

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

In the Matter of)	
)	
E D)	OAH No. 18-1188 MDX
_____)	Agency No.

ORDER OF DISMISSAL ON SUMMARY ADJUDICATION

I. Introduction

E D requested a fair hearing after she was denied authorization for reimbursement for photochromic gray lenses. However, on December 26, 2018, the Department of Health and Social Services, Division of Health Care Services (Division) filed a Motion for Summary Adjudication because it overturned its denial and agreed to reimburse E D for the requested photochromic gray lenses. As the Division is agreeing to pay for E D’s photochromic gray lenses, there is no dispute to decide and the case is thus moot. Accordingly, the Division’s Motion for Summary Adjudication is granted.

II. Facts

The facts in this case are not in dispute.¹

E D is a Medicaid recipient diagnosed with “acquired cone dystrophy, which is a rare condition that causes her to be photophobic.”² On October 28, 2018, Ms. D’s medical provider, Dr. W M, O.D. submitted a request for photochromic gray lenses.³ The Division initially denied the request because the medical documentation Dr. M submitted in support of the request was over a year old.⁴

After E D requested a fair hearing, the Division approved the prior authorization request that was the basis of this fair hearing appeal in its entirety.⁵ The Division received additional documentation Dr. M, which the Division then concluded “warrants medical necessity for lenses.”⁶

¹ The facts are established by E D’s email regarding good cause for failure to appear, the Division’s position statement and Exhibit A-E, the Division’s Motion for Summary Adjudication.
² Exhibit E at 17.
³ Exhibit E at 12.
⁴ Exhibit D.
⁵ Division’s Motion for Summary Adjudication; Exhibit F (the attachments submitted with the Division’s Motion for Summary Judgment are marked as Exhibit F).
⁶ Exhibit F.

The Division filed its Motion for Summary Adjudication on December 26, 2018. A hearing was set for January 10, 2019; E D did not appear, although she called the Office of Administrative Hearing (OAH) later that day and told office staff her phone number was broken, and she had a new phone number.⁷

The OAH issued a Notice of Failure to Appear, requiring Ms. D to submit a written statement explaining good cause for her failure to appear. On January 27, 2019, E D emailed OAH explaining that she had experienced an outage with her cell service and that someone at Medicaid told her that the denial had been overturned and there was no hearing.⁸ The OAH found good cause for her failure to appear and gave her until February 7, 2019 to oppose the Division's Motion for Summary Adjudication. The OAH gave the Division until February 15, 2019 to provide any response to any opposition filed by E D. Neither E D nor the Division provided anything further.

III. Discussion

The Division filed a request for summary adjudication. A motion for summary adjudication in an administrative hearing is equivalent to a motion for summary judgment in a court case.⁹ Summary adjudication is a mechanism to “resolve matters of law when the facts are not in dispute.”¹⁰ In order to be entitled to summary adjudication, a party must present evidence that, if unrebutted, establishes that party's right to a decision in its favor; if the party meets that threshold, then the other party must present evidence that creates a genuine dispute as to a material fact.¹¹ In evaluating a motion for summary adjudication, if there is any room for differing interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom judgment may be granted.¹²

It is a fundamental legal principle that adjudicative bodies should typically abstain from deciding a question where the facts have rendered the legal issues moot.¹³ A case is moot if it has lost

⁷ A note of her call is reflected in the OAH's file from Legal Assistant Allan Alcancia.

⁸ E D's email of January 27, 2019 is marked and admitted as Exhibit G.

⁹ *In re C. K.*, OAH 06-0860-PER (OAH 2006), available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=4985>.

¹⁰ *In re C. K.* at 1.

¹¹ 2 AAC 64.250(b). An issue of fact is “material” if it would make a difference in the outcome. *See Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968).

¹² *In re C. K.*

¹³ *Akpik v. State, Office of Management & Budget*, 115 P.3d 532, 535 (Alaska 2005); *Vanek v. State, Bd. Of Fisheries*, 193 P.3d 283, 287 (Alaska 2008).

its character as a present, live controversy.¹⁴ A prime consideration when deciding whether a case is moot is whether the relief requested is still effectively available—a case is moot if “the party bringing the action would not be entitled to any relief even if they prevail.”¹⁵ Mootness is a question of law.¹⁶

Here, the relief available to E D through this appeal is narrow. It is limited to the October 28, 2018 request for photochromic gray lenses. After agreeing to authorize her request, there is no dispute between the Division and E D regarding Dr. M’s October 28, 2018 request for photochromic gray lenses. The Division’s agreement to pay resolves the matter in its entirety.

Because there is no longer a denial of medical assistance at issue, this case does not present a hearable issue under 7 AAC 49.100 (1). Accordingly, it is subject to dismissal under 7 AAC 49.100(1). That regulation delegates to the administrative law judge the authority to enter a final order of dismissal

IV. Conclusion

Because the relief available to E D through the OAH appeal process is narrow and limited to authorization of the underlying medical claims, the Division’s authorization of E D’s October 28, 2018 request for photochromic gray lenses renders this case moot. The Division’s Motion for Summary Adjudication is GRANTED.

Appeal Rights: This is a final order for purposes of appeal rights. 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 order.

DATED: February 22, 2019

By: Signed _____
Hanna Sebold
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

¹⁴ *O’Callaghan v. State*, 920 P.2d 1387, 1388 (Alaska 1996); *Ahtna Tene Nene v. State, Dept. of Fish & Game*, 288 P.3d 452, 457 (Alaska 2012).

¹⁵ *O’Callaghan*, 920 P.2d at 1388.

¹⁶ *Akpik*, 115 P.3d at 534.