BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
M L	)	OAH No. 21-0291-PER
	)	Agency No.

FINAL DECISION[1]

I. INTRODUCTION

M L secured health insurance coverage for his adult son, H, through a 2018 settlement agreement with the Department of Administration, Division of Retirement and Benefits ("Division"). That agreement noted that coverage was not permanent and that the Division could require certain information annually. The Division denied 2021 insurance coverage for H for failure to provide this information. The Division and Mr. L disagree about what information the Division may require under the settlement agreement.

As discussed below, the language of the settlement agreement, evidence regarding its formation, and the conduct of the parties demonstrate that the Division may require documentation that H's condition currently prevents him from working full time. But the agreement does not limit or dictate the form or source of this information. Regardless of the form, Mr. L did not provide this information. The Division's denial of 2021 coverage for H is affirmed.

II. FACTS

The Division denied 2019 health insurance coverage for Mr. L's adult son, H, who had been diagnosed with Autism Spectrum Disorder.[2] On appeal, Mr. L and the Division participated in a successful mediation that resulted in a settlement agreement. The mediator articulated that agreement on the record, stating that if the parties accept the agreement orally, the Division "will type up a more formal settlement agreement that the parties will then sign."[3] The mediator summarized the agreement as follows:

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[1] This decision has been modified from an earlier proposed decision to add Section IV in response to a proposal for action submitted by Mr. L pursuant to AS 44.64.060(e).

[2] R. 62.

[3] A document purporting to be a transcript of this proceeding appears in the record starting at R. 20, having been attached to Mr. L's appeal at an earlier stage. This document does not identify its provenance, but appears to be an informal transcription. For clarity, some punctuation and repeated words have been cleaned up in quotations from that document in this decision.

> The agreement that the parties have reached is that, based on the facts of H's current medical situation, the division has determined that H is incapable of employment because of a mental incapacity, and that therefore he is eligible to receive insurance going forward, backdated to the October date of his termination of insurance coverage. This, the insurance coverage, is not guaranteed to be permanent. On an annual basis the division, and through its representative, currently is Aetna, will be asking for information to confirm that H is still in fact incapable of employment because of the mental incapacity. The division is requiring that Mr. L provide current medical information, current complete medical information, regarding H's current medical situation. The division agrees that if H does take minimal and therapeutic employment that would not negate insurance coverage. However, if H does return to a more significant level of employment, the division is going to have to do an evaluation of whether he still meets this requirement of being incapable of employment because of a mental disability, a mental incapacity, based on the facts and circumstances for whatever employment H is able to have.[4]

The parties agreed to this summary of terms on the record.[5] For clarification, Mr. L asked if he would need to provide "documentation regarding the employment to make this effective now or are we good for a year and then we redo it then?"[6] The Division's representative responded that H's "status will be good for one year."[7]

The parties then exchanged drafts of a written settlement agreement. At one point, the draft included language that made continuing coverage contingent on "a statement from [H's] healthcare provider confirming that H's mental or physical incapacity prevent him from attending school/college on a full-time basis or being employed on a full-time basis."[8] Mr. L stated at oral argument that he rejected this language and would not have accepted a settlement that required an annual submission from a medical provider.[9]

The final signed settlement agreement states:

> The parties agree that H's parents and care providers will work with him to explore and test his ability for employment, for living outside their home and for attending an accredited educational or technical institution. On an annual basis the Division through its representative, currently Aetna, will be asking for information to confirm that H is still incapable of permanent full-time employment.[10]

Pursuant to the settlement agreement, the Division provided coverage for 2019.

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4 *Id.*
5 *Id.*
6 R. 21.
7 *Id.*
8 R.24.
9 *See also* L Reply at 5 (notes on pg. 2 of Division's brief).
10 R. 9.

2020 Coverage

In late 2019, Aetna asked Mr. L to fill out two of its standard forms, GC-463 and GC-464.[11] The GC-463 is a form for parents of a disabled dependent and asks for information on whether a dependent is working or attending school.[12] The GC-464 form is for a disabled dependent's physician and asks for information including how a dependent's condition prevents employment.[13] Mr. L objected to providing the GC-464 physician's form, arguing that the settlement agreement did not require it.[14] The Division disagreed, stating that it interpreted the settlement agreement to require an annual reassessment based on updated medical documentation.[15] The parties exchanges several emails, but found themselves at an impasse.[16]

Deputy Commissioner of Administration Paula Vrana arranged a phone call with Mr. L for December 23, 2019.[17] According to Mr. L, Deputy Commissioner Vrana "agreed that a statement from his healthcare provider, GC-464, was deleted from the Agreement and is not required" and that "she would make sure H is on the plan for 2020 and would call [Mr. L] back if she changed her decision."[18] There is no other account of this call or a written decision in the record, but the Division did provide coverage for 2020.[19]

2021 Coverage

Starting on October 5, 2020, Aetna reached out to Mr. L for information to support H's coverage for 2021.[20] The record includes numerous letters and emails between Mr. L and Aetna or the Division over whether Mr. L needed to provide a GC-464 physician's form.[21] At that time, the Division claimed it was "an oversight" not to terminate H's coverage in 2020 after Mr. L did not provide this form.[22]

11 R. 32.
12 R. 13-15.
13 R. 16-18.
14 R. 32.
15 R. 31.
16 R. 28-32.
17 R. 5, 28.
18 R. 2.
19 R. 37.
20 R. 79.
21 *See*, *e.g.*, R. 66-78; R. 164-73.
22 R. 37.

Mr. L provided the GC-463 parent form, but not the GC-464 physician's form.[23] He objected repeatedly to being asked for the GC-464 form or any similar documentation from a health care provider, claiming that asking for this information violated the settlement agreement.[24]

The Division ultimately denied coverage for 2021 because Mr. L did not provide information "to confirm H continues to be incapable of permanent full-time employment due to a health disability."[25] The Division pointed to the language in the settlement agreement referring to both parents and care providers.[26] The Division stated that it could approve eligibility retroactively if Mr. L "provide[d] some form of credible documentation from a qualified care provider or evidence that is equally reliable which evidences his continued incapacity."[27] The Division followed up with another letter informing Mr. L of his appeal rights.[28]

Mr. L appealed, arguing that he did not need to provide a form GC-464 or similar annual statement from a healthcare provider because the settlement agreement did not explicitly include this requirement and language to that effect had been removed from drafts of the settlement.[29] The Division affirmed denial of 2021 coverage in a February 5, 2021 decision.[30] The Division found that the information Mr. L provided — a GC-463 parent form, links to educational materials on autism, and a referenced to a 2016 diagnosis — did not "confirm that H is currently incapable of permanent full-time employment."[31] The Division noted that "[w]hile there is no cure for [Autism Spectrum Disorder], the diagnosis itself does not conclude that H is currently incapable of permanent full-time employment, and the referenced reports are from over two years ago, indicating they are not reports detailing his current incapacity."[32]

Mr. L timely appealed to the Office of Administrative Hearings. The parties agreed this matter would be heard on the written record and briefs, along with an oral argument that was held May 12, 2021.

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23 R. 104.
24 *See*, *e.g.*, 104, 164-66; Appendix for L Supplement #1, Attachment #13.
25 R. 102.
26 *Id.*
27 *Id.*
28 R. 90-91.
29 R. 66-69.
30 R. 62-63.
31 *Id.*
32 *Id.*

III. DISCUSSION

The Division argues that the settlement agreement unambiguously provides for the Division to annually require information from a medical provider to support ongoing insurance coverage.[33] Mr. L argues that the settlement agreement unambiguously requires the Division to provide coverage without additional documentation from a physician because language about annual medical information was excluded from the final agreement and because autism is a permanent condition.[34]

The agreement and extrinsic evidence do not support either party's position —that medical documentation is required annually, or that it is never required. What the agreement allows the Division to require annually is information that H is incapable of working because of his autism — information that must both be current and demonstrate a causal link. As discussed below, Mr. L did not provide that information.

A. The Settlement Agreement Allows the Division to Require Proof that H's Condition Prevents Him from Working.

The goal in interpreting a contract is to give effect to the parties' reasonable expectations in entering the contract.[35] The parties' reasonable expectations can be evident in both the language of the contract and extrinsic evidence.[36] "The extrinsic evidence that may be considered includes the language and conduct of the parties, the objects sought to be accomplished and the surrounding circumstances at the time the contract was negotiated, as well as the conduct of the parties after the contract was entered into."[37] If the language and extrinsic evidence reveal an ambiguity, that ambiguity is resolved in light of the parties' intent.[38]

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33 Div. Br. at 13-23.

34 R. 69.

35 *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 305 P.3d 309, 315 (Alaska 2013) ("When interpreting a contract, the goal is to give effect to the reasonable expectations of the parties.") (cleaned up).

36 *Fairbanks North Star Borough v. Tundra Tours, Inc.*, 719 P.2d 1020, 1024 (Alaska 1986) ("The parties' reasonable expectations are assessed through resort to the language of the disputed provision and other provisions of the contract, relevant extrinsic evidence, and case law interpreting similar provisions."). The Division argues there are actually two agreements here — an oral agreement captured on the record immediately following mediation and a later written settlement agreement. It is unclear from the record whether the parties intended the written settlement agreement to be fully integrated agreement that discharges the prior oral agreement or a separate collateral agreement. *See*, *e.g.*, 11 Williston on Contracts § 33:28 (4th ed.) (distinguishing between collateral and included oral promises). This distinction is not critical to interpreting the parties' agreement because Alaska law requires consideration of both contract language and extrinsic evidence. The parties' oral articulation of the settlement is equally relevant whether it is a separate agreement or extrinsic evidence of the written agreement.

37 *Nautilus*, 305 P.3d at 316 (cleaned up).

38 Tesoro Alaska Co. v. Union Oil Co. of California, 305 P.3d 329, 333 (Alaska 2013).

The dispute here is over what information Mr. L must provide for H's continued insurance coverage. The Division and Mr. L focus primarily on the form of information and who must provide it. But the settlement agreement does not address form. The written agreement states that annually the Division "will be asking for information to confirm that H is still incapable of permanent full-time employment."[39] This language leaves open the form and source of information, creating flexibility, not ambiguity. The fact that the parties considered but ultimately did not include language requiring a specific healthcare provider statement indicates an intent to leave the form and source of information open-ended and broad. The fact that the Division granted eligibility for 2020 without receiving the GC-464 physician's form further demonstrates a flexibility on the source and form of supporting information.[40] For 2021, the Division initially asked a GC-464 physician's form, but then later clarified it would accept any "form of credible documentation from a qualified care provider *or evidence that is equally reliable which evidences his continued incapacity*."[41] In other words, the Division was prepared to accept documentation that was not a GC-464 or a physician's statement, so long at it demonstrated H's current inability to work.

The key element of the parties' agreement is thus not the form of the information, but the substance — specifically, proof that H's Autism Spectrum Disorder is continuing to prevent him from working. The agreement does not ask for mere confirmation that H is not working. He could be unemployed for a myriad of reasons. The parties agreed the Division could ask for confirmation H is "still incapable of permanent full-time employment"[42] and "still in fact incapable of employment because of the mental incapacity."[43] So even though the parties did not agree to a particular form of information, they did agree Mr. L could be required to provide information that demonstrates a causal link between H's condition and his ability to work.

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[39] R. 9. This is almost verbatim from the earlier oral recitation of the agreement. R. 20. ("On an annual basis the division and through its representative, currently is Aetna, will be asking for information to confirm that H is still in fact incapable of employment because of the mental incapacity.").

[40] The Division argues that the parties' conduct after entering the settlement agreement cannot be considered in interpreting that agreement. (Div. Br. at 23.) But the case the Division cites for this proposition did not exclude evidence of the parties' post-contract conduct. *Port Valdez Co. v. City of Valdez*, 437 P.2d 768, 771 (Alaska 1968). To the contrary, the Alaska Supreme court has more recently stated that the parties conduct after a contract is entered is in fact pertinent extrinsic evidence of the parties' intent. *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 305 P.3d at 316 ("The extrinsic evidence that may be considered includes the language and conduct of the parties, the objects sought to be accomplished and the surrounding circumstances at the time the contract was negotiated, as well as the conduct of the parties after the contract was entered into.").

[41] R. 102 (emphasis added).

[42] R. 9.

[43] R. 20.

The parties further agreed that the Division could require updated information annually because, while H's autism diagnosis may be immutable, his inability to work is not. The settlement agreement calls for documentation that H is "still incapable" of working. This language indicates an expectation that H's ability to work may change over time. That expectation is echoed in the settlement agreement where "[t]he parties agree that H's parents and care providers will work with him to explore and test his ability for employment."[44] The parties also discussed H's potential journey towards employment during the oral recitation of the settlement, in this exchange between a Division representative and Mr. L:

> Davis: . . . That status will be good for one year when they will do their annual review at that time. However, if circumstances do change, and to be honest I really hope they do, and he is able to either return to employment or attend college full time or whatever, then certainly let us know right away so that we can make any necessary changes we need to make.
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> L: Yup, that sounds great. That works for me.[45]

Mr. L further acknowledged at oral argument that the parties settled the earlier case with the understanding and common goal that H would one day hold a job. The settlement agreement language and parties' conduct thus demonstrate the parties' intent to reassess H's eligibility annually based on his current ability to work.

In sum, the language of the settlement and extrinsic evidence demonstrate an intent and understanding that the Division could request annual updates showing H's autism continues to prevent him from working. This settlement does not require a particular form of documentation. But it does require that the documentation provide proof of H's current condition and how that impacts his ability to work.

B. Mr. L Did Not Provide Proof That H is Incapable of Working Because of his Autism.

When asked to provide information confirming H is still incapable of working for, Mr. L provided a GC-463 parent form on which he stated that H had worked for five days in April 2020 and that his reason for not working most of the year was "Confidential Diagnosis Autism — State of AK has confidential copy of diagnostic report dated 08/21/2016."[46] Two months later, after

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44 R. 9.
45 R. 21.
46 R. 104 (at pg. 2 of attachment).

the Division had been requesting additional information, Mr. L provided two links to general information about autism from the Centers for Disease Control and Mayo Clinic.[47] This is the sum total of information Mr. L provided.

Background information about autism, a reference to a 2016 diagnosis, and a statement that H only worked five days does not show that H is currently unable to work because of his autism. As discussed above, the settlement agreement requires current information. The parties anticipated H progressing towards full time employment. Citing a diagnosis from more than four years ago does not provide information about H's current status.

Nor does a diagnosis plus the fact that H has not been working provide documentation that his autism is the reason he is not working. H may have been not working by choice. Or to avoid exposure to COVID-19. Or because of difficulty finding a job. From the sparse information Mr. L provided, the Division had no way of knowing if autism was H's reason for not working, let alone assess whether he is currently incapable of working because of it.

Whether Mr. L could demonstrate a causal link between H's condition and his unemployment without documentation from a physician or other health care provider is a factual decision for the Division to make when and if presented with such evidence.[48] As far as what Mr. L chose to provide the Division, it falls far short of demonstrating H's current condition or whether that condition renders him incapable of working. The parties agreed the Division could require such information annually for continued insurance coverage. Because Mr. L did not provide the information, the Division acted within its discretion to deny coverage for 2021.

IV. MR. L'S PROPOSAL FOR ACTION

The parties were given an opportunity to submit a proposal for action in response to this decision. Mr. L submitted a proposal that largely reiterated the arguments he raised earlier in briefing and oral argument. Mr. L proposed interpreting the settlement agreement to require Aetna and the Division to accept information from Mr. L alone, and that this information need not be current or demonstrate a causal connection between H's condition and his lack of full-time employment.[49] As discussed above, the language of the settlement agreement and extrinsic evidence do not support this interpretation.

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47 R. 73.

48 That factual decision would be subject to review under AS 39.30.006, but it is the Division's to make in the first instance.

49 Request for Proposal for Action to Proposed Decision at 5.

Mr. L also proposed an amendment to the settlement agreement.[50] Potential amendments are an issue the parties may discuss with each other outside the context of this appeal.

V. CONCLUSION

The settlement agreement allows the Division to require documentation that H's condition is continuing to prevent him from working. The agreement does not limit this documentation to information from H's parents. Nor does it dictate that it must be in the form of a physician's statement or GC-464 physician's form. What the agreement requires is documentation that is current and that demonstrates a causal link between H's autism and an inability to work. Mr. L did not provide this information. Accordingly, the Division's denial of coverage for the 2021 plan year is affirmed.

DATED: June 22, 2021.

By: *Signed*
Rebecca Kruse
Administrative Law Judge

Adoption

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED: June 22, 2021.

By: *Signed*
Rebecca Kruse
Administrative Law Judge

[50] *Id.*