

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

In the Matter of)	
)	
D E)	OAH No. 20-0969-MDX
_____)	Agency No.

DECISION

I. Introduction

D E is a Medicaid recipient. The Business A Ambulance service (BAA) requested the Medicaid program authorize payment for emergency medical transport services provided to him on May 7, 2020. The Division of Health Care Services (Division) denied the request. Mr. E requested a hearing to challenge the denial.

Evidence at the hearing did not establish that Mr. E’s medical condition was sufficiently severe to qualify for emergency transport as defined by regulation. Therefore, the Division’s decision denying authorization of payment is on that basis is Affirmed.

II. Facts

The following facts were established by a preponderance of the evidence.

A. Procedural Background

D E is a Medicaid benefit recipient. He requested emergency ambulance transport services from BAA to assist him from his home to Hospital A on May 7, 2020.¹

BAA submitted a payment authorization request for the transport.² The request was accompanied by 4 pages of patient and transport records, commonly referred to as the medical run sheet.³

The request was denied August 19, 2020.⁴ The denial was based on the Division’s determination that emergency transport was not medically necessary because Mr. E’s medical condition at the time did not meet established regulatory criteria or standards of practice to demonstrate an emergency.⁵

Mr. E appealed.⁶

¹ Ex. D.
² Ex E.
³ *Id.*
⁴ Ex. D
⁵ *Id.*
⁶ Ex. C.

B. The Hearing

The telephonic hearing took place January 15, 2021. The record remained open until February 16, 2021 to receive additional medical records and briefing. Fair Hearing representative Laura Baldwin appeared on behalf of the Division. Vivian Drake, the nurse who made the review determination, was her primary witness. Exhibits A-E were admitted. Mr. E represented himself and called his sister, L E, and his mother, N E, as witnesses.

Ms. Drake made the denial of authorization decision. She is the nurse reviewer for durable medical equipment, lifeline, and medical transport services payment requests. Her background includes twenty years' nursing experience with extensive involvement in emergency care services.⁷

Ms. Drake based her denial on the information contained in the medical run sheet submitted with the authorization request.⁸ She concluded the medical run sheet did not demonstrate Mr. E needed emergency transport. That is, he did not have an unexpected, immediately life-threatening condition justifying authorization.⁹

Ms. Drake discussed her conclusion that Mr. E did not have an unexpected, immediately life-threatening condition justifying emergency transport authorization in some detail. The primary item of import to her analysis was a notation on the first page of the medical run sheet specifically stating Mr. E's travel was "non-emergent." This phrase is used by emergency medical services (EMS) staff to indicate the patient is stable and not in immediate threat of death or cardiac arrest. This notation is made when the patient's condition is not directly life-threatening.¹⁰

Other medical notations showed Mr. E's vital signs to be within normal ranges. For example, on page 3 of the run sheet, Mr. E's blood pressure was listed as 109/67; his oxygen saturation was 96% breathing normally on room air; his blood glucose was 107; and his heart rate was consistent with the resting rate of a young adult man. The only reading outside the norm was his temperature listed at 99.6. This reading is consistent with fever and dehydration.¹¹

⁷ Testimony of V. Drake.

⁸ *Id.*

⁹ *Id.*

¹⁰ Ex. E; Testimony of V. Drake.

¹¹ *Id.*

Ms. Drake identified other medical notations which indicated Mr. E was not exhibiting symptoms consistent with the criteria for emergency transport. First, she noted the ambulance call listed “headache” as the reason for dispatch. A headache would not commonly be an immediately life-threatening medical condition.¹²

Second, Ms. Drake interpreted the phrase patient “states he is able to walk to the stretcher in the hallway” contained in the records to mean Mr. E did in fact walk from his room to the gurney. She additionally interpreted the phrase Mr. E “rested comfortable (sic) in the ambulance while waiting” to mean he was not in respiratory distress. Ms. Drake testified she believed the notations that Mr. E’s breathing sounded “clear” with “normal” effort ratified her interpretations. Lastly, repeated references within the run sheet to an injury to Mr. E’s arm indicated to Ms. Drake that pain in that extremity was the major concern expressed to EMS the evening of transport.¹³

Ms. Drake’s overall conclusion was that while Mr. E might have been under the weather for a few days, the ambulance was more likely than not called seeking transport for care to a non-life-threatening emergency. Denial of payment for emergency and non-emergency services was appropriate under this totality of circumstances, in her opinion.¹⁴

In contrast, Mr. E argued that a medical emergency justifying his transport on May 7, 2020 existed because, although he had been sick for some period, a sudden change in his respiratory ability occurred and created a medical emergency. In his opinion it was imperative he seek immediate medical care for his respiratory functioning. He was also experiencing fever, dehydration, and general weakness. According to Mr. E, the information on the run-sheet while technically accurate did not correctly reflect his degree of distress.¹⁵

Mr. E and his family testified that he had been extremely ill for two weeks or more before the ambulance was called. His mother, who is employed as a personal care attendant, testified that Mr. E consistently ran a temperature over 100 for several days before the ambulance was called. He had severe headaches and chills. He was unable to keep food or liquid in his system. His urine was a dark color she had never observed before. Ms. E testified that based on her

¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ Testimony of C. E.

observations, she urged her son to the hospital prior to May 7, 2020, but he delayed seeking help until it was a crisis because he is unemployed and unable to pay the co-payment.¹⁶

Mr. E testified that he was prompted to call an ambulance on May 7, 2020 when the cough in his chest changed to a deep rattle with phlegm-soaked shaking that frightened him. He struggled to breath and was worried he would be unable to continue to do so. At that point he also felt very weak. He was worried his symptoms were consistent with Covid-19 and he would die.¹⁷

Mr. E asked his sister, L, for help. L called N at her job as a personal care attendant for advice. Mr. E's father chauffeured N to work in the family's only car that day, and his whereabouts and likelihood to return were unknown.¹⁸ According to L when she checked for commercial transport, she was told a taxi would not be available for more than an hour and possibly more than two hours.¹⁹

Mr. E, therefore, decided to call an emergency ambulance. When the ambulance arrived, Mr. E told EMS that he could walk to the gurney. However, when he attempted to do so, he was unable to walk without assistance.²⁰ EMS gave him oxygen before he got into the ambulance which eased his breathing before he was transported. Mr. E opined that the run sheet notation regarding his oxygen saturation and breathing ability was therefore correct, but it did not accurately reflect the seriousness of his medical state.²¹

Mr. E's mother was able to join him at the hospital more than an hour after he arrived at the emergency department. She insisted he be given priority due to the seriousness of his distress. According to their testimony, Mr. E was admitted to the hospital for several hours before released with a diagnosis of walking pneumonia.²² He was driven home from the hospital by a friend, and it took the assistance of several people to get him into the home and place him on the couch.²³ Mr. E remained on the couch for two weeks of recuperation.²⁴

¹⁶ Testimony of N E.

¹⁷ Testimony of C. E.

¹⁸ *Id.*

¹⁹ Testimony of L E. L and D E testified that although the E residence is not geographically far from the hospital, it is isolated on a large property on a back road.

²⁰ Testimony C. E; Testimony of L E.

²¹ Testimony of C. E.

²² Testimony of N E; Testimony of C. E.

²³ *Id.*

²⁴ *Id.*

The Es testified that the hospital released Mr. E with prescriptions for a serious cough suppressant, antibiotics, and two medical devices.²⁵ He was given a home spirometer to monitor and improve his lung function. He was also given a bedpan because hospital staff recognized he was too weak to walk to the bathroom.²⁶ Ms. Drake confirmed that Medicaid paid for these prescriptions, including the respiratory medical device.²⁷

Mr. E identified portions of the run sheet that corroborated his version of events. Those portions described his complaints as suffering from headache, fever, and cough. They identified his fever. They also confirmed EMS were informed that Mr. E had not been eating or drinking, especially in the last three days.²⁸

III. Discussion

Mr. E has the burden of proving, by a preponderance of the evidence, that the Division's denial of authorization for his emergency medical transport was incorrect.²⁹

The Alaska state Medicaid regulations governing medical transportation and accommodation services are located at 7 AAC 120.400 - 7 AAC 120.490. The Alaska Medicaid program will pay for medically necessary transportation for a Medicaid recipient. The Medicaid program will not pay for transportation services the Division determines are excessive or inappropriate for the medical needs of the recipient.³⁰

Unless the transportation is for a medical emergency, the transportation must be requested by a medical provider and approved in advance.³¹ 7 AAC 120.490(2) defines "emergency transportation" as "the transportation necessary immediately when a sudden, unexpected occurrence creates a medical emergency."

In this case the medical transport records accompanying the request for emergency transport authorization did not establish a life-threatening medical condition caused by a sudden, unexpected occurrence made immediate transport by ambulance necessary. To the contrary the records describe Mr. E's medical condition as sick but stable at the time of his transport on May

²⁵

Id.

²⁶

Id.

²⁷

Testimony of V. Drake.

²⁸

Testimony of C. E; Ex. E.

²⁹

7 AAC 49.135.

³⁰

7 AAC 105.110(2); 7 AAC 120.405(c).

³¹

7 AAC 105.130(a)(1); 7 AAC 120.405; 7 AAC 120.415.

7, 2020. The Division did not err when it denied authorization for payment in reliance on that information.

Thus, the question became whether Mr. E met his burden of proof through the presentation of evidence at the hearing. Mr. E credibly testified he had been ill, and his illness materially worsened on May 7, 2021. The labored breathing that he and his family described is consistent with respiratory difficulty and walking pneumonia. It was reasonable for him to seek medical care.³² The medication and medical device prescriptions subsequently paid for by the Division confirm that Mr. E's medical condition required treatment.

However, the test for authorization of emergency transport is not whether the Medicaid recipient reasonably needed some form of medical care. The test is an objective one of whether at the time transport was made a sudden, life-threatening medical condition existed. Walking pneumonia, although often a miserable medical condition, does not meet that criteria. Mr. E failed to establish that his medical condition on May 7, 2020 met the criteria for emergency transport authorization.³³

IV. Conclusion

Although Mr. E did establish that he was ill on May 7, 2020, the evidence in the medical run sheet and presented at the hearing did not establish that his medical condition was sufficiently severe to qualify for emergency transport as defined by regulation. Therefore, the Division's decision denying authorization of payment is on that basis is Affirmed.

Dated: February 23, 2021

Signed _____
Carmen E. Clark
Administrative Law Judge

³² Ex B., p. 8.

³³ Mr. E argued that the medical run sheet did not accurately describe the full extent of his medical condition, and his hospital medical records should be considered because they were relevant to his medical condition at the time of transport. The administrative law judge agreed information from Mr. E's hospital records or the full BBA report could provide additional information critical to understanding the seriousness of Mr. E's medical condition on May 7, 2020. The hearing was therefore held open until February 5, 2021 for Mr. E to submit additional medical records. The Division was given until February 16, 2021 to file a response. The Office of Administrative Hearings (OAH) did not receive additional medical records from Mr. E.

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 9th day of March, 2021.

By: Signed
Name: Carmen Clark
Title: Administrative Law Judge

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