.

¹⁵ Exhibit F at 57-58.

¹⁶ Mr. J testimony; Ms. M testimony.

¹⁷ Ms. Pokorny testimony.

¹⁸ *Id.*

III. Discussion

The Alaska Medicaid program pays for medically necessary transportation for a Medicaid recipient. Unless the transportation is for a medical emergency, the transportation must be requested by a medical provider and approved in advance.¹⁹ The Medicaid program will, if medically necessary, also pay for an escort to accompany an adult Medicaid recipient.²⁰ Here, the Division determined a medical escort was necessary for Mr. J.

However, despite concluding an escort was medically necessary for Mr. J, the Division concluded Ms. M was not a suitable escort.²¹ While the regulations do not address disqualifying a specific escort, the Division can certainly evaluate whether a proposed escort can serve as an escort. An escort is one “who accompanies a recipient to or from a source of medical care.”²² Therefore, if the escort cannot accompany the recipient to and from appointments, the escort is not capable of satisfying this requirement, and the Division can decline to authorize that individual as an escort.²³

Mr. J and Ms. M appeared for the scheduled hearing. Both testified clearly and were able to relay information in a concise manner. Ms. M accompanies Mr. J to his local appointments and helps him navigate his medical appointments when he is confused.²⁴ She has travelled with her sister to medical appointments without incident.²⁵ Ms. M showed she is able to accompany Mr. J to and from his medical appointments in City A.

But the Division disagrees. The Division concluded Ms. M cannot perform the duties of an escort because Ms. M has an alcohol problem.²⁶ But the Division did not provide any credible evidence that supports that conclusion or refutes Ms. M’s ability to serve as an escort. The only incident Ms. Pokorny involving Ms. M and alcohol was the June 2019 incident in which Mr. J sustained an injury while he and Ms. M were allegedly intoxicated.²⁷ While the

¹⁹ 7 AAC 120.410.

²⁰ 7 AAC 120.430.

²¹ Ms. Pokorny testimony.

²² 7 AAC 120.490 (3).

²³ It is foreseeable that the ability to successfully function as a medical escort could be limited by physical and mental impairments, or that a proposed medical escort has a history of not satisfactorily serving as a medical escort, which could reasonably lead the Division to conclude one is not able to assist a recipient in attending medical appointments.

²⁴ Ms. M testimony; Exhibit F at 58; Ms. M testimony

²⁵ Ms. M testimony.

²⁶ Ms. Pokorny testimony.

²⁷ Exhibit F at 57-58; Ms. Pokorny testimony.

Division attributes the cause of the injury to Ms. M, the medical records provide conflicting versions of who caused injury to Mr. J.²⁸ Both Mr. J and Ms. M deny Ms. M caused the injury, and Ms. M was not charged with any wrongdoing.²⁹ This one incident is not sufficient to show Ms. M has an alcohol problem. Nor does it demonstrate that she cannot successfully serve as Mr. J's medical escort.

The Division's theory is mere speculation, at best. In fact, it was undisputed that Ms. M has escorted her sister, a Medicaid recipient, without incident.³⁰ As a result, the evidence shows that it is more likely true than not true that Ms. M meets the requirements to be a medical escort for Mr. J.

V. Conclusion

The facts show Ms. M is capable of serving as Mr. J's escort. The denial is reversed.

DATED August 14, 2019

Signed

Hanna Sebold

Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 28th day of August, 2019.

By: *Signed*

Name: Hanna Sebold

Title: Administrative Law Judge

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

²⁸ *Id.*

²⁹ Ms. M testimony; Mr. J testimony.

³⁰ Ms. M testimony.