

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

In the Matter of)	
)	OAH No. 18-0784-MDX
E J)	Agency No.
_____)	

DECISION

I. Introduction

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E J is a Medicaid recipient. Mr. J’s medical provider requested travel from City A to City B for medical treatment. For his return trip, Mr. J requested travel from City B to City C because he lives in City C but had been in City A. The Division of Health Care Services (Division) approved round trip travel from City A to City B but denied travel from City B to City C. Mr. J timely requested a hearing to challenge the denial.

Mr. J’ hearing was held on August 28, 2018. Mr. J was granted leave to present his testimony in written form. Mr. J submitted his written testimony timely, and it was considered in its entirety.

The evidence in this case shows that Mr. J scheduled his medical appointment while he was residing in City C, and then subsequently traveled to City A. The evidence is unclear as to whether he was in the process of moving to the City A or visiting. However, after his appointment was made and after his travel to City A, he made a request for travel coverage. While Mr. J’s situation is not explicitly addressed in the Medicaid regulations, given the facts of this case, the Division’s decision denying prior authorization is reasonable and is affirmed.

II. Facts

Mr. J lives in City C.¹ While in City C, he made a medical appointment, which was scheduled to occur in City B on June 1, 2018.² Sometime on or before June 11, 2018, the appointment was rescheduled to June 19, 2018.³

¹ There was some confusion as to whether Mr. J was permanently looking to relocate to the City A area or simply visiting family. In his written testimony, Mr. J expressed concern that “Conduent seemed geared more towards trying to entrap me in a contradiction about my plans, instead of trying to help us understand the law.” Any confusion about his reasoning behind his travel to City A had no bearing on the decision made in this case.

² Exhibit G, p. 7.

³ Exhibit G, pp. 8 – 11.

On June 12, 2018, Mr. J left City C by ferry and travelled to City D. He then ferried from City D to City A, arriving on June 15, 2018.

On June 18, 2018, Mr. J's health care provider spoke to Mr. J. Mr. J informed her that he was currently in City A and he requested that Medicaid arrange for his travel from City A to City B for his appointment and a return from City B to City C. Mr. J's health care provider then contacted the State Medicaid travel office, who stated that Medicaid travel would be approved for round trip travel to City A, since the travel was originating in City A. The medical provider's notes indicate that "Patient stated is ok w[sic] back to City A [sic] and figring [sic] out his way back to City C or possibility in the works of moving to City E."⁴ Later that same day, Mr. J phoned his medical provider objecting to the Medicaid travel arrangements.⁵

Mr. J went to his medical appointment in City B and returned to City A by Medicaid travel.⁶ He eventually returned to City C at his own expense.⁷

III. Discussion

The issue in this case is whether the Division properly denied Mr. J's request that the return leg of his medical travel be from City B to City C, rather than from City B to City A. However, before reaching that issue, it is first necessary to resolve three procedural issues raised by Mr. J.

A. Burden of Proof

The first issue is who has the burden of proof. The Alaska Fair Hearing regulations, which apply to Medicaid cases such as this, are clear that Mr. J, as the party requesting the Medicaid benefit here, bears the burden of proof to establish by a preponderance of the evidence to demonstrate that the Division's denial of travel authorization was incorrect.⁸ At the beginning of the hearing, Mr. J was told this. To help clarify the Division's position, it was proposed that the Division present its position first. All parties were advised this did not change who bore the burden of proof.

B. Exhibit G

Mr. J's second issue concerns exhibit G. Mr. J argues that it should be stricken from the record. Exhibit G consists of Mr. J's medical provider's notes regarding his medical appointments and travel

⁴ Exhibit G, p. 10.

⁵ Exhibit. G, p. 11.

⁶ Maria Pokorny testimony.

⁷ E J testimony in Court.

⁸ 7 AAC 49.135 applicable here, places the burden of proof on a party pursuing a claim for "new or additional benefits," and places the burden on the Division where it is seeking to reduce or terminate benefits.

arrangement requests. Mr. J agreed to the admission of exhibit G during the August 28, 2018 hearing. He cannot now change his mind.

Further, these are highly relevant documents. The technical rules of evidence do not apply in these proceedings and he had an opportunity to respond.

C. Procedural Due Process

Mr. J alleges that he was not given an opportunity to present evidence. The record shows Mr. J was served with notice of the denial. He was served with notice of informal appeal, to which he responded. He was served with a notice of formal appeal, and a hearing was set. He was given a hearing and an opportunity to present any testimony and evidence he wanted. He was given the opportunity to present his position in writing. There is no evidence he has been deprived of an opportunity to be heard. All his testimony, as well as questions he asked at the hearing on August 28, 2018, were considered.

D. Medicaid Travel Requirements

The Alaska Medicaid program will pay for medically necessary transportation for a Medicaid recipient.⁹ Absent an emergency, for which there was none in this case, transportation for a Medicaid recipient must be requested by a medical provider and preapproved by the division.¹⁰ Medicaid does not reimburse a recipient for transportation paid by the recipient.¹¹

Mr. J claimed the Division's arguments have changed with respect to the Division's position on his travel from City B to City C. The Division has never vacillated in its conclusion that it is inappropriate and excessive to have a patient travel from City B to City C when his travel began in City A.¹² The Division has consistently cited the applicable regulations. However, the Division has used different explanations of the regulations in its attempts to explain its application to Mr. J. At no point did they present contradicting positions.

When deciding whether to preauthorize travel, Medicaid must evaluate each situation for the "1) least expensive means of transportation and accommodation for a recipient and an authorized escort; 2) recipient's medical condition; 3) distance to the place of the treatment; and 4) availability of transportation providers."¹³ While the regulation does not specifically address

⁹ 7 AAC 105.100(5); 7 AAC 105.130(a)(1); 7 AAC 120.405.

¹⁰ 7 AAC 105.130 (a)(1); 7 AAC 120.410.

¹¹ 7 AAC 120.405 (e).

¹² Exhibit E.

¹³ 7 AAC 120.410. The Division provided copies of the Medicaid regulations in Exhibit D.

the instant situation where return travel is requested to a different location than where travel originated, the Division has interpreted the regulations to conclude that because Mr. J was only authorized travel from City A to City B, it was excessive to authorize a return flight that exceeded that distance. Mr. J disagreed with that application of the regulation. The Division's interpretation is a reasonable one, especially given the fluidity of Mr. J's plans. He was in City C, decided to come to City A, and then requested travel from City A. Accordingly, the Division's denial was valid.

In addition, the facts show a further basis for affirming the Division's denial. Mr. J knew in advance that the Division would only approve round trip travel from and back to City A. He accepted that round trip travel. He has waived his right to object.

IV. Conclusion

The Division denied preapproved travel for Mr. J from City B to City C because Mr. J was in City A when he began his Medicaid travel. Instead, the Division approved round trip travel to and from City A.

The Division's decision to deny Mr. J' prior authorization for return travel to City C is affirmed.

DATED October 23, 2018.

Signed _____
Hanna Sebold
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 8th day of November, 2018.

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.]