

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

In the Matter of)

F. D.)

OAH No. 24-0515-MDX

DECISION

I. Introduction

F. D. is a middle-aged gentleman with multiple health challenges who resides in an assisted living home. Through ProCare, he requested Medicaid coverage of oral enteral formula (Boost/Ensure drink) 570 calories daily. The request was denied by the Division of Health Care Services (Division) as not supported by evidence of medical necessity within the meaning of 7 AAC 105.100(5). Mr. D. requested a hearing to challenge the denial.

The hearing was held on October 2, 2024. Mr. D., who is deaf, was present by Zoom and represented himself, communicating through voice to text and by typing in the Zoom chat. He testified as a witness on his own behalf. Laura Baldwin, a Fair Hearing representative, represented the Division. She called as witnesses Katie Fett, the Division's program manager who reviewed the request, and Dr. John Botson, D.O., Alaska State Medicaid Director. Exhibits A through F submitted by the Division were admitted to evidence without objection by Mr. D. The record closed at the end of the hearing.

The evidence failed to show that the request for enteral formula in the form of Boost or Ensure drinks requested by Mr. D. is medically necessary. Mr. D., who has the burden of proof, did not satisfy that burden. Accordingly, the Division's denial of the request is AFFIRMED.

II. Facts

Mr. D. is a fifty-eight year old man with multiple diagnoses, including Type 2 diabetes mellitus with diabetic polyneuropathy and long-term insulin use. He had used Ensure oral nutrition with Medicaid authorization, but, according to Mr. D., his Ensure was stopped by Assisted Living Home A. and Assisted Living Home B. He no longer lives there, and now resides at Assisted Living Home C. He does not receive SNAP benefits, and his income, he testified, is not sufficient to purchase Ensure. He relies now on his church sponsor occasionally finding it for him at a food bank. Mr. D.'s diagnoses include, in addition to Type 2 diabetes,

“malabsorption due to intolerance” (coded as K90.49) which his physician recorded as bloody diarrhea following eating most food protein sources.¹

Ms. Fett testified to her review of the request, and that she asked for Dr. Botson to review the medical record as well. She confirmed that Mr. D. had previously been authorized to receive “Boost” from August 6, 2022, to July 17, 2023. She explained that generally, the state Medicaid local guidelines provide coverage of enteral nutrition when the feedings are provided by an enteral device (such as a feeding tube) or the recipient has a disease or condition that prevents absorption of nutrients of an oral diet or a disease or condition that obstructs food from reaching the small bowel. Because that wasn’t shown in Mr. D.’s records, she recommended denial.

Dr. Botson testified that he reviewed the medical records provided by the requester. He noted that Mr. D.’s primary care provider noted Mr. D. received most of his nutrition through regular food and he had not had significant weight loss. He testified that the purpose of enteral nutrition is to increase caloric intake when a person is unable to, for example, eat enough to supply an increased need for calories due to some conditions by eating alone, or a person was unable, due to some disorders, to get food to the small intestine or for it to be absorbed by the small intestine. Dr. Botson noted that Mr. D.’s primary care physician, Dr. X., had discussed a gastroenterology referral with Mr. D. This type of examination might demonstrate if such a condition or disease was causing malabsorption or if an obstruction existed.

Mr. D. objected by suggesting that a colonoscopy would look only at what the “end” of the food was. In response, Dr. Botson explained that a colonoscopy was only one part of a gastroenterological examination, and that an endoscopy would also be part of it. This kind of examination, he explained would be appropriate.

¹ Ex. E, pg. 7.

III. Discussion

The question here is whether Mr. D.’s use of Ensure drink is medically necessary. Alaska’s Medicaid regulations explicitly state that Medicaid will only pay for reasonably necessary medical services.² It will not pay for 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[.]³

Alaska Medicaid will only pay for enteral or oral nutritional products if they are prescribed, certified as medically necessary, and the certification indicates that “sufficient caloric or protein intake is not obtainable through regular, liquefied, or pureed food.”⁴ The Division’s Policy Article Guidance states that “Enteral nutrition for beneficiaries with a functioning gastrointestinal tract whose need for enteral nutrition is not due to reasons related to the non-function or disease of the structures that normally permit food to reach the small bowel will be denied as non-covered, no benefit.”⁵ The associated Local Coverage Document Guidance states that:

Enteral nutrition is covered for a beneficiary who requires feedings via an enteral access device to provide sufficient nutrients to maintain weight and strength commensurate with the beneficiary's overall health status and has a permanent:

A. full or partial non-function or disease of the structures that normally permit food to reach the small bowel; OR,

B. disease that impairs digestion and/or absorption of an oral diet, directly or indirectly, by the small bowel.⁶

The federal courts have held that an individual’s physician’s opinion regarding whether a treatment is necessary is rebuttably presumed to be correct: The Medicaid statute and regulatory

² 7 AAC 105.100(5),

³ 7 AAC 105.110.

⁴ 7 AAC 120.240(a).

⁵ Ex. B, pg. 17.

⁶ Ex. B, pg. 29.

scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.⁷ For this reason, more weight is given to a treating physician’s opinion than the opinions of those who do not treat a claimant.⁸ An examining physician’s opinion is “entitled to greater weight than the opinion of a non-examining physician.”⁹ An administrative law judge must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician.¹⁰ Even when—as here—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.”¹¹ “The opinion of a non-examining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician *or* a treating physician.”¹²

Here, Dr. X., Mr. D.’s primary care physician, did express a desire to refer Mr. D. for a gastro-intestinal (GI) evaluation, including colonoscopy, but reported that Mr. D. refused the referral.¹³ His note makes it clear that refill of a prescription for Ensure was based *entirely* on Mr. D.’s self-report that his symptoms resolved in the past with use of Ensure.¹⁴ However, Mr. D.’s weight, at 295 pounds, remained stable and the majority of his caloric needs are, as Dr. X. noted, met through regular food.¹⁵ Dr. X. did not explain what condition prevented Mr. D. from meeting all his caloric needs through regular food, although Dr. X. was concerned enough by Mr. D.’s reported symptoms to recommend a GI evaluation. Dr. Botson concurred in the recommendation for a GI evaluation, which, he explained, could show whether Mr. D. had a qualifying condition. He also noted that despite the break in supply of Ensure after July 2023, Mr. D. had not had a significant weight loss demonstrating inability to obtain nutrients from regular food.

⁷ *Weaver v. Reagen*, 886 F.2d 194, 200 (8th Cir. 1989).

⁸ *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Although *Lester* was decided in the context of Social Security benefits, the same principles are applied in Medicaid cases. See, e.g., *Holman v. Ohio Dep’t of Human Serv.*, 757 N.E.2d 382 (Ohio App. 2001).

⁹ *Lester* at 830.

¹⁰ *Lester* at 830 – 831.

¹¹ *Lester* at 830 – 831.

¹² *Lester* at 831.

¹³ Ex. E, pg. 7.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

Dr. Botson’s views regarding the medical evidence, including that a GI evaluation would be appropriate, is convincing. The fact that Mr. D. declined to follow Dr. X.’s advice for a GI evaluation strongly suggests that Mr. D.’s report was motivated by the desire to obtain a renewal of his Ensure supply instead of real concern for his reported symptoms. Mr. D. may prefer to use Ensure, but he has failed to show *evidence* (such as that which could be obtained in a GI evaluation) that it is reasonably necessary for treatment or correction of a condition, illness, or injury that prevents him from obtaining sufficient nutrients to maintain a weight “commensurate with [his] overall health status.” Therefore, the request for Medicaid authorization for Ensure/Boost oral enteral nutrition is properly denied as not being medically necessary.

IV. Conclusion

The Division’s denial of the authorization request for oral enteral nutrition liquid is AFFIRMED.

Dated: October 3, 2024

By: Signed
Signature
Kristin S. Knudsen
Name
Administrative Law Judge
Title

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

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 17th day of October, 2024.

By: Signed
Signature
Kristin S. Knudsen
Name
Administrative Law Judge
Title

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