

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

In the Matter of )  
 )  
SAM X.\*\* ) OAH No. 23-0694-MDX  
 ) Agency No. 23-HCS-0198/0199/0200  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

Sam X. is a disabled minor child who receives Medicaid benefits. Olivia X., his mother, requested that the Medicaid program pay for an enclosed bed (Cubby Bed) for him. The Division of Health Care Services (Division) denied that request.<sup>1</sup> Ms. X. requested a hearing on Sam’s behalf to challenge that denial.

Sam’s hearing was held on December 1, 2023. Ms. X. represented Sam and testified on his behalf. Dr. Cathleen Marshall, MD, testified on Sam’s behalf. Laura Baldwin, a Fair Hearing Representative with the Division, represented the Division. Karen Benson, a Medical Program Specialist 4 with the Division, testified on its behalf. The record was held open after the hearing for Ms. X. to submit additional information on Sam’s behalf and for the Division to submit its response to that information.

The evidence in this case shows that the Cubby Bed, while desirable from a safety standpoint, is not medically necessary. Consequently, the Division’s denial of Sam’s request for a Cubby Bed is AFFIRMED.

**II. Facts**

Sam is an energetic four-year-old with multiple diagnoses: partial focal epilepsy, autism spectrum disorder, attention deficit hyperactivity disorder, global developmental delay, speech delay, and incontinence. He is non-verbal. He experiences “drop” seizures, where he will fall down during a seizure.<sup>2</sup> Dr. Marshall, a pediatric neurologist who has been treating

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<sup>1</sup> Sam’s initial request was for three items: a pediatric wheelchair, a specialized car seat, and for the Cubby Bed. The Division initially denied the request for all three items. Based upon information received during the hearing process, the Division subsequently approved the pediatric wheelchair and the specialized car seat. It, however, continued to deny authorization for the Cubby Bed. Accordingly, this decision will only address the Cubby Bed.

<sup>2</sup> Ex. E, pp. 1 - 3; Dr. Marshall’s testimony.

Sam since the spring of 2023, described him as being physically very active and essentially having the mind of an 18-month-old in a four-year-old body.<sup>3</sup>

The Cubby Bed is a completely enclosed low mattress on lockable wheels. The canopy completely encloses the mattress and has zippers that prevents the occupant from leaving the bed. It also has padding, and enclosure panels that limit the amount of sensory input an occupant receives.<sup>4</sup>

Ms. X. requested that Medicaid pay for a Cubby Bed for Sam on September 18, 2023. Sam’s physician, Dr. Marshall, signed that authorization request.<sup>5</sup> The Division denied that request.

The authorization request included a “Physical Therapy Mobility Assistive Equipment Letter of Medical Necessity” from Providence Alaska Children’s Hospital. That Letter of Medical Necessity is signed by both a physical therapist and certified physician assistant.<sup>6</sup> It provided the following statement regarding Sam:

He does not sleep much at night and remains quite active which challenges his safety and his families safety. He has seizures that happen at night and due to his cognitive deficits, when he is awake at night he presents as a flight risk. He will get up in the middle of the night, unlock doors, even with 5 locks engaged, and wanders and has gotten outside on occasion. He requires 24/7 supervision because of these cognitive and behavioral deficits. He does not have any physical mobility deficits in the home and is independent with ambulation and all mobility. He is nonverbal and has severe cognitive deficits and at times has become aggressive in his behaviors. The family is having difficulty safely managing his care especially at night. Because of this issue at night, pt family is requesting an enclosed bed with better safety and sensory stimulus management to calm his behaviors at night and keep he and his family safe.<sup>7</sup>

The Letter of Medical Necessity further provides that [Sam] is unsafe and very active at night and requires 24/7 supervision at this time. He requires an enclosed bed to improve his safety and limit stimulation that he is receiving that increases his agitation. This recommended enclosed bed has the ability to limit his movements during the night and also maintain his safety. It has zippered enclosures that have safety measures preventing his ability to escape and move about the house at night. It has padding the prevent his ability to be entrapped or to suffocate. This padding is also necessary given [Sam’s] seizure disorder and the frequent occurrence of seizures during the night. The enclosure

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<sup>3</sup> Dr. Marshall’s testimony.

<sup>4</sup> Ex. E, pp. 5 – 6.

<sup>5</sup> Ex. E-2

<sup>6</sup> Ex. E.

<sup>7</sup> Ex. E, p. 2.

panels limit noise, lighting, and visual stimulus which decreases the amount of sensory input he gets which helps calm him. His family has tried other options that are of lesser cost but this has not provided any benefit and [Sam] continues to elope at night, through doors, windows, and giving access to other objects that pose a safety risk to him.<sup>8</sup>

The Letter of Medical Necessity concludes with a “Recommendation” that states that Sam needs the Cubby Bed “to keep him from eloping during the night.”<sup>9</sup>

Dr. Marshall described Sam as very active, stated that he does not always comply with directions, and stated that he will climb up on items in her office and has fallen from them. She also stated that because the Cubby Bed is entirely contained, he cannot fall out of it. She stated that while placing a mattress on the floor would alleviate concerns about falling, but does not address safety concerns, such as when he throws himself against things.<sup>10</sup>

Ms. X. described Sam as having a very unpredictable sleep pattern where he will sleep for two hours and then remain awake for 24 hours. He has seizures where he falls to the floor. He has knocked over a dresser, knocked the TV off the wall, and climbs on furniture and countertops. She essentially cosleeps with him at night in case he has seizures. She has tried to control his environment by installing baby gates, but he can climb them. She has installed “thumpers” to alert her if he tries to leave, but he tears them up.<sup>11</sup>

### **III. Discussion**

In reviewing the denial of the request for the Cubby Bed, the critical question is whether it is medically necessary. This is because the Alaska Medicaid regulations explicitly state that Medicaid will only pay for medically necessary services and items<sup>12</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>13</sup>

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<sup>8</sup> Ex. E, pp. 5 – 6.

<sup>9</sup> Ex. E, p. 6.

<sup>10</sup> Dr. Marshall’s testimony.

<sup>11</sup> Ms. X’s testimony.

<sup>12</sup> 7 AAC 105.100(5).

<sup>13</sup> 7 AAC 105.110.

The evidence shows that Sam’s treating physician’s opinion is that the Cubby Bed is medically necessary. The federal courts have held that an individual’s physician’s opinion regarding whether a treatment is medically 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>14</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>15</sup> An examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining physician.”<sup>16</sup> An administrative law judge must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician.<sup>17</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>18</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>19</sup>

In this case, however, there is no evidence showing that the Cubby Bed along with its options is required for medical treatment. There is no showing that it will be used to treat Sam’s medical condition. The Cubby Bed consists of a mattress with a secure enclosure. There is no evidence that the mattress is needed for medically required positioning, or for variable height adjustments necessary to accommodate severe arthritis, lower extremity injuries, severe cardiac conditions, or spinal conditions.<sup>20</sup> Instead, it has three articulated purposes, to prevent injury to Sam in the event of seizures, to decrease his sensory input, and to contain Sam for safety purposes, due to his propensities for uncontrolled behavior and leaving a safe environment. However, preventing injury to Sam in the event of seizures can be accomplished by environmental modification without requiring an enclosed bed – by placing the mattress on the floor. Similarly, limiting sensory stimuli can be accomplished without requiring an enclosed bed by tailoring his environment, i.e., by modifications to decrease noise and light.

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<sup>14</sup> *Weaver v. Reagen*, 886 F.2d 194, 200 (8<sup>th</sup> Cir. 1989).

<sup>15</sup> *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996).

<sup>16</sup> *Lester* at 830 – 831.

<sup>17</sup> *Lester* at 830 – 831.

<sup>18</sup> *Lester* at 830 – 831.

<sup>19</sup> *Lester* at 831.

<sup>20</sup> See Ex. B, pp. 31 - 32 for a discussion of the requirements for approval of a specialized bed.


The primary purpose for the Cubby Bed, as clearly and convincingly demonstrated by Ms. X's and Dr. Marshall's testimony, is to maintain Sam in a controlled environment where he cannot leave his bed and go into other areas of the home where there are potential safety issues due to his behavior, and where he might potentially leave the home. This conclusion is reinforced by the language in the Letter of Medical Necessity: "[h]is family has tried other options that are of lesser cost but this has not provided any benefit and [Sam] continues to elope at night, through doors, windows, and giving access to other objects that pose a safety risk to him."<sup>21</sup> This is a purely safety concern, and while keeping Sam safe is a worthwhile goal, it does not meet the criteria for medical necessity. The Cubby Bed is not "reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system."<sup>22</sup>

To reject the uncontradicted medical necessity opinion of a treating physician, which Dr. Marshall is, there must be "clear and convincing evidence" that the Cubby Bed is not medically necessary. As recited above, the evidence shows that although the Cubby Bed would provide a more secure environment for Sam, which would help protect him, 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 Cubby Bed was properly denied as not being medically necessary.

#### **IV. Conclusion**

The Division's denial of Sam's request for a Cubby Bed is **AFFIRMED**.

Dated: January 19, 2024

  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>21</sup> Ex. E, pp. 5 – 6.

<sup>22</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 24 day of February, 2024.

*[signature redacted for publication]*

Lawrence A. Pederson  
Administrative Law Judge