

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

In the Matter of)	
)	
J V)	OAH No. 21-0048-MDX
_____)	Agency No.

DECISION

I. Introduction

J V is a Medicaid recipient. His medical provider requested prior authorization from the Medicaid program for him to receive MRIs of the lumbar, thoracic, and cervical spine. The Division of Healthcare Services (Division) denied the request.

Mr. V requested a hearing to challenge the denial of the MRIs. His hearing was held on February 9, 2021. The Division was represented by Laura Baldwin, its hearing representative. Dr. Raman, M. D., an assistant medical director with Comagine Health, which conducts prior authorization reviews for the Division, testified on the Division’s behalf. Mr. V represented himself and testified on his own behalf. N H, Mr. V’s significant other, also participated in the hearing.

Mr. V has the burden of proof in this case. He has met that burden. The Division’s concerns over the appropriateness of the MRIs are not sufficient to overcome the professional judgment of Mr. V’s treating physician. Accordingly, the denial of prior authorization is REVERSED.

II. Facts

Mr. V is 48 years old with a history of back issues. His medical records show diagnoses of lumbar disease with myelopathy, acute bilateral back pain without sciatica, intervertebral disc disorder with myelopathy – lumbar, and a history of osteoarthritis – left glenohumeral joint, among numerous other conditions. His medical records also reference sleep apnea.¹

Mr. V experienced a sudden exacerbation in his neck and back pain in October and November 2020. He did not recall anything that might have triggered it. He described his back and neck as “popping” and “crunching” and said that he was wearing a neck brace approximately three times per week.² Mr. V went to see his primary care doctor, Dr. B, in mid-October 2020,

¹ Ex. E, pp. 14 – 18.
² Mr. V’s testimony.

due to his increased pain in his upper mid back and lower cervical spine. The notes from that October 13, 2020 appointment stated “we reviewed that he won’t meet Medicaid criteria for MRI spine at this time.”³ He was then referred for physical therapy, which he completed.⁴ The notes from an October 29, 2020 medical appointment mention Mr. V going to physical therapy and state that “we need 3 to 4 weeks of good PT for Medicaid to even consider imaging of the spine.”⁵

Mr. V’s doctor subsequently requested, on November 20, 2020, that the Medicaid program authorize cervical, thoracic, and cervical MRIs for him. That request was sent to Comagine, the Division’s reviewer for prior authorization requests, for its review. Following that review, the Division notified him that the request for the MRIs was denied. The denial letter essentially stated that Mr. V had not completed conservative care, and that there were not medical symptoms to justify the MRIs.⁶

Dr. Raman is an assistant medical director at Comagine. He has considerable medical experience and expertise, has board certifications, and was an adjunct clinical instructor at the University of Washington medical school. After the Division issued its denial letter, he attempted to contact Dr. B, Mr. V’s doctor. He was not able to speak to Dr. B, but did speak to his assistant, who confirmed that Mr. V had completed physical therapy and had recent x-rays. Copies of the physical therapy records and x-rays were to be provided Comagine but were not.⁷

At hearing, the Division did not dispute that Mr. V had been provided conservative medical care. Dr. Raman first opined that as a general matter, that 30% of MRIs revealed abnormalities that resulted in inappropriate surgeries, and that for someone such as Mr. V with sleep apnea issues, that MRIs under sedation were medically risky. Secondly and more specifically, he had reviewed Mr. V’s prior imaging studies and found that Mr. V’s current symptoms were attributable to facet joint arthritis, and that new MRIs would not be useful. He also did not find any evidence of any nerve root or spinal cord compression that could justify an MRI, and that there had not been any testing of Mr. V’s rectal tone. Based upon his review of Mr. V’s medical records, he did not find any symptoms that would support a finding that the

³ Ex. E, p. 14.

⁴ Ex. E, p. 15; Dr. Raman’s testimony.

⁵ Ex. E, p. 3.

⁶ Exs. D, E.

⁷ Dr. Raman’s testimony; Ex. F, p. 4.

MRIs were medically necessary. He also stated that Mr. V's doctor's request for the MRIs did not necessarily mean that the doctor thought they were medically necessary.⁸

Dr. Raman's notes from his attempt to contact Dr. B, Mr. V's doctor, specify that the conditions that were looked for and not found were "acute spinal instability, cervical or thoracic myelopathy symptoms, or cauda equina symptoms", "compelling information to consider acutely progressing neurogenic claudication," myelopathic signs for the thoracic spine, or "documentation of a radicular thoracic pain syndrome, sensory deficit, or motor deficit" among others.⁹ The medical imaging studies that were reviewed were 2018 x-rays of the cervical spine, and 2013 and 2016 MRIs of the lumbar spine.¹⁰

III. Discussion

This case involves the issue of whether the Medicaid program should authorize the MRIs that were requested by Mr. V's physician. Mr. V bears the burden to establish by a preponderance of the evidence that the Division's decision to deny the requested MRIs was incorrect.¹¹

The Medicaid program will only pay for medical services that are "medically necessary."¹² It will not pay for services that are "not reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system" or that are not "medically necessary."¹³ The critical question here is whether the MRIs, which are diagnostic tools, are "reasonably necessary for the diagnosis and treatment" or "medically necessary" for the treatment of Mr. V. It should first be noted that by requesting authorization for the MRIs, Mr. V's treating physician was stating that they were medically necessary.

The federal courts have held that an individual's physician's treating opinion regarding whether a treatment is necessary is presumed to be correct:

⁸ Dr. Raman's testimony.

⁹ Ex. F, p. 4.

¹⁰ Ex. F, p. 5.

¹¹ 7 AAC 49.135; *Alcohol Beverage Control Bd. v. Decker*, 700 P.2d 483, 485 (Alaska 1985); 2 AAC 64.290(e) (preponderance of the evidence means that a fact is proven to be more likely true than not true).

¹² 7 AAC 105.100(5).

¹³ 7 AAC 105.110(1) and (2).

The Medicaid statute and regulatory scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.¹⁴

In general, more weight is given to a treating physician’s opinion than the opinions of those who do not treat a claimant.¹⁵ An examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining physician.”¹⁶ An administrative law judge must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician.¹⁷ Even when a treating or examining physician’s opinion is contradicted, that opinion “can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record.”¹⁸ “The opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician *or* a treating physician.”¹⁹

The Division’s evidence that the MRIs were not reasonably or medically necessary consists of a statement in the notes from an October 13, 2020 medical appointment that stated “we reviewed that he won’t meet Medicaid criteria for MRI spine at this time,” and the review notes from Comagine’s reviewers, including Dr. Raman, and Dr. Raman’s testimony.

The statement contained in the October 13, 2020 medical appointment notes cannot be construed as an admission that the MRIs were not reasonably or medically necessary. At the most, they simply state that Mr. V’s doctor thought Medicaid would not approve the MRIs at that time. This is corroborated by the statement in the October 29, 2020 medical appointment notes that the doctor believed that Mr. V completing three or four weeks of physical therapy was a prerequisite to Medicaid approving the MRIs. However, the MRI request was not made on either October 13 or 29, 2020. The request was made on November 20, 2020, after Mr. V had been sent to physical therapy. As such, the statement in the October 13, 2020 medical appointment notes does not establish that Mr. V’s doctor thought that the MRIs were not reasonably or medically necessary.

The Comagine reviewers’ notes and Dr. Raman’s testimony are their medical opinions based upon older medical records of Mr. V that predate the exacerbation of his symptoms that

¹⁴ *Weaver v. Reagen*, 886 F.2d 194, 200 (8th Cir. 1989).

¹⁵ *Lester v. Chaier*, 81 F.3d 821, 830 (9th Cir. 1996).

¹⁶ *Id.* at 830 – 831.

¹⁷ *Id.*

¹⁸ *Id.* at 830 – 831.

¹⁹ *Id.* at 831.

resulted in his October 2020 appointment with his doctor and the consequent November 2020 request for the MRIs. These are the medical opinions of reviewing physicians. They did not treat or examine Mr. V. As such, their opinions alone do not constitute sufficient evidence for them to supersede the medical opinion of Mr. V's doctor. Instead, there must be substantial evidence in the record as a whole that supports their opinion.

While the Comagine reviewers, including Dr. Raman, cannot be faulted for their failure to consider the more recent imaging and physical therapy records, given that those records were requested and not provided, their opinions and the record do not rise to the level of the substantial evidence required to supersede Dr. V's doctor's opinion of medical necessity. Dr. Raman's testimony that Mr. V's doctor's request for the MRIs did not necessarily mean that the doctor thought they were medically necessary, is speculative and given no weight. As a result, given the deference afforded to Mr. V's doctor's opinion, as his treating physician, Mr. V has met his burden of proof in this case, and the Division's denial of the request for the MRIs is reversed.

IV. Conclusion

The Division's determination that prior authorization should not be granted for Mr. V's request for cervical, lumbar, and thoracic MRIs is REVERSED.

Dated: February 25, 2021

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 11th day of March, 2021.

By: *Signed* _____
Name: Lawrence A. Pederson
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.]