

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

In the Matter of:	)	
	)	
J.N.	)	OAH No. 22-0854-MDX
_____	)	Agency No. 22-HCS-0130

**DECISION**

**I. Introduction**

J.N. is a minor who receives Medicaid benefits from the State of Alaska. He requested that the Medicaid program authorize payment for an eating device. The Division of Health Care Services (Division) denied that request. Z.T., J.N.'s mother/guardian requested a hearing to challenge that denial.

J.N.'s hearing was held on November 29, 2022. Z.T. represented J.N. in the hearing and testified on his behalf. Laura Baldwin, a Fair Hearing Representative for the Division, represented the Division. Karen Benson, a Medicaid Program Specialist 4, who oversees the Medicaid Durable Medical Equipment program, testified for the Division.

J.N. had the burden of proof to establish that the eating device was medically necessary. He did not satisfy that burden. Consequently, the denial of his authorization request is **AFFIRMED**.

**II. Facts**

J.N. is a severely physically disabled minor. His upper extremities are almost entirely non-functional. He is almost completely dependent upon others for assistance with even the most minor physical task. He cannot feed himself, with the exceedingly minor exception that his family has created a device that he can use for small finger food items like a small piece of apple. He must be handfed anything that requires a spoon or a fork.<sup>1</sup>

J.N. attends school. He has an aide through the school to assist him physically in anything that needs to be done, which includes feeding him. J.N. is exceedingly uncomfortable with having to be handfed while in the presence of other people. This includes being fed in the school lunchroom in the presence of other students. It also includes other public places such as restaurants.<sup>2</sup>

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<sup>1</sup> Z.T.'s testimony.

<sup>2</sup> Z.T.'s testimony.

While at school, J.N. is sometimes able to take his lunch in a classroom outside the presence of other people. However, a great deal of the time, he will just not eat while at school, which results in him coming home exceedingly hungry. He is not losing weight.<sup>3</sup>

J.N. was able to successfully trial an “Obi” self-feeding system. It enabled him to eat without having to be handfed by another person. He requested that the Medicaid program authorize payment for him to purchase the machine.<sup>4</sup> The authorization request form contained a certification of medical necessity, which was signed by Doctor A, MD.<sup>5</sup> The request also contained a letter signed by both Doctor A and by Doctor B, PT, DPT, which reads in pertinent part:

The Obi self-feeder is medically necessary, due to J.N.’s peripheral joint contractures and minimal functional use of his hands and fingers. The Obi self-feeding device will help maintain J.N.’s physical well-being, because he will be able to feed himself independently; his self-worth and therefore, his psychological well-being will also like be positively impacted by having an independent self-feeding strategy.<sup>6</sup>

Doctor A’s notes from an August 15, 2022 appointment with J.N. conclude:

Patient and parents are interested [in] obtaining an self feeding device. “Obi adaptive eating device” is for individuals with upper extremity strength and mobility limitations. J.N. at his age is very uncomfortable with other people seeing him have to be fed by adults. He is interested in having the ability to feed himself independently and allow him to eat more efficiently without support from others. This adaptive eating device would allow him to do so. Parent is also interested in reducing infection risks by reducing the need for others to touch his food and have to be in his face for feedings. I believe this device is a medical necessity for his future independent function.<sup>7</sup>

The Division denied J.N.’s request because it found that the device was not medically necessary.<sup>8</sup>

### **III. Discussion**

In reviewing the denial of J.N.’s request for the Obi self-feeding system, the critical question is whether the Obi self-feeding system is medically necessary. This is because the

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<sup>3</sup> Z.T.’s testimony.

<sup>4</sup> Ex. E.

<sup>5</sup> Ex. E, p. 3.

<sup>6</sup> Ex. E, p. 5.

<sup>7</sup> Ex. E, p. 8.

<sup>8</sup> Ex. D, p. 2; Ms. Benson’s testimony.

Alaska Medicaid regulations explicitly state that Medicaid will only pay for medically necessary services and items<sup>9</sup> and will not pay for items and services that are:

- 1) not reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system, as determined upon review by the department, or that is not identified in a screening required under 7 AAC 110.205;
- (2) not properly prescribed or medically necessary in accordance with criteria established under 7 AAC 105 - 7 AAC 160 or by standards of practice applicable to the prescribing provider;<sup>10</sup>

The evidence shows that J.N.'s physician has stated that the Obi self-feeding system is medically necessary by the signature to the provision agreeing with the authorization request.

The federal courts have held that an individual's physician's opinion regarding whether a treatment is necessary is presumed to be correct:

The Medicaid statute and regulatory scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.<sup>11</sup>

In general, more weight is given to a treating physician's opinion than the opinions of those who do not treat a claimant.<sup>12</sup> An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician."<sup>13</sup> An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.<sup>14</sup> Even when a treating or examining physician's opinion is contradicted, that opinion "can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record."<sup>15</sup> "The opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician *or* a treating physician."<sup>16</sup>

In this case, however, there is no evidence showing that the Obi self-feeding system is required for medical treatment of any kind. There is no showing that it will be used to treat J.N.'s medical condition, or that the self-feeding system is necessary to keep him properly nourished. Instead, it would alleviate J.N.'s unease at being fed by another person in public

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<sup>9</sup> 7 AAC 105.100(5).

<sup>10</sup> 7 AAC 105.110.

<sup>11</sup> *Weaver v. Reagen*, 886 F.2d 194, 200 (8<sup>th</sup> Cir. 1989).

<sup>12</sup> *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996).

<sup>13</sup> *Lester* at 830 – 831.

<sup>14</sup> *Lester* at 830 – 831.

<sup>15</sup> *Lester* at 830 – 831.

<sup>16</sup> *Lester* at 831.

settings. While that is a worthwhile goal, it does not meet the criteria for medical necessity. It is not “reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system.”<sup>17</sup> Doctor A’s certification of medical necessity must be reviewed in the context of their examination notes from August 15, 2022: “I believe this device is a medical necessity for [J.N.’s] future independent function.” J.N.’s “future independent function” is a desirable goal, but does not establish that there is a medical reason for the device.

To reject the uncontradicted medical necessity opinion of a treating physician, which Doctor A is, there must be “clear and convincing evidence” that the Obi self-feeding device is not medically necessary. As recited above, the evidence shows that although the Obi self-feeding system would undeniably benefit J.N., it is not “reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system.” Accordingly, the request for Medicaid authorization for the Obi self-feeding system was properly denied as not being medically necessary.

#### **IV. Conclusion**

The Division’s denial of J.N.’s prior authorization request for the Obi self-feeding device is AFFIRMED.

Dated: December 6, 2022

Signed \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>17</sup> See 7 AAC 105.110(1).

## Adoption

The undersigned, by delegation from the Commissioner of Health, 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 21<sup>st</sup> day of December, 2022.

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.]