

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

In the Matter of)	
)	OAH No. 19-0078-MDE
K N)	Division No.
_____)	

DECISION

I. Introduction

K N is a Medicaid recipient who lives independently. In December 2018, the Division of Public Assistance (Division) notified Ms. N that her Medicaid Cost of Care (Cost of Care) would increase beginning with the month of January 2019. Ms. N disagreed with the Division and requested a hearing.

Ms. N’s hearing was held on March 28 and April 25, 2019. Ms. N represented herself and testified on her own behalf. Ms. N’s personal care attendant, C Q, testified for Ms. N. Fair Hearing Representative Sally Dial represented the Division. Kalin Paredes, an Eligibility Technician employed by the Division, testified for the Division.

Ms. N presented additional evidence during the hearing process, which was new to the Division. That evidence shows that Ms. N has ongoing medical expenses not otherwise covered through the Medicaid program, which she is entitled to claim as deductions against her Cost of Care obligation. As a result, while she still has a Cost of Care obligation, it is as follows:

January 2019:	\$121.41
February, March, and April 2019:	\$205.00
May, June, and July 2019:	\$ - 0 -

II. Facts¹

Ms. N receives Medicaid Home and Community Based Waiver (Waiver) benefits. She lives on her own in an apartment. Her sole source of income is Social Security retirement income, which increased to \$1,861 beginning with January 2019.² In December 2018, the Division began reviewing Ms. N’s Cost of Care based upon the January 2019 increase to her Social Security income. The Division initially notified Ms. N that her monthly Cost of Care

¹ These factual findings are established by a preponderance of the evidence. They are based upon the hearing testimony and exhibits as noted.

² Ex. 3.

would be \$706.54 for January 2018, and then decrease to \$205 beginning with February 2019.³ After discussing the matter with Ms. N's Medicaid Home and Community Based Waiver care coordinator, the Division revised the Cost of Care obligation for January 2019 only, reducing it to \$121.41.⁴

The Division arrived at the figure of \$121.41 for January by subtracting the Medicaid personal needs allowance of \$1,656.00 and previously allowed expenses of \$83.59 from Ms. N's \$1,861 monthly Social Security retirement income.⁵

Ms. N disagreed with the Division's calculation of her Cost of Care obligation and requested a hearing to challenge that calculation.⁶ During the course of the hearing, Ms. N submitted additional receipts for non-covered medical expenses on March 26, 2019 and on April 16, 2019, which dealt with expenses incurred between October 3, 2018 through April 12, 2019.⁷

The Division reviewed those receipts and determined that \$565.45 of those receipts were for non-covered medical costs, for which she was entitled to a deduction when calculating her Cost of Care obligation.⁸ The Division did not allow the following expenses:

Nasal wash kit:	\$12.49
Drink for wound health:	\$76.99
Vanicream skin cream:	\$13.39
Met Rx ZMA:	\$10.53
Gloves:	\$26.84 ⁹

In addition, the Division did not allow the items purchased from Walmart on March 8, 2019, and the following items purchased from Fred Meyer, where the receipt reads "Transaction Suspended":

Argan Oil Shampoo:	\$10.38 (2 entries at \$5.19 each)
Fish Oil:	\$17.99 ¹⁰

³ Exs. 4 – 4.1.

⁴ Exs. 5 – 5.1.

⁵ Ex. 5.1.

⁶ Ex. 6.

⁷ Exs. 13.2 – 13.7, 14.1.

⁸ The Division's April 18, 2019 Supplemental Statement provides that \$420.51 is allowed based upon the receipts provided on March 16, 2019. It further states that the receipts provided on April 16, 2019 allowed it to provide additional credit for \$91.18 (BP cuff/Vitamins/Pads), \$29.86 (liners/pads), and \$23.90 (shipping charges). Those total \$144.94.

⁹ See April 18, 2019 Supplemental Statement from the Division; Ms. Paredes's testimony.

¹⁰ See April 18, 2019 Supplemental Statement from the Division; Ex. 13.7.

Ms. Q’s testimony established the following: the ZMA was essentially the same as the vitamin B9 allowed by the Division,¹¹ supplemented with a sleep aid; that the Argan Oil was shampoo which was covered, that the gloves were used by her while working as Ms. N’s PCA to care for Ms. N’s incontinence needs, which included cleaning soiled items; and that the “transaction suspended” item were actually purchased – the “transaction suspended” meant that these items were purchased through Fred Meyer’s curbside pickup program. Her testimony also established that the items purchased from Walmart on March 8, 2019 was for incontinence supplies (“chucks”) in the amount of 69.93.¹²

Ms. N also provided an estimate from her dentist of projected costs for future dental care.¹³

III. Discussion

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has different financial requirements. Ms. N receives Medicaid Waiver benefits. As a Medicaid Waiver recipient who lives independently, *i.e.* not in an assisted living or nursing home, she is allowed a personal needs allowance of \$1,656.00 per month.¹⁴ If her income exceeds that amount, she is responsible for paying the excess to her medical providers, which reduces the amount the Medicaid program pays to those providers. That amount she is required to pay is referred to as the Medicaid Cost of Care contribution.¹⁵

Ms. N’s normal monthly income, beginning January 1, 2019, consists of \$1,861 in Social Security benefits. Her normal monthly Cost of Care obligation would be the difference between that amount and the \$1,656.00 personal needs allowance. This is \$205.00, the amount calculated by the Division for February 2019 forward. However, a Medicaid recipient who is subject to the Cost of Care obligation is entitled to some deductions when calculating that obligation. Those deductions include unpaid medical expenses.¹⁶ The deduction applies to “medical expenses incurred by the recipient that are not paid by Medicaid, Medicare, or any other health insurance.”¹⁷

¹¹ See April 18, 2019 Supplemental Statement from the Division; Ex. 13.6.

¹² Ms. Q’s testimony; Ex. 3.17; Ms. N’s spreadsheet – Ex. N’s Ex. 4, and Ms. N’s Ex. 6-7, receipt R12.

¹³ Ms. N’s Ex. 6.1.

¹⁴ Ex. 5.

¹⁵ 7 AAC 100.552; 7 AAC 100.554(a) and (c)(1); 7 AAC 100.558; Ex. 12.4.

¹⁶ 7 AAC 100.554(c)(5).

¹⁷ 7 AAC 100.566(a).

As provided in the facts above, the Division calculated, based upon the information provided by Ms. N as of April 16, 2019, that she has \$565.45 in allowable non-covered medical costs. Based upon Ms. Q's testimony, Ms. N should also be allowed the \$10.53 for the ZMA, \$10.38 for the Argan Oil shampoo,¹⁸ and \$17.99 for the Fish Oil. Ms. N is allowed the \$69.93 for the "chucks pads" purchased from Walmart on March 8, 2019. The Division objected to allowing the \$26.84 cost of gloves, arguing that Ms. Q should be responsible for those costs as part of her own job supplies. However, because Ms. N has incontinence needs and the gloves are necessary for Ms. Q to care for those needs, the cost of \$26.84 for the gloves is allowed. These additional costs come to \$135.67. This brings the total, from the receipts provided by Ms. N to \$701.12.

There is insufficient evidence in the record to show that remaining items requested by Ms. N, the nasal wash kit, drink for wound health, and Vanicream skin cream, are allowable medical expenses, and a deduction cannot be allowed for them. Ms. N is also not entitled to a deduction for her future dental costs. She can assert that after it has been incurred.

Ms. N would like her Cost of Care to be recalculated back to January 2019. However, the Division has argued that instead, it should be calculated from May forward, given that Ms. N did not provide receipts documenting her costs until late March and mid-April 2019. The Division's argument is well taken. It is Ms. N's obligation to provide the Division with timely proof of her non-covered medical expenses. It should also be noted that the allowance for Ms. N's allowable non-covered medical expenses starting in May 2019 will not disadvantage Ms. N, because she will still receive a deduction for the full amount of those expenses.

Ms. N's Cost of Care for January 2019 will remain at \$121.41, and her monthly Cost of Care for February through April 2019 remains at \$205.00. It is necessary to determine what Ms. N's Cost of Care will be for May 2019 forward. If she had no allowable deductions for non-covered medical expenses, her monthly Cost of Care would be \$205.00. However, as found above, she has \$701.12 in allowable deductions. This will completely cancel out her Cost of Care obligation for May, June, and July 2019 ($\$205.00 \times 3 = \615.00). She would also have a minimum of \$86.12 as a deduction from her Cost of Care for August 2019 ($\$701.12 - \$615.00 = \$86.12$). If Ms. N believes that her allowable non-covered medical costs for August 2019 will be

¹⁸ Ms. N's shampoo was allowed in her previous Medicaid Cost of Care case, OAH Case No. 18-0042-MDE.

greater than \$86.12, it is incumbent upon her to provide the Division with her receipts well before August 1, 2019.

It is very important to note that the Division cannot be faulted for its treatment of Ms. N's Cost of Care obligation. Once Ms. N provided receipts, the Division was able to review and adjust her obligation, leaving only a minor amount in dispute.

IV. Conclusion

The Division's determination of Ms. N's Cost of Care obligations for January 2019 (\$121.41) and for February through April 2019 (\$205.00 monthly) is upheld. Her monthly Cost of Care contribution for May through July 2019 is \$0.00.

DATED this 20th day of May, 2019.

Signed

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 3rd day of June, 2019.

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.]