

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

In the Matter of)
)
N H) OAH No. 21-0508-MDX
) Agency No.
_____)

DECISION

I. Introduction

N H is a Medicaid recipient who does not have a fixed dwelling. He currently lives in his car. He has a serious health condition which requires that his legs be elevated for symptomatic relief. His doctor requested prior authorization from Medicaid for 30 days of lodging and meals, to allow him to elevate his legs, which he cannot do in his car.

The Division of Health Care Services (Division) denied the request for prior authorization because the Medicaid program only allows it to provide lodging and meals to recipient who are traveling outside their home community for medical treatment. Mr. H disagreed with the Division's denial and requested a hearing. His hearing was held telephonically on April 12, 2021. Mr. H represented himself with the assistance of his daughter K D. Both Mr. H and Ms. D testified. Laura Baldwin was the Division's representative. Maria Pokorny, the Division's Medicaid Transportation Services manager, testified for the Division.

The evidence at hearing shows that Mr. H's need to elevate his legs, although medically necessary, does not allow the Medicaid program to provide him with lodging and meals. This is because he resides in the City A area, even though he does not have a fixed dwelling (house, apartment, etc.) to call home. Consequently, the Division's denial of the preauthorization request for lodging and meals is AFFIRMED.

II. Facts¹

Mr. H is a Medicaid recipient who had a heart attack in September 2020. He came to City A for a medical appointment in March 2021 and has been staying in City A since then. He lives in his car. He owns property located approximately 45 miles driving from City A. The property does not contain a dwelling structure. It had a tent and other necessary supplies, but they were stolen when he was in City A for medical care.

¹ The facts are established by a preponderance of the evidence. They are based upon, unless otherwise stated, the hearing testimony of Mr. H, Ms. D, and Ms. Pokorny.

Mr. H has severe exceedingly painful swelling in his legs, which limits his mobility. For example, he has to use the shopping cart as a wheeled walker when he goes to a grocery store. It also impacts his ability to drive due to pain. With the combination of the pain and his medications, he cannot drive the full distance to his property, even in stages. His doctors have told him that he cannot do his cardiac rehabilitation until the swelling goes down. Because he is living in his car, he cannot elevate his legs properly so that the swelling will go down.

On March 25, 2021, the Clinic A (CA), Mr. H's medical provider requested prior authorization from Medicaid for Medicaid to provide Mr. H with 30 days of housing.² As part of that request, CA provided copies of Mr. H's medical records from his March 22, 2021 appointment with Dr. D at CA, and copies of hospital records from September 25 and 27, 2020, December 22, 2020, and March 19, 2021.³ The request also included a March 25, 2021 letter from Dr. D, which reads as follows:

N H was admitted to the hospital with an acute MI on September 25, 2020. He has since that time reported bilateral lower extremity edema. He was seen again in the ER on March 19, 2021 for bilateral lower extremity swelling and he was given discharge instructions to elevate his legs. N is homeless and currently living in his vehicle therefore, he is unable to elevate his legs due to the size of the vehicle. He is currently experiencing stiffness, pain, and difficulty walking. These issues will continue until the swelling resides. N has a plan in place to get housing in approximately 30 days. It is medically necessary for N to have housing in a hotel for a total of 30 days in order for him to elevate his legs.⁴

The Division denied the prior authorization request. In its denial, the Division stated that the reason for the denial was that Mr. H was residing in City A and that the Medical program could "only cover meals and lodging for medically necessary travel outside of a recipient's city of residence."⁵

III. Discussion

The Medicaid program contains a number of restrictions upon what services to recipients that it will pay for. The specific regulation that governs accommodations (lodging, food) specifically provides:

The department will pay for accommodation services, including food and lodging, that are authorized by the department and incurred by a recipient and the recipient's authorized escort who are required to travel to receive necessary

² Ex. E.

³ Ex. F.

⁴ Ex. F, p. 2.

⁵ Ex. D.

medical care and cannot reasonably return to the recipient's home community on the same day.⁶

It should first be noted that Dr. D's letter states that the accommodation services are medically necessary to allow Mr. H to elevate his legs and reduce the swelling. The Division's denial letter did not challenge Dr. D's conclusion of medical necessity, nor does it argue that elevation of Mr. H's leg is not medical care.

The Division's denial was based on the fact that the housing was not needed for Mr. H to travel outside his home community for medical treatment. Mr. H argued that City A was not his home community and the property that he calls home is located approximately 45 miles away from City A. He has also been in City A since March of 2021 living in his car. City A is therefore his home community. As a result, the applicable Medicaid regulations do not allow it to pay for his lodging, even for a medically necessary purpose, within City A. This conclusion is the same even if Mr. H's property outside City A is his home, due to its proximity to City A.

Mr. H persuasively argued that his currently living situation does not allow him to elevate his legs, which is necessary to reduce his painful and debilitating swelling. However, the Alaska Medicaid regulations do not allow for a hardship exception that allows the Medicaid program to ignore its regulations or carve out exceptions to them.⁷ The Division therefore does not have the ability to ignore its regulations. "Administrative agencies are bound by their regulations just as the public is bound by them."⁸

IV. Conclusion

The Division's denial of Mr. H's prior authorization request for 30 days of lodging and meals is AFFIRMED.

Dated: April 21, 2021.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

⁶ 7 AAC 120.425(a).

⁷ The Alaska Medicaid program previously allowed an "undue hardship" exception to the strict application of its regulatory requirements. However, the regulation that allowed this exception, 7 AAC 43.080(a), was repealed in 2004 (Register 170).

⁸ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

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 6th day of May, 2021.

By: *Signed* _____
Name: Z. Kent Sullivan
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.]