

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

In the Matter of	)	
	)	
Z N	)	OAH No. 21-0579-MDX
_____	)	Agency No.

**DECISION**

**I. Introduction**

Z N is a young child who is a Medicaid recipient. Her health care provider requested that the Medicaid program provide her with a wheelchair. The Division of Health Care Services (Division) approved the request for the wheelchair but denied two of the requested options, which were for poly casters and pneumatic tires with airless inserts (airless tires). Standard tires that came with the wheelchair were approved.

Z’s parents requested a hearing to challenge the denial of the airless tires. Z’s hearing was held telephonically on May 3, 2021. Z’s mother, P N represented Z’s interests and testified on Z’s behalf. Laura Baldwin, a Division hearing representative, represented the Division. Tracy Stephens, a Division manager for the durable medical equipment program, testified for the Division.

The evidence in this case shows that the airless tires, although useful, are not medically necessary. As a result, the Division’s denial of the request for them is AFFIRMED.

**II. Facts**

Z is a young child. H T, her physical therapist submitted a “Physical Therapy/Assistive Equipment Letter of Medical Necessity” that requested pneumatic tires with airless inserts for the rear tires (airless tires). The request stated that “[t]hese wheels are necessary for optimal maneuverability and stability of the wheelchair. Z lives in a rural area and the closest repair shop is at least 30 miles away.”<sup>1</sup> Ms. T signed the letter, which stated the recommendations are medically necessary. Dr. F, DO, also signed the letter under the typed statement “I agree with the above findings & recommendations.”<sup>2</sup>

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<sup>1</sup> Ex. E, p. 13.

<sup>2</sup> Ex. E, p. 14.

The Division approved Z receiving a wheelchair. However, it denied two of the requested components, the poly casters and the airless tires as not being medically necessary.<sup>3</sup> The denial of the airless tires was appealed. The poly casters were not.<sup>4</sup>

Ms. Stephens is a program manager for Medicaid's durable medical equipment program. She reviewed the request for the airless tires and concluded that the tires were not medically necessary, and that the wheelchair came with standard tires. The standard tires are the same size as the airless tires. A registered nurse with Conduent, a company that does medical request reviews for the Division, also reviewed the request, and also agreed that the airless tires were not medically necessary.<sup>5</sup>

Ms. N testified that the airless tires were necessary for the mobility of the wheelchair, and that Z's physical therapist, who works with Z five days per week, said that the tires were required.<sup>6</sup>

### **III. Discussion**

In reviewing the denial of Z's request for the pneumatic tires with the airless inserts, the critical question is whether those specialized tires are medically necessary. This is because the Alaska Medicaid regulations explicitly state that Medicaid will only pay for medically necessary services and items<sup>7</sup> and will not pay for items and services that are:

- 1) not reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system, as determined upon review by the department, or that is not identified in a screening required under 7 AAC 110.205;
- (2) not properly prescribed or medically necessary in accordance with criteria established under 7 AAC 105 - 7 AAC 160 or by standards of practice applicable to the prescribing provider;<sup>8</sup>

The first issue is medical necessity. The evidence shows that Z's physician has stated that the airless tires are medically necessary by the signature to the provision agreeing with the authorization request.

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<sup>3</sup> Ex. D; Ms. Stephens' testimony.

<sup>4</sup> Ex. C.

<sup>5</sup> Ms. Stephens' testimony.

<sup>6</sup> Ms. N's testimony.

<sup>7</sup> 7 AAC 105.100(5).

<sup>8</sup> 7 AAC 105.110.

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

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.<sup>9</sup>

In general, more weight is given to a treating physician's opinion than the opinions of those who do not treat a claimant.<sup>10</sup> An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician."<sup>11</sup> An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.<sup>12</sup> 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."<sup>13</sup> "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."<sup>14</sup>

In this case, there is no physician's opinion, treating, examining, or reviewing, that contradicts the medical necessity opinion posited by Z's doctor. The deference afforded Dr. F's medical opinion of medical necessity is not the end of the discussion. Under 7 AAC 105.110(1), the requested components must be "reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system." However, there is no evidence shows that the airless tires are "reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system." The airless tires instead are desirable, per the physical therapist's written statement, from a convenience standpoint because they require less repairs, given the fact that the nearest repair facility is 30 miles away. This is not a medical reason. Ms. N's testimony was based on her discussions with the therapist.

As a result, there is substantial evidence showing that the airless tires for Z's new wheelchair are not medically necessary. This means that her request for those tires was properly denied.

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<sup>9</sup> *Weaver v. Reagen*, 886 F.2d 194, 200 (8<sup>th</sup> Cir. 1989).

<sup>10</sup> *Lester v. Chaier*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996)

<sup>11</sup> *Lester* at 830 – 831.

<sup>12</sup> *Lester* at 830 – 831.

<sup>13</sup> *Lester* at 830 – 831.

<sup>14</sup> *Lester* at 831.

#### **IV. Conclusion**

The Division's denial of Z's prior authorization request for airless tires for her wheelchair is AFFIRMED.

Dated: May 13, 2021.

Signed  
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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 27<sup>th</sup> day of May, 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.]