

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

In the Matter of:)
)
K.O.) OAH No. 19-0199-MDX
_____)

DECISION

I. Introduction

K.O. is a Medicaid recipient. Medicaid approved travel for K.O. and an escort to travel from City A to medical appointments in City B. During a stop in City C on his return trip to City A, K.O. and his escort, I.C., missed their flight from City C to City A. K.O. medical provider requested prior approval to extend the travel for K.O. and I.C. from City C to City A. The Division of Healthcare Services (the Division) denied the request. K.O. requested a hearing to challenge the Division’s decision.

Because K.O. was not forced to change his travel plans due to reasons beyond his or his escort’s control, the Division’s decision denying prior authorization for a travel extension is **AFFIRMED**.

II. Facts

K.O. is a Medicaid recipient, who lives in City A.¹ On November 6, 2018, K.O. and an escort, I.C. traveled from City A to City B for K.O.’s medical appointments.² K.O. requested an escort for travel because he uses a wheelchair.³ That travel was preauthorized on behalf of the Division by the Hospital A Travel Management Office.⁴

On November 7, 2018, K.O. and I.C. set out on their return trip to City A.⁵ They left City B on Airline A flight 0070, with one stop in City C before its scheduled arrival in City A at 11:24 p.m.⁶

Upon arrival in City C, the flight crew advised passengers that it would be a quick stop and that passengers going to City A needed to stay on the plane.⁷ I.C. told the flight attendant that she needed to

¹ Ex. F.
² Ex. G at 2; Ex. F.
³ Ex. F at 1.
⁴ Ex. F at 3.
⁵ Ex. G at 2; Ex. F; Testimony of K.O.; Testimony of I.C..
⁶ Ex. G at 2.
⁷ I.C. Testimony.

use the restroom and asked if she could get off the plane.⁸ The flight attendant told I.C. that she could use the plane’s lavatory.⁹ Although I.C.—who is 5 feet and 11 inches tall and 340 pounds—fits in a regular airplane seat, she decided that she was too big to fit in the lavatory.¹⁰ She maintains that she could sit on the toilet seat but her legs were too long to fit inside the lavatory with the door closed.¹¹ I.C. concluded that she could wait for the short duration of the flight from City C to City A.¹²

After the plane was loaded, it taxied away from the gate for de-icing.¹³ Unfortunately, the stop in City C lasted longer than expected, and I.C. still needed to use the restroom.¹⁴ I.C. asked K.O. if she could use one of his adult diapers.¹⁵ After overhearing I.C. ask for an adult diaper, the flight attendant told another flight attendant that she thought I.C. had urinated in her seat.¹⁶ The plane returned to the gate.¹⁷ I.C. again asked to get off the plane to use the restroom, and the flight attendant told her that if she left the plane, she would not be allowed back on.¹⁸ I.C. and K.O. were escorted off the plane by someone they say appeared to work in baggage claim.¹⁹

K.O. and I.C. spent the night in the City C airport.²⁰ The following morning, I.C. called the Hospital A travel management office to report that she and K.O. were stuck in City C and needed a ticket to get back to City A.²¹ I.C. talked to F.N..²² The parties dispute what I.C. told F.N.. According to F.N., I.C. stated that K.O. needed to go to the restroom during their stop in City C, and they departed the plane but were unable to re-board.²³ I.C. maintains that she told F.N. that she did not fit in the plane lavatory, she asked to leave the plane because she needed to use the restroom, and she and K.O. were ultimately kicked off the plane without explanation.²⁴ After talking to I.C., F.N. contacted the Airline A ticketing agency.²⁵ According to Airline A’s reservation notation system, after the plane had taxied away

⁸ I.C. Testimony.
⁹ I.C. Testimony.
¹⁰ I.C. Testimony.
¹¹ I.C. Testimony.
¹² I.C. Testimony.
¹³ I.C. Testimony.
¹⁴ I.C. Testimony.
¹⁵ I.C. Testimony.
¹⁶ I.C. Testimony.
¹⁷ I.C. Testimony.
¹⁸ I.C. Testimony.
¹⁹ I.C. Testimony; Nielsen Testimony.
²⁰ I.C. Testimony; Nielsen Testimony.
²¹ I.C. Testimony; F.N. Testimony; *see also* Ex. G at 1.
²² I.C. Testimony; F.N. Testimony.
²³ F.N. Testimony; Ex. G at 1.
²⁴ I.C. Testimony.
²⁵ F.N. Testimony.

from the terminal, I.C. asked to exit the aircraft because she needed to use the restroom.²⁶ When the flight attendant told I.C. that she could use the aircraft lavatory, I.C. refused, stating that she was too big to fit.²⁷ The Airline A ticketing agency told F.N. that I.C. demanded to be let off the plane and threatened to relieve herself in the seat.²⁸ The pilot taxied the plane back to the terminal, and they allowed I.C. and K.O. off the plane.²⁹

After talking to the Airline A ticketing agency, F.N. called I.C. to inform her that the travel extension request would be denied. I.C. and K.O. caught a flight from City C to City A on Alaska Seaplanes, a smaller, regional airline.³⁰

K.O.'s provider, Dr. Gandhi submitted an authorization for reimbursement of K.O.'s extended travel services.³¹ And on February 7, 2019, Hospital A, on behalf of the Division, sent a letter to K.O., notifying him that the request was denied.³² Citing 7 AAC 120.410(d)(1), Hospital A reasoned: "The department will pay for nonemergency transportation and accommodation services provided without prior authorization if the recipient is forced to change authorized travel plans for reasons beyond the recipient's control, including the cancelation of an airline flight due to weather conditions or the closing of an airport for security reasons."³³ Hospital A concluded that K.O. was not forced to change his travel plans for reasons beyond his control.³⁴

K.O. requested a hearing to challenge the denial. Hearing Representative Laura Baldwin represented the Division. Alaska Medicaid travel program representative, S.C., Hospital A Travel Management Office and Care Coordination Center Manager, K.L., and Hospital A travel agent F.N. testified on behalf of the Division. K.O.'s nephew, S.C., represented K.O.. K.O. and I.C. testified on behalf of K.O..

At the hearing, in addition to the denial of reimbursement for the extended travel, the parties also disagreed about I.C.'s alleged placement in an "unsuitable escort list." The "Notice of denial of request for travel authorization" dated February 7, 2019 notifies K.O. only that the request for extended travel services was denied.³⁵ The letter does not provide notice that I.C. will not be authorized as an escort in

²⁶ F.N. Testimony.

²⁷ F.N. Testimony; Ex. G at 1.

²⁸ F.N. Testimony; Ex. G at 1.

²⁹ F.N. Testimony; Ex. G at 1.

³⁰ I.C. Testimony.

³¹ Ex. E; Ex. F at 4; *see also* Ex. D.

³² Ex. D.

³³ Ex. D.

³⁴ Ex. D.

³⁵ Ex. D.

the future.³⁶ The Division did not raise that issue until its position statement. The suitable escort issue is outside the scope of this case and thus will not be addressed in this decision.

III. Discussion

The issue in this case is whether K.O.'s request for extended travel benefits from City C to City A was properly denied.³⁷ K.O. has the burden of proving by a preponderance of the evidence that his request should have been approved.³⁸

In addition to paying for certain compensable medical expenses, under appropriate circumstances, the Alaska Medicaid program will pay for medically necessary transportation services for a Medicaid recipient.³⁹ If medically necessary, the Medicaid program will also pay for an escort to accompany a Medicaid recipient on authorized travel due to the recipient's age, physical capacity, or mental capacity.⁴⁰ Medicaid requires prior authorization for reimbursement of nonemergency transportation services.⁴¹ The regulations provide an exception to that rule but only for changes in authorized travel plans that are beyond the recipient's control, such as flight cancellation because of weather, the closing of an airport for security reasons, or for the recipient to receive additional medical services that were not originally contemplated in his or her treatment plan.⁴² The department will not pay for services that the department determines to be excessive or inappropriate for the distance traveled or inconsistent with the medical needs of the recipient.⁴³

The Division denied K.O.'s request for additional travel because he missed his flight from City C to City A for reasons that were within his or his escort's control, and therefore, the requested extended transportation services did not meet the criteria for this exception. K.O. did not need to reschedule travel for a weather, mechanical, or security issue. Nor was his travel extended for unanticipated medical services. Instead, K.O. needed to reschedule travel from City C to City A because either he voluntarily exited the aircraft knowing that he would not be allowed back on or because his escort's

³⁶ Ex. D.

³⁷ As noted, the parties also disagree about I.C.'s placement on an "unsuitable escort list." However, because the "Notice of denial of request for travel authorization" dated February 7, 2019 does not provide notice that I.C. will not be authorized as an escort in the future and because the Division did not raise that issue until its position statement, the suitable escort issue is outside the scope of this case. See 7 AAC 49.060; 7 AAC 49.070. Moreover, because the Division has not actually denied authorization of I.C. as an escort, that issue is not yet ripe. A future denial of I.C. as an escort could still be challenged.

³⁸ 7 AAC 49.135.

³⁹ 7 AAC 105.100(5); 7 AAC 105.130(a)(1); 7 AAC 120.405.

⁴⁰ 7 AAC 120.430; 7 AAC 120.490(3).

⁴¹ 7 AAC 120.410; 7 AAC 105.130(a)(1).

⁴² 7 AAC 120.410(d).

⁴³ 7 AAC 120.405(c)(1).

actions caused the airline to remove him and his escort from the airplane. Either way, K.O.'s arguments are not persuasive. Although it was probably not a comfortable fit, I.C.'s claim that she could not use the aircraft lavatory because she was too big is not credible. I.C. fit in a regular airplane seat, and larger people manage to use aircraft lavatories.⁴⁴ Similarly, K.O.'s and I.C.'s claim that they were removed from the airplane by an Airline A luggage handler, without any explanation, lacks credibility. The far more likely scenario is that I.C., who needed to use the restroom but decided that the airplane lavatory was too uncomfortable to use, demanded to be allowed off the plane. And given that K.O. uses a wheelchair, a person from Airline A ground crew assisted them off the airplane.

Under the facts of this case, Medicaid is not required to extend transportation services when a recipient's or the recipient's escort's actions prevent travel. The weight of the evidence supports the Division's conclusion that K.O. was not forced to change travel plans for reasons beyond his or his escort's control.

IV. Conclusion

The Division's decision to deny K.O.'s request for extended transportation services is AFFIRMED.

Dated: April 29, 2019

Signed _____
Jessica Leeah
Administrative Law Judge

⁴⁴ Testimony of S.C. (testifying that he frequently flies Airline A and was able to use the lavatories at 6'2" and over 375 pounds).

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 21st day of May, 2019.

By: Signed
Name: Jessica Leeah
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.]