BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
K L. C) OAH No. 19-0112-PER
) Agency No. 2019-0108

DECISION AFTER PROPOSAL FOR ACTION

I. Introduction

After K C traveled from her home in Alaska to see a physician in another state, the AlaskaCare Retiree Health Plan paid Ms. C's claim for compensable travel costs at 80 percent of actual cost. Ms. C appealed, arguing that Plan documents say that eligible travel costs are paid at 100 percent. The payment at 80 percent of cost was affirmed in the Division of Retirement and Benefits' internal review process. Because the Plan documents do not say or imply that travel costs are paid at 100 percent, the division's decision is affirmed.

II. Facts

K C is a retired public employee. She is a member of the Public Employee's Retirement System. She receives health insurance through the AlaskaCare Retiree Health Plan.

In 2016, after breaking her right ankle, Ms. C had surgery in Seattle to repair the fracture.[1] A little less than a year later, in May 2017, Ms. C experienced some popping, pain, and swelling in the ankle.[2] She returned to Seattle from her home in City A to have her ankle evaluated by her surgeon.[3] The surgeon determined that no additional surgery was necessary, although he did prescribe some medication.[4]

Ms. C submitted the travel expense of her May 2017 trip to Seattle, $428.89, to the Plan for reimbursement.[5] The administrative manager of the Plan, Aetna Life Insurance Company, denied the claim for travel expenses.[6] The explanation of benefits that denied the claim stated that Ms. C could appeal by asking for further review by Aetna.[7] Ms. C appealed the denial twice, to what is called a "Level I" and "Level II" review, both conducted by Aetna.[8] Aetna denied the claim in full in both levels of review. Aetna explained that the claim was denied because the treatment was available locally and the plan did not cover travel for follow-up treatment that

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1 Record at 100.
2 *Id.*
3 *Id.*
4 Record at 96, 101.
5 Record at 93-101.
6 Record at 88.
7 Record at 90.
8 Record at 65, 73.

occurred more than 90 days after the surgery.[9] The Level II denial letter stated that this was the last level of internal review for the Division.[10] The letter explained that if Ms. C wished to have further review of the denial, she had to appeal to the Office of Administrative Hearings.[11]

On February 21, 2018, Ms. C appealed the denial to the Office of Administrative Hearings.[12] She sent her appeal, as required, to the Division of Retirement and Benefits. Under the law, the Division was required to refer the notice of appeal to the Office of Administrative Hearings within 10 days.[13] The Division did not refer the appeal.

Instead, on May 3, 2018, the Division issued what it called a "Notice of Decision on Appeal."[14] This notice explicitly stated that it was in response to Ms. C's request for a review by the Office of Administrative Hearings.[15] The notice reversed the Aetna Level II decision, and stated that, in this particular case, insurance benefits for Ms. C's travel costs would be allowed.[16] Later, the Division informed Ms. C that if she wished to appeal the "Notice of Decision on Appeal," she could appeal to the superior court.[17]

Aetna subsequently paid 80 percent of Ms. C's claim for travel costs—less the 20 percent that, in Aenta's view, represented the share of the expense that the insured must pay under the Plan. The amount paid was $343.11, leaving $85.78 for Ms. C.

Ms. C then initiated another administrative action regarding her claim for travel.[18] She requested review of the denial of the $85.78. In her view, the entire amount of the travel should have been compensable.[19]

Once again, Ms. C pursed both a Level I and Level II appeal before Aetna. Once again, in both decisions, Aetna denied the claim.[20] It explained that, in its view, travel costs were subject to the 80 percent limitation on reimbursement for medical expenses.[21]

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[9] Record at 61, 69.
[10] Record at 61.
[11] Record at 62.
[12] Record at 52-54.
[13] *See* AS 44.64.060(b); 2 AAC 35.110.
[14] Record at 48.
[15] *Id.* The statement implies that the Division *is* the Office of Administrative Hearings, which is not the case. The Division's action was not in accordance with the requirements of the law. *See* AS 44.64.030(29); AS 44.64.060(b); 44.64.080(c).
[16] Record at 49.
[17] Record at 47. This notice confirms that the Division was violating the law by bypassing the Office of Administrative Hearings and assuming for itself the authority to issue the final administrative decision.
[18] Record at 24.
[19] *Id.* at 24-25.
[20] Record at 13, 21.
[21] Record at 13.

With this round of appeals, however, Aetna's Level I and Level II decisions provided conflicting advice on how Ms. C was to proceed if she disagreed with the Level II decision. The Level I decision explained the process as follows. First, if Ms. C disagreed with the Level I decision, she could request a Level II review. Then, if she disagreed with the Level II appeal, she would be able to appeal to the Office of Administrative Hearings.[22]

Once she received the actual Level II decision from Aetna, however, the Division had changed the process for internal review. Although the Level II decision was designated a "final decision," it, for the first time, purported to require retirees to undertake a *third* level of internal review, which would take another 60 days.[23] According to the Level II decision, a retiree could not appeal to the Office of Administrative Hearings until he or she had completed the third level of internal review.[24]

Following her receipt of the December 13, 2018, Level II decision, Ms. C did not request a Level III decision. Instead, on January 8, 2019, she requested an appeal to the Office of Administrative Hearings.[25] The Division referred the request to the Office of Administrative Hearings. At a case planning conference, the parties agreed to submit the case to the Administrative Law Judge on the record without the need for an evidentiary hearing. Both parties filed opening briefs.[26] Although the parties were permitted to file responsive briefs, neither chose to do so.

III. Discussion

The parties agree that the retiree insurance medical plan contains a coinsurance requirement that applies to medical services.[27] Under this requirement, the plan will only pay 80 percent of most covered expenses until a member has reached an out-of-pocket limit of $800.[28]

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22 Record at 21-22.

23 Record at 14.

24 *Id.*

25 Record at 2.

26 At the case planning conference, Ms. C questioned whether the Division had followed the proper procedure because she had not received a Level III review. Counsel for the Division stipulated that the best process at this stage was to proceed with the appeal. I agreed that remanding for the formality of a denial at "Level III" was not required. The process followed by the Division, however (which included failing to follow the law on referral of appeals to this office, taking on the role the law assigns to this office in issuing the final administrative decision, unilaterally undertaking a Level III review that had not been offered or requested, sending conflicting notices regarding the available administrative review process, and then failing to complete a Level III review when one notice had promised a Level III review), leaves much to be desired.

27 2016 Plan Booklet at 12 ("After you meet the annual deductible, the Medical Plan pays 80% for most covered expenses up to the next $4,000."), *available at* http://doa.alaska.gov/drb/pdf/ghlb/retiree/RetireeInsuranceBooklet2003with2016amendment.pdf. All references in this decision to "Plan Booklet" mean the 2016 version of the Plan Booklet.

28 *Id.*

Where the parties disagree is over whether the coinsurance requirement applies to travel costs. Ms. C argues that the coinsurance requirement does not apply to travel costs. She arrives at this conclusion by looking at the plain language of the section of the Plan Booklet that authorizes the plan to pay travel costs. This section states that "The Medical Plan pays travel and ambulance costs within the contiguous limits of the United States, Alaska, and Hawaii."[29] In Ms. C's view, the use of the phrase "pays costs" is significant. She contends that if the Plan meant to say that travel expenses were subject to the 80 percent coinsurance limit, it would simply have designated travel as a covered expense. To her, use of the phrase "pays travel cost" necessarily means the entire cost of travel will be paid.

Ms. C makes the same inference from a related passage in the Plan Booklet that uses the term "reimbursement": "Travel must be preauthorized to receive reimbursement under the Medical Plan."[30] Again, she asserts that the use of the term "reimbursement" instead of "covered expense" implies 100 percent reimbursement.

In response, the Division asserts that the "Plan's language makes clear that travel benefits fall under the medical plan."[31] Because travel benefits are under the medical plan, not the audio, dental, or vision plans, the Division concludes that "the travel benefit is a covered service under the medical plan."[32]

The dispute between Ms. C and the Division is a question of contract interpretation. "When interpreting contracts, the goal is to 'give effect to the reasonable expectations of the parties.'"[33] When determining the expectations of the parties to an insurance contract, some special rules apply. An exclusion to coverage is interpreted narrowly.[34] Ambiguities are interpreted in favor of the insured.[35] The Alaska Supreme Court has advised that in interpreting insurance contracts, a decisionmaker must examine the disputed policy provision, other provisions of the contract, relevant extrinsic evidence, and case law interpreting similar provisions.[36] Here, because the terms of the AlaskaCare Plan are contained in the Plan Booklet, the outcome of this case will require that we consider how the insured would interpret the plain

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[29] 2016 Plan Booklet at 41,
[30] C brief at 1 (quoting Plan Booklet at 41).
[31] Division's brief at 3.
[32] *Id.*
[33] *Stepanov v. Homer Elec. Ass'n, Inc.,* 814 P.2d 731, 734 (Alaska 1991).
[34] *C.P. ex rel M.L. v. Allstate Ins. Co.,* 996 P.2d 1216, 1226 (Alaska 2000).
[35] *State Farm Fire and Cas. Co. v. Bongen,* 925 P.2d 1042, 1045 (Alaska 1996).
[36] *Bering Strait Sch. Dist. v. RLI Ins. Co.,*873 P.2d 1292, 1295 (Alaska 1994).

language of the Plan Booklet.[37] The relevant Plan Booklet in this case is the 2003 Booklet, with all amendments that were adopted by the time of the service, 2016.

Ms. C's argument that the 80 percent coinsurance requirement does not apply to travel costs could prove correct in one of two ways. First, the coinsurance requirement applies only to "covered expense."[38] It follows that if travel costs are not "covered expenses" under the Plan, then they would not be subject to the 80 percent limit. Under this argument, travel costs would be considered a stand-alone category of reimbursable expenses that are governed by a different set of rules for reimbursement than those that apply to "covered expenses."

Second, under the Plan, the coinsurance requirement only applies to *some* covered expenses. It follows that some covered expenses are *not* subject to the requirement. Therefore, even if travel costs are included in "covered expenses," they may be among those covered expense that are reimbursed at 100 percent. To determine whether Ms. C's travel expenses should be reimbursed in full under either of these approaches, we must turn to Plan Booklet.

A. Is travel a covered expense?

Ms. C is correct that if the Plan Booklet treated travel costs differently from other medical expenses it would be significant. Because the coinsurance requirement applies only to "covered expenses," if the Plan Booklet made clear that travel was *not* a "covered expense" (meaning that it would be reimbursable under some other mechanism), then it would not be subject to the coinsurance requirement.

Ms. C's argument that the plain language of the Plan Booklet promises reimbursement of 100 percent of travel expenses, however, is not persuasive. Nothing in the phrase "pays costs," or the term "reimbursement," necessarily implies full reimbursement or payment of full costs. These terms could just as easily tell the reader that the expense is reimbursable, subject to whatever limits the policy places on reimbursement.

In order to determine whether travel costs are "covered medical expenses" or a separate category of authorized expenses, we must turn to the Plan Booklet. On page 17, the Plan Booklet has a heading, written in all capital letters, with a large font, that reads, "COVERED EXPENSE."[39] Under that heading, the Plan Booklet explains, "Benefits are available for medically necessary services and supplies necessary to diagnose, care for, or treat a physical or

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[37] *See, e.g., In re D.M.,* OAH No. 08-0153-PER (OAH 2008) at 2 ("The terms and conditions of coverage applicable to this matter are found in the Alaska Care Retiree Insurance Information Booklet..").

[38] 2016 Plan Booklet at 12.

[39] 2016 Plan Booklet at 17.

medical condition." This language suggests that travel costs necessary to diagnose, care for, or treat a physical or medical condition would be one among many reimbursable covered expenses. It does not imply that travel costs would be under a different set of rules than those that govern other covered expenses.

Continuing to page through the Plan Booklet, following the large heading "covered expenses," the Plan Booklet has several smaller subheadings. Each subheading describes a covered service or supply. For example, the Plan Booklet lists provider services, hospitalization, pregnancy, and many other services. Under each of these subheadings, the Plan Booklet explains conditions and rules for when the service or supply would be compensable.

When we reach page 41 of the Plan Booklet, it has a subheading called "Travel."[40] This heading is written in the same font size as the other subheadings for services or supplies listed under the major heading "COVERED EXPENSES." Although Ms. C is correct that the explanation under this subheading does indicate that the Plan will "pay travel costs," the explanation also uses the term "covered" in a manner that makes clear that travel is, in fact, a "covered expense":

> Travel is covered for you to receive treatment which is not available in the area you are currently located in. Treatment is defined as a service or procedure, including a new prescription, which is medically necessary to correct or alleviate a condition or specific symptoms of an illness or injury. It does not include any diagnostic procedures or follow-up visits to monitor a condition. Treatment must be received for travel to be covered.[41]

Thus, the Plan Booklet makes clear that eligible travel is a covered expense to be treated like any other covered expense. Although travel itself is not a medical service, when travel is necessary for the medical service to be provided, it meets the definition of a covered medical service. Further, the layout of the Plan Booklet, which contains a long list of medically-related expenses, and explains the circumstance in which the expenses will be covered, makes clear that eligible travel, like provider services, hospitalization, or other medical services or supplies, is simply one in a list of covered expenses.

Accordingly, Ms. C's argument that the plain language of the Plan Booklet takes travel out of the realm of "covered expenses" is not correct. Even when resolving any ambiguity in Ms. C's favor, travel is a covered expense. Because the 80 percent coinsurance limit applies to "covered expenses," and because travel is a covered expense, the limit applies to travel, unless

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[40] *Id.* at 41.
[41] *Id.* 42.

travel is one of those services or supplies that is reimbursed at 100 percent. We turn next, then, to the question of whether travel is one of those services that is exempt from the default rule of 80 percent coverage.

B. Is travel one of the covered expenses that is reimbursed at 100 percent?

For some services or supplies, the Plan Booklet provides 100 percent payment even before a person reaches the out-of-pocket limit. For example, the Plan Booklet states that "The Plan pays 100% of covered expenses with no deductible for obtaining a second surgical opinion when the first surgeon has recommended nonemergency . . . surgery."[42] Similarly, for skilled nursing services, the Plan Booklet states, "[t]he Medical Plan pays 100% of covered expenses, after the deductible, for charges of a skilled nursing facility while you are confined for recovery from a disease or injury."[43] This is significant—it shows that when the Plan will pay for 100 percent of a covered expense, the Plan Booklet will say so.

For travel, however, the Plan Booklet does not state that the Plan will pay for 100 percent of the cost of the travel service. Instead, as described above, the Plan Booklet states that the Plan "pays travel costs" without saying whether it pays 50 percent, 80 percent, or 100 percent. An examination of the Plan Booklet, however, reveals that the Plan Booklet explicitly states the percent paid anytime the Plan pays something other than "normal benefits." For all other covered expenses, the coinsurance requirement applies (until the retiree has met the out-of-pocket limit of $800).

Thus, the Plan Booklet, in both structure and language, makes clear that travel costs are "garden variety" covered expense. These costs are not governed by a special set of rules and are not among those expenses that are designated for reimbursement at 100 percent.

IV. The Division's Proposal for Action

Under the administrative appeals process that applies to retirement appeals, after receiving the initial proposed decision from the Administrative Law Judge, a party may file a "proposal for action."[44] The process allows the party to address issues with the proposed decision before the decision is adopted by the final decisionmaker. On April 15, 2019, the Division filed a proposal for action. Ms. C did not file a proposal for action.

In its proposal for action, the Division asked that footnotes 15 and 17 be deleted. In these footnotes, the decision observes that the Division

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[42] *Id.* at 26.
[43] *Id.* at 24.
[44] AS 44.64.060(e).

- failed to refer an appeal to the Office of Administrative Hearings when required to do so by law;
- issued the final administrative decision *itself*, noting that its decision was in response to an appeal to the OAH, implying that it was the OAH; and
- offered Ms. C the opportunity to appeal *its* decision to the superior court, bypassing the statutorily-required step of a hearing before the OAH before a case is appealed to the superior court.[45]

The Division argues that the issues raised in these two footnotes were not part of this appeal. It asserts that it could have incorporated documents related to these issues, but did not do so because the only issues that it addressed were related to the compensability of the travel expense. In its view, including these observations about the procedure followed by the Division without notice that procedure would be at issue is not appropriate.

I am not persuaded that the inclusion of the two footnotes in this decision is unfair to the Division. First, at the prehearing conference, Ms. C herself raised the issue of proper procedure. Although the issue she raised was somewhat different—she asked whether jurisdiction before OAH was proper when she had been told there would be a Level III appeal to the agency and no such appeal had been provided—her inquiry was sufficient to put the Division on notice that the issue of proper procedure was in play in this appeal.

Second, as the Division knows, procedure is important in every appeal. Most appellate decision will include a description of the relevant facts and procedure. The description of the procedure must tell the story of "how we got here." If an agency made a mistake, and failed to follow the proper procedure, that mistake must be noted in the decision. I would not, of course, draw a conclusion that the failure to follow proper process was willful or sanctionable without first giving notice to the Division. At a minimum, however, the decision must describe the error in process, and explain why it was in violation of the law. Anything less would make it appear that the decisionmaker was ignoring (or ignorant of) the legal requirements.[46]

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[45] I recognize that in cases where OAH does not have jurisdiction, an appeal of an agency decision could go directly to superior court. Here, however, OAH did have jurisdiction over Ms. C's appeal. By not referring the appeal to the OAH, and instead issuing its own final decision, appealable to superior court, the Division was bypassing the OAH. That action violates the law.

[46] Although the Division had the option of requesting a remand so that it could present evidence on the issue of improper procedure, it did not do so.

V. Conclusion

Under the terms of the AlaskaCare Retiree Health Plan, travel expenses may be covered medical expenses. When the travel expenses are covered, however, they are subject to the 80 percent coinsurance limit. Therefore, the Division's decision that Ms. C's travel costs should be paid at 80 percent of actual cost is affirmed.

DATED: April 26, 2019.

By: *Signed*
Stephen Slotnick
Administrative Law Judge

Adoption

Under the authority of AS 44.64.060(e)(1), I adopt this decision 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 26th day of April, 2019.

By: *Signed*
Stephen C. Slotnick
Administrative Law Judge

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