

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)	
)	
B & J P)	OAH No. 22-0746-PER
_____)	Agency No. H-2022-011

DECISION

I. Introduction

J P is a retiree in the Public Employees Retirement System (PERS), and both he and his spouse, B P, receive medical coverage under the AlaskaCare Retiree Health Plan (Plan). On behalf of his wife, Mr. P appealed a decision of the Plan Administrator, the Department of Administration, Division of Retirement and Benefits (Division), denying a health insurance claim submitted for her travel expenses to undergo a biopsy, and his companion costs.

There is no dispute that the lymph node biopsy itself was medically necessary and covered by the Plan. Rather, the issue in this case is whether the biopsy was the type of service for which travel expenses are also covered by the Plan. Because the biopsy was a diagnostic service for which the Plan does not provide travel reimbursement, the Administrator's denial of the P's claim is affirmed.

II. Facts

There are no disputed facts in this case. All the facts described herein were established through the agency record and the submissions by the parties.

A. Background

The Ps live in Community A, an island fishing community in Southeast Alaska of approximately 3,000 residents. In June 2021 Ms. P fell at the beach. She sought treatment locally, and a chest x-ray revealed a right rib fracture, as well as a nodule in in her right lung. A subsequent computerized tomography (CT) scan of the chest revealed adenopathy, pleural effusion, and a spiculated lesion, among other abnormalities of concern. Ms. P's local doctor treated her for presumed pneumonia. A follow up CT scan of Ms. P's chest and abdomen in July 2021 showed some improvements, but also the continued presentation of irregularities in Ms. P's lungs, including lymphadenopathy and the spiculated lesion. Ms. P's local provider referred her to the Seattle Care Cancer Alliance Lung Cancer Early Detection Clinic (SCCA) as further medically necessary testing was not available locally.¹

B. The Ps July 2021 travel to Seattle

¹ R. 54. On April 1, 2022, Seattle Cancer Care Alliance and Fred Hutchinson Cancer Research Center merged to form Fred Hutchinson Cancer Center.

On July 12, 2021, the Ps travelled from Community A to Seattle, Washington. A week later, on July 19, Ms. P underwent a positron emission tomography (PET) scan which showed an fluorodeoxyglucose (FDG) uptake in the right upper lobe, lymph nodes and other areas. Based on these imaging results, she was referred to undergo an ultrasound-guided right supraclavicular lymph node biopsy.²

Ms. P had the biopsy on July 21. Four samples of right lymph node tissue were taken and sent to Pathology, the department responsible for testing tissues to secure accurate diagnoses of diseases.³ The biopsy confirmed a diagnosis of lung adenocarcinoma.⁴

Nothing in the record indicates that Ms. P received any additional treatment, including any new prescriptions or services to alleviate any conditions or specific symptoms of an illness or injury, nor is this a fact in dispute. The Ps returned to Community A on July 27, 2021. After their return, they submitted a claim to Aetna (the Plan's third-party administrator) requesting reimbursement of their \$1,258.74 in combined round trip travel expenses.⁵

C. Aetna initial determination and the Ps' appeal

In September 2021 the Ps received an Explanation of Benefits (EOB) from Aetna, denying coverage for the cost of their flights to Seattle.⁶ The EOB indicated that Mr. P's flight costs were denied because the Plan does not cover companion fees, and that Ms. P's flight costs were denied because she had not received "treatment" during the trip.

Travel expenses under the Plan are only covered if the member travels to receive "treatment," which the Plan defines 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.⁷

Aetna's September 2021 EOB stated that Ms. P's travel was not covered by the Plan because she had not received any "treatment" as the defined by the Plan.⁸

Under the Plan, a dispute regarding a coverage decision by Aetna may be appealed at two different levels for review. In January 2022 Mr. P filed an initial appeal of Aetna's decision on

² R. 52.

³ R. 52, 32-33, 36.

⁴ R. 52, 57, 36, 101-102.

⁵ R. 45.

⁶ R. 89-90.

⁷ R. 90, 105.

⁸ R. 90.

behalf of his wife and included letters from Ms. P's doctor in Community A, Provider A, and from Sylvia Goczol, a clinical nurse coordinator from the SCCA.⁹ Noting the word "procedure" in the definition of "treatment," Mr. P pointed to Ms. Goczol's description of the biopsy as "not a diagnostic test, but a required procedure," and Provider A's reference to "a medical biopsy procedure that was medically necessary." He also attached medical records from Ms. P's visit to the SCCA that referenced the word "procedure" to buttress his argument that his wife's biopsy was a procedure included in the definition of treatment, such that her flights should be covered under the Plan.

On February 1, 2022, Aetna denied the Ps claim for reimbursement as not meeting the eligibility requirements under the Plan, because the provider chart notes did not indicate that Ms. P had received treatment during the travel period. Additionally, Aetna noted that travel companion fares are not covered.¹⁰

On February 16, 2022, Mr. P filed a second level appeal, reiterating his contention that his wife's biopsy was a procedure. As support for his assertion, he included the documents from the original appeal, as well as radiology reports and a newly obtained letter from Dr. Cristina Merkhofer, a physician from the Division of Oncology at the SCCA. Her letter detailed the events in Ms. P's medical history that led up to her admission to SCCA, concluding;

[B]ased on her imaging results, she was referred to undergo an ultrasound-guided right supraclavicular lymph node biopsy procedure on 7/21/2021, and pathology returned with a TTF-1 positive lung adenocarcinoma. This procedure was medically necessary in order to correctly determine Ms. P's diagnosis. Given the medical necessity of her biopsy procedure, we are requesting reimbursement for the patient's airfare cost for her to travel to SCCA from her home in Alaska.¹¹

On June 2, 2022, Aetna denied the Ps claim on the same grounds: that companion airfare is not covered, nor is airfare for the receipt of diagnostic services.¹²

D. The Ps' Appeal to the Division and then to the Office of Administrative Hearings

Having exhausted the two levels of review available through Aetna, Mr. P timely appealed this decision to the Plan Administrator, the Division.¹³ On August 5, 2022, the Division upheld Aetna's determination that Ms. P's ultrasound guided lymph node biopsy was a medically

⁹ R. 54, 55, 56, 60-61.

¹⁰ R. 73-76.

¹¹ R. 57.

¹² R. 45-48.

¹³ R. 21-24.

necessary diagnostic procedure that was not available locally. But the Division found there was no evidence that she received treatment or new prescriptions during the trip to Seattle, and therefore, her travel claim did not meet the eligibility requirements under the Plan.¹⁴

Mr. P appealed the Division's decision, and the case was referred to the Office of Administrative Hearings on August 30, 2022. Case planning conferences were held on September 14, November 8, and December 10, 2022. The Ps represented themselves, while the Division was represented by an Assistant Attorney General from the Department of Law. At the December 10 conference, the parties advised that they wished to forgo a hearing and rest their cases on their written statements, as no facts were in dispute. The parties submitted written briefs, and as neither party requested oral arguments the record closed on December 16, 2022.

III. Discussion

A. Analytical framework

The AlaskaCare Retiree Health Plan Booklet (Booklet) is the insurance contract for Plan members, and as such includes the policy details and definitions.¹⁵ The dispute between the Ps and the Division, therefore, is a question of contract interpretation. The January 2021 Booklet is the version that applies in this matter, as it was in effect during the Ps travel period.

The Alaska Supreme Court has advised that ambiguous insurance policies are to be construed in favor of the insured.¹⁶ An insurance policy must be construed “so as to provide that coverage which a layman would reasonably have expected given his lay interpretation of the policy’s terms.”¹⁷ However, the mere fact that two parties to an insurance contract have differing subjective interpretations of that contract does not make it ambiguous. Rather, ambiguity exists “only when the contract, taken as a whole, is *reasonably* subject to differing interpretations.”¹⁸

The Ps assert that there is ambiguity in the word “treatment,” as defined in the Booklet, which an insured must have received to qualify for travel coverage under the Plan. The Division disagrees. The question under the analysis articulated by our Supreme Court is how a layperson would reasonably interpret the plain language of the Plan Booklet and the terms of the AlaskaCare Plan.¹⁹

¹⁴ R. 13-14.

¹⁵ R. 14. Available at [AlaskaCare Retiree Health Plan, Retiree Insurance Information Booklet, May 2003 as amended through 2018](#).

¹⁶ *Simmons v. Insurance Co. of N. America*, 17 P.3d 56, 59 (Alaska 2001).

¹⁷ *Whispering Creek Condo. Owner Ass'n v. Alaska Nat. Ins. Co.*, 774 P.2d 176, 178 (Alaska 1989).

¹⁸ *U.S. Fire Ins. Co. v. Colver*, 600 P.2d 1, 3 (Alaska 1979) (quoting *Modern Constr., Inc. v. Barce, Inc.*, 556 P.2d 528, 529 (Alaska 1976)).

¹⁹ See *In re D.M.*, OAH No. 08-0153-PER (OAH 2008).

B. Applicable Plan language

On page 27 of the Booklet is Section 3.3, Covered Medical Expenses, which begins, “Benefits are available for medically necessary services and supplies necessary to diagnose, care for, or treat a physical or medical condition.”²⁰ A list of what qualifies as being “medically necessary” follows, including, “[a] diagnostic procedure indicated by the health status of the patient and expected to provide information to determine the course of treatment without aggravating the condition or causing additional health problems[.]”²¹ The Division does not dispute that Ms. P’s lymph node biopsy was a medically necessary procedure, and accordingly, the Plan covered the cost of the biopsy.²²

Continuing further, on page 46 of the Booklet is Section 3.3.18, “Travel,” which explains the parameters of travel coverage under the Plan.²³ The first statement in bold letters is that “all travel must be pre-certified to receive reimbursement under the Plan.”²⁴ Further down the page, it states, “[i]f the patient is a child under 18 years of age, a parent or legal guardian’s travel charges are allowed. Also, when authorized by the claims administrator, travel charges for a physician or a registered nurse are covered.”²⁵

The Plan continues, “[t]ravel, as described above, is covered only in the circumstances set forth in the following sections. Travel is not covered for diagnostic purposes.”²⁶ The sections that follow in bolded letters are “Emergencies,” “Treatment Not Available Locally,” “Second Surgical Opinion,” and “Surgery in Other Locations,” and each section includes a paragraph outlining specific limitations.²⁷

The parties agree that the section applicable to the Ps situation is “Treatment Not Available Locally,” as Ms. P could not receive the necessary lymph node biopsy in Community A, Alaska. Turning to that paragraph, the explanatory language reads as follows,

Treatment Not Available Locally

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

²⁰ 2021 Plan Booklet p. 27.

²¹ *Id.*

²² Division’s Brief, p. 8-9.

²³ 2021 Plan Booklet p. 46.

²⁴ Neither party raised this issue in their briefs, so it is unclear if the Ps sought pre-certification prior to their travel. Presumably they did not, or the issue of travel coverage leading to this appeal would have been addressed prior to their July 2021 trip to Seattle.

²⁵ 2021 Plan Booklet p. 47.

²⁶ *Id.*

²⁷ 2021 Plant Booklet p. 47- 49.

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.²⁸

C. Ms. P’s biopsy was not “Treatment” as defined by the Travel Provisions of the Plan

To prevail in this appeal and qualify for travel coverage for the July 12 - 27, 2021 Seattle trip, the Ps must prove by a preponderance of the evidence that Ms. P received treatment during the trip as defined by the Plan.²⁹

Mr. P focuses on the beginning of the Plan’s definition: “[t]reatment is defined as a service or a procedure...,” and then argues that Ms. P received “treatment” because of the repeated use of the word “procedure” in her medical charts following the July 2021 SCCA visit, and in the letters from Provider A and Merkhofer and Ms. Goczol. Additionally, he notes, Ms. Goczol’s letter states that the biopsy “was not a diagnostic test, but a required procedure[.]”³⁰

The Division responds that that there is no ambiguity in the language of the Plan; treatment must be received for travel to be covered, and travel is not covered for diagnostic procedures, which is what Ms. P received. It contends that the Plan’s definition of treatment must be read in its entirety, to include the additional qualifying language that the procedure be “medically necessary to correct or alleviate a condition or specific symptoms of an illness or injury,” and specifically exclude diagnostic procedures. The Division avers that the lymph node biopsy met the definition of a diagnostic procedure, as it was a medically necessary service “expected to provide information to determine the course of treatment without aggravating the condition or causing additional health problems.”³¹ Additionally, the Division notes that Ms. P’s providers submitted billing of the biopsy to the Plan under diagnostic and consultive codes.³²

The Division’s argument is far more persuasive. A determination of whether the Plan’s definition of treatment is ambiguous under the Plan necessarily includes a standard of reasonableness. Given that the broadest possible definition of “procedure” includes “a particular way of accomplishing something or of acting,” “a series of steps followed in a regular definite order,” and “a traditional or established way of doing things,” the word “procedure” could

²⁸ *Id.*

²⁹ *See* 2 AAC 64.290(e).

³⁰ R. 37.

³¹ Division’s Brief, p. 7-8.

³² *Id.*

theoretically be used to describe virtually any medical process at all.³³ Under this interpretation, the Plan would allow travel coverage for “procedures” of the most nominal importance, which would make all the paragraphs in the Booklet regarding pre-certified travel and other qualifying circumstances surrounding travel largely pointless. This is not a reasonable interpretation of the definition of the word “treatment” under the Plan.

Additionally, nothing in the record shows that the lymph node biopsy alleviated or corrected any symptoms involving Ms. P’s then suspicious node. The samples taken during her biopsy were sent to the Pathology Department. Pathology is the science of the causes and effects of diseases,³⁴ which involves the laboratory examination of samples of body tissue for diagnostic or forensic purposes. The biopsy allowed the pathologists to diagnose the concerning node in Ms. P’s lung as adenocarcinoma, providing her, her family, and her medical providers the ability to make informed choices about a course of treatment going forward. The lymph node biopsy, therefore, was a diagnostic procedure, and not a treatment for which travel expenses are covered by the Plan, as stated in several locations in the Booklet.

IV. Conclusion

Under the terms of the AlaskaCare Retiree Health Plan, travel expenses may be covered medical expenses if an insured is seeking medically necessary treatment that is not available locally. Ms. P’s lymph node biopsy, while medically necessary and not available locally, was not treatment as defined by the Plan, as it was a diagnostic procedure. Therefore, her travel expenses were appropriately denied by the Administrator. Mr. P’s travel expenses were also appropriately denied under the Plan, as companion fares are only covered if patients are under the age of 18, which Ms. P is not, or if he traveled as a pre-approved physician or nurse, which he did not.

DATED: January 6, 2023.

By: Signed

Danika B. Swanson
Administrative Law Judge

³³ “Procedure.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/procedure>. Accessed 30 Dec. 2022.

³⁴ “Pathology.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://merriam-webster.com/dictionary/pathology>. Accessed 30 Dec. 2022.

ADOPTION

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 31st day of January, 2023.

By: Signed
Signature
Danika Swanson
Name
Administrative Law Judge
Title

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