

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

In the Matter of)	
)	
B S)	OAH No. 20-0767-MDX
<hr style="width: 40%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

B S is a minor who receives Medicaid benefits. She requested prior authorization for a wheelchair with several additional components. The Division of Health Care Services (Division) approved most of the request but denied authorization for a component known as a “FreeWheel.” The Division concluded that component was not medically necessary because it was designed to enhance mobility-related activities not covered by Medicaid.

Ms. S requested a hearing to challenge the denial. The telephonic hearing took place October 14, 2020. Ms. S was represented by her guardian and mother, D S. D S and G Z, B’s occupational therapist, testified. An email from B’s physical therapist was also submitted. Laura Baldwin, a Division employee, represented the Division. Krystal Nichols, manager for the durable medical equipment program, testified for the Division.

The evidence in this case shows that B is a child with complex medical needs, including a congenital heart defect. Over-exertion by children with her medical history is a legitimate concern, and the FreeWheel component can reduce the effort required to propel a wheelchair. Thus, in appropriate circumstances a FreeWheel could be found medically necessary. However, in this case there was insufficient evidence to support a finding of medical necessity for B because her request was based on social development and convenience factors rather than identified medical health concerns. The denial of the FreeWheel is **AFFIRMED**.

II. Facts

B S is a four-year old girl with a history of congenital hypoplastic left heart syndrome and severe coarctation of the aorta.¹ Hypoplastic left heart syndrome is a complex and rare heart defect where the left side of the heart is critically underdeveloped.² Children with congenital

¹ Ex. F., p. 6.

² A normal heart has four-chambers, two on the right and two on the left. The right and left side perform different tasks pumping the blood throughout the body. The right side moves blood to the lungs where it is enriched with oxygen then circulated to the heart’s left side. The left side of the heart pumps blood through the aorta to

hypoplastic left heart syndrome require multiple heart surgeries to survive.³ Because their hearts work much harder to do their job, these children remain at risk for heart failure.⁴ B's baseline oxygen saturation is 75-80%.⁵ She has trunk weakness, flaccid lower extremities, poor seat balance, and decreased endurance.⁶ In addition to hypoplastic heart syndrome, B is partially paralyzed. On April 28, 2020 she was playing with another toddler when she fell and was unable to rise. She has been unable to walk since that time.⁷

On May 28, 2020, National Seating and Mobility, a durable medical equipment provider, requested authorization for a manual wheelchair with a variety of components for B.⁸ One of those components was the FreeWheel. The FreeWheel is a small wheel that attaches to the wheelchair footrest by means of a detachable metal latching system.⁹ This allows the casters of the wheelchair to slightly rise and makes it easier to roll over obstacles such as uneven pavement, grass, snow, and gravel. As a result, the user expends less effort to travel and can avoid the work of having to "wheelie" over smaller impediments.¹⁰

The Division approved the request with the exception of the FreeWheel component on June 11, 2020.¹¹ The Division denied the request for the FreeWheel based on its conclusion the component was not medically necessary.¹² The Division concluded the FreeWheel was not medically necessary because it assisted ambulation only for convenience or recreational purposes.¹³

Ms. S appealed on September 10, 2020.¹⁴

The telephonic hearing took place on October 14, 2020. Laura Baldwin represented the Division and presented one witness, Krystal Nichols. Ms. Nichols is the Division manager for

circulate the oxygen rich blood throughout the body. In children with hypoplastic left heart syndrome the either do not have the left chambers or they are too small. Thus, the right side of the heart must perform both functions. Testimony of C. S, F. Z, and K. Nichols. *See also*, Congestive Heart Failure in Infants and Children, Cincinnati Children's Hospital available on-line at www.cincinnatichildrens.org/health/v/chf.

³ Testimony of C. S.

⁴ *Id.*

⁵ Ex. F., p. 6.

⁶ *Id.*

⁷ *Id.*; Testimony of C. S.

⁸ Ex. F., p. 6.

⁹ Ex. G.

¹⁰ *Id.*; Testimony of K. Nichols.

¹¹ Ex. D.

¹² *Id.*

¹³ Ex. E., p. 2.

¹⁴ Ex. C.

the durable medical equipment program. She testified this was the Division’s first request for authorization of the FreeWheel component. She researched the product and medical standards related to its use. In doing so she found that the FreeWheel is not typically covered as a durable medical device. For example, Medicare primarily treats it as specialized assistive equipment. That is, if approved, it is covered as assistive technology to aid ambulation and further the benefit recipient’s ability to perform the activities of daily living not to address a specific health concern. In addition, the FreeWheel’s manufacturer’s materials promote it primarily for recreational or convenience purposes.¹⁵

Ms. Nichols testified that after analyzing Ms. S’s application in light of this research, she concluded the request did not meet the standard for medical necessity. She examined the application as a whole, including the Equipment Purchase Evaluation prepared by Seattle Children’s Hospital accompanying the authorization request.¹⁶ B’s need for the FreeWheel was described as follows:

- [B] [c]annot do wheelies to lift her casters over uneven terrain. She lives in City A, AK, that has snow in the winter. This will maximize her safety and independence with wheeling on grass at preschool or during fire drills. It will also allow her to wheel outside on the lawn with her brother and friends.¹⁷

Based on this description of goals for the component, Ms. Nichols concluded the FreeWheel was not medically necessary because it was not “reasonable and necessary for the treatment of illness, injury, disease, disability, or developmental condition.” Nor was there a history of “primarily and customary” use of the FreeWheel to serve a medical purpose. The two primary uses for the FreeWheel are increased personal mobility and user independence; those were also the rationales underlying B’s request.¹⁸ Ms. Nichols saw the benefit to B from increased mobility and independence, but those purposes were not ones that would support approval of the FreeWheel as an item of durable medical equipment through her Division.¹⁹

Ms. Nichols acknowledged the application established B had endurance and breathing issues. She further acknowledged that physical stress could increase B’s risk of heart complications. Nevertheless, Ms. Nichols concluded the current application failed to establish a

¹⁵ Testimony of K. Nichols.

¹⁶ *Id.*

¹⁷ Ex. F., p. 8.

¹⁸ Testimony of K. Nichols.

¹⁹ *Id.*

sufficient nexus between B’s health status and a medical benefit to her from an “easier” wheelchair. Were a future application to do so, the FreeWheel could theoretically qualify as a medical necessity. However, Ms. Nichols opined that in those circumstances other options would also exist.²⁰

Ms. S described her daughter’s condition. Until April of this year, B did suffer from heart disease, but she was receiving good care and able to act as a fairly normal four-year old. For reasons that have yet to be diagnosed, B lost use of her legs while playing with another child this spring. Adjustment to the wheelchair has been hard for B and the family. B wants to play with her brother and friends as she used to, but access is difficult. She cannot conveniently accompany the family on walks or play in the park. The specialists at Seattle Children’s Hospital were adamant that B receive as much independence and mobility as possible. The FreeWheel would assist with those goals.²¹

III. Discussion

B S has the burden of proving, by a preponderance of the evidence, that the Division’s denial of pre-authorization for the FreeWheel component was incorrect.²²

The Alaska Medicaid program requires prior authorization for wheelchairs and their components.²³ Authorization can only be approved if the equipment is medically necessary.²⁴ Neither the federal Medicaid Act²⁵ nor the accompanying federal regulations define medical necessity. The responsibility for defining medical necessity is left to each state.²⁶ Alaska regulations and statutes also do not contain a broad definition that sets out when procedures of this type are medically necessary. The pertinent portions of the applicable Alaska regulation, 7 AAC 105.110, simply state that Medicaid “will not pay for a service that is (1) not reasonably necessary for the diagnosis and treatment of an illness or injury ... as determined upon review by the department,” or “(2) not ... medically necessary in accordance with criteria established under [Department regulations] or by standards of practice applicable to the prescribing provider.”²⁷

²⁰

Id.

²¹ Testimony of C. S; Exs. 1 and 2.

²² 7 AAC 49.135.

²³ 7 AAC 105.130(4); 7 AAC 120.210(b)(9).

²⁴ 7 AAC 120.210(a).

²⁵ 42 U.S.C. § 1396 et. seq.

²⁶ *See Thie v. Davis*, 688 N.E.2d 182 (Ind.App.1997).

²⁷ 7 AAC 105.110(1), (2).

To be authorized by Medicaid an item or service must fall within one or more benefit categories, and not otherwise be excluded by statute from coverage. Durable medical equipment means “equipment that (A) can withstand repeated use; (B) is primarily and customarily used to serve a medical purpose; (C) generally is not useful to an individual in the absence of an illness or injury; and (D) is appropriate for use in the home, school, or community.”²⁸ Wheelchairs are listed as durable medical equipment.²⁹ Medical purposes include those “necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system.”³⁰ In contrast, if the wheelchair or its components are used to increase, maintain or improve the functional capabilities of a child with a disability rather than treat the child’s medical condition, the wheelchair might be considered an assistive technology device or specialty assistive equipment.³¹

In this case the Division correctly concluded the identified purpose of the Free-Wheel component as requested in the May 28, 2020 authorization request was to increase B’s functional capabilities. That is, the component was requested to improve her personal independence and ability to perform activities of daily living rather than address a medical need. Testimony at the hearing and the exhibits filed on B’s behalf confirmed those were the reasons for the request.³² These are worthy and desirable benefits from the FreeWheel. However, the Division may not authorize payment for durable medical equipment for those reasons.

IV. Conclusion

B had the burden to establish the FreeWheel was medically necessary. She failed to prove the FreeWheel, although certainly desirable from a mobility standpoint, also met a medical purpose. The Division’s decision is Affirmed.

Dated: October 24, 2020

Signed _____
Carmen E. Clark
Administrative Law Judge

²⁸ 7 AAC 105.399(4).

²⁹ 42 U.S.C. § 1861(n).

³⁰ 7 AAC 105.110

³¹ Testimony K. Nichols.

³² Testimony of C. S and F. Z; Exs. 1 and 2.

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 19th day of November, 2020.

By: Signed _____
Name: Carmen Clark
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.]