

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

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| In the Matter of: |) | |
| |) | |
| K.H. and |) | Consolidated Cases: |
| M.D. |) | OAH Case No. 19-0135-MDS |
| _____ |) | OAH Case No. 19-0136-MDS |

DECISION

I. Introduction

K.H. and M.D. are brothers who receive Medicaid benefits through the Medicaid Home and Community-Based Waiver program. Their parents, N.X. and E.X., requested that the Medicaid program pay for the installation of a ceiling lift in their home for the boys' use. The Division of Seniors and Disabilities Services (Division) denied the request.

N.X. and E.X. requested a hearing to challenge that denial. The hearing was held on March 15, 2019. N.X. and E.X. participated telephonically and testified. N.I., the Medicaid Care Coordinator for the two boys, also participated telephonically. Victoria Cobo-George, a Fair Hearing Representative with the Division, represented the Division. Rodney George, the unit manager, for the Division's Waiver review unit, Denise Busby, a reviewer with the unit, and Susan Kubitz, a nurse assessor with the Division, all testified on the Division's behalf.

The evidence in this case shows that a lift mechanism is necessary to transfer the boys from their beds into their bathroom. The current system, which consists of a Hoyer lift, is unsafe. As a result, the Division's denial of the request for a ceiling lift is REVERSED.

II. Facts

K.H., age 10, and M.D., age 6, are severely disabled brothers who live with their parents N.X. and E.X. They are both diagnosed with Allen-Dudley-Herndon Syndrome and seizure disorder.¹ They are both non-ambulatory and must be physically lifted from their beds to another surface. They are not capable of transferring on their own. The X Family have a Hoyer lift, which is a sling supported by a wheeled frame. The boys are moved into the sling, and the lift is then wheeled to its destination.

¹ Ex. E, p. 7.

The X Family submitted an amendment to the boys' Medicaid Waiver Plan of Care which asked that the Medicaid program pay for the installation of a ceiling lift, which would allow them to move the boys from their bedroom into their bathroom:

K.H. is in need of . . . a ceiling lift for his bedroom that he shares with his brother who will have a joint amendment. He is unable to walk and is a 2 person transfer as he is so long. The hoier just doesn't work well and it's unsafe now due to his contractions.²

The Division denied the X Family's request for the reason that the requested ceiling lift was unnecessary.³ As part of its review of the request, Mr. George, Ms. Kubitz, and two employees from Geneva Woods, the medical supply company, visited the X Family's home to see why the existing Hoyer lift was not adequate. Mr. George then saw a transfer performed. He clarified that the transfer was a two-person transfer, meaning one person operated the Hoyer lift while the other was hands-on with the transferee. Mr. George believes that the Hoyer lift is adequate to perform the transfers.⁴

K.H. "hypertones" due to his medical condition. The hypertone resembles a seizure, where the muscles tighten up, the back arches, the body becomes stiff and rigid and twists.⁵ E.X. described the hypertone as K.H. rolling like an "alligator" and propelling himself out of the sling.⁶

N.X. was trained in the use of the Hoyer lift by Geneva Woods. He believes the Hoyer lift is unsafe because he has witnessed K.H. hypertone while in the Hoyer lift, which resulted in K.H. twisting and hanging upside down in the sling. He last used the Hoyer lift approximately five to six months before the hearing, when he saw K.H. hanging upside down. Because he considers the Hoyer lift to be unsafe, he uses a wheeled shower chair for moving the boys. That is currently acceptable for M.D. because of M.D.'s smaller size. However, it is becoming not feasible to transfer K.H., the older brother, into the shower chair due to his larger size.⁷ The family has tried three different types of slings with the Hoyer. The school is able to use a Hoyer

² Ex. E, p. 3.

³ The Division's denial letter states the reason for the denial was because the ceiling lift was "part of a larger renovation to an existing residence." Ex. D. At hearing, the Division clarified that the original denial was based on incomplete information and it was instead denying the request because the current Hoyer lift was sufficient to meet the X Family's needs. The X Family agreed to have the hearing proceed without requiring the Division to provide a new denial notice.

⁴ Mr. George's testimony.

⁵ Ms. Kubitz's testimony; Mr. George's testimony.

⁶ E.X.'s testimony.

⁷ N.X.'s testimony.

lift successfully with K.H.. However, it uses a total of three people: one to operate the Hoyer and two to transfer K.H..⁸ In contrast, the X Family are able to only use two people with the Hoyer: one to operate it and another to transfer K.H..⁹ A ceiling lift will allow a two-person transfer with both people stabilizing K.H. and will not require another person to operate it.¹⁰

Ms. Kubitz is a registered nurse who previously helped to provide care for M.D. at the X Family's home and at school. She has witnessed K.H. hypertoning during a transfer from the bed into a wheeled shower chair. She has considerable experience with Hoyer lifts and believes that they are safe if operated properly. She has never seen anyone come out of a Hoyer lift. She opined that the X Family do not know how to operate the Hoyer lift properly.¹¹

III. Discussion

A ceiling lift falls within the general category of an environmental modification to a Medicaid recipient's residence. It must be preauthorized by the Division and it must be "necessary to (A) meet the recipient's needs for accessibility ... (B) protect the health, safety, and welfare of the recipient; and (C) further the independence of the recipient in the recipient's residence ..."¹²

The question is whether the ceiling lift is "necessary." The Division has asserted that the existing Hoyer lift, if operated properly, meets the boys' transfer needs. Because the X Family have requested the ceiling lift, they have the burden of proof, by a preponderance of the evidence, to demonstrate that the ceiling lift is necessary, i.e., that the Hoyer lift does not meet the boys' transfer needs.¹³

Ms. Kubitz is a nurse, who has experience with both boys and with Hoyer lifts. Her experience transferring the boys involves the use of a wheeled shower chair and not the Hoyer lift. In contrast, N.X. and E.X. testified about their experience with K.H. hypertoning while in the Hoyer lift and that they tried three different types of slings to alleviate the problem of his twisting in the sling while hypertoning. Their testimony is corroborated by the fact that K.H. uses a Hoyer lift while at school, but that the use of that lift requires three people, one person to operate the lift while the other two have their hands on K.H.. In contrast, the home Hoyer lift

⁸ E.X.'s testimony.

⁹ N.X. and E.X.'s testimony.

¹⁰ N.X.'s testimony.

¹¹ Ms. Kubitz's testimony.

¹² 7 AAC 130.300(a) and (b)(2).

¹³ 7 AAC 49.135

only has two people to assist with it: one to operate it and the other for the transfer. In other words, the weight of the evidence shows that it is more likely true than not true that a safe utilization of the Hoyer lift at home would require a team of three people. However, the ceiling lift would not require a team of three people. Because it does not require a separate person to operate it, it can be used by two people, both of whom would be able to physically perform the transfer. As a result, the X Family have met their burden of proof, and their request for a ceiling lift is allowed.

IV. Conclusion

The Division’s denial of the X Family’s request for a ceiling lift is REVERSED.

Dated: April 30, 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 15th day of May, 2019.

By: Signed

Name: Jillian Gellings
Title: Project Analyst

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