

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

In the Matter of)	
)	
U. P.)	OAH No. 24-0348-MDS
_____)	

DECISION

I. INTRODUCTION

On April 18, 2024, U. P., through his guardian W. (M.) X., applied for Medicaid Home and Community-Based Waiver (Waiver) benefits through an amendment to his Support Plan of Care. The amendment sought coverage for 37 units of rehabilitative group home care for the period from November 7, 2023, to December 13, 2023. The Division of Senior and Disability Services (SDS) denied the amendment on May 3, 2024, because the amendment was filed 101 business days after the effective start date of Medicaid (November 7, 2023) pursuant to 7 AAC 130.217(d)(3) and because the amendment lacked supporting documentation and justification. P., through his guardian, requested a fair hearing, asserting that need for the benefits was sufficiently documented and justified. As to the delay, P. argues that the interruption in his Medicaid eligibility and difficulties with the Harmony website constituted unusual circumstances justifying the delay.

This decision concludes that the requested amendment should be denied. The amendment was filed late, and the basis to excuse the late filing provided in the amendment and in testimony was insufficient to meet standard of “unusual circumstances that *prevent* timely completion of a plan of care amendment.”¹ Accordingly, the Division’s denial of Mr. P.’s April 18, 2024 application for an amendment adding 37 units of Group Home services from Nov. 7, 2023, to Dec. 13, 2023, to his Plan of Care is AFFIRMED.

II. FACTS

A. Background information

There is no dispute that Mr. P. is eligible for Intellectual and Developmental Disabilities (IDD) Waiver Services. In addition to intellectual disabilities, he has been diagnosed with encephalopathy, autistic disorder, anxiety disorder (unspecified), attention deficit

¹ 7 AAC 130.217(d)(3) (emphasis added).

hyperactivity disorder and mood disorder due to known physiological condition.² He was in Office of Children’s Services care for a number of years and when he turned 18, his grandmother was appointed his guardian.³ In December 2020, the Superior Court appointed Ms. X. (M.) as his guardian.⁴ He resided in a group home with his brother, who was also in OCS care.⁵ In November 2021 he was arrested and, following conviction on several charges, remained in prison through November 6, 2023. While he was in prison, his Medicaid eligibility was suspended, but he was not disenrolled.

Through his guardian and IDD Services care coordinator, upon his eligibility for parole, Mr. P. was released to a group home operated by a Provider of Care Services⁶ on November 7, 2023. Unfortunately, Mr. P. did not comply with the terms of his parole and was remanded back to prison December 13, 2023.⁷ He subsequently eloped from a substance abuse program to which he was released and his present whereabouts are unknown.⁸

B. Procedural history

This matter concerns a plan amendment to cover payment of IDD Waiver benefits to the group home operator for the 37 days Mr. P. resided there from November 7, 2023, to December 13, 2023.

On April 25, 2023, Ms. X. was notified that SDS had approved a “Home and Community Based Waiver Support Plan for Mr. P., effective from June 8, 2023.”⁹ Care Coordination would be provided by Summit Care Coordination (Ms. O. L.).¹⁰ When notified of his planned release on parole, Ms. O. L. and Ms. X. sought a placement for him in a group home setting. Ultimately, a place was found for him with a Provider of Care Services. During his incarceration, Mr. P.’s Medicaid eligibility had been suspended, so Ms. O. L. chose to prioritize reinstatement of his Medicaid before submitting a support plan amendment to include the rehabilitative group home care.

² Ex. C, pg. 9.

³ Ex. C, pg. 12.

⁴ Ex. C, pg. 27-30.

⁵ Ex. C, pg. 12

⁶ Ex. C. pg. 5.

⁷ *Id.*

⁸ Ex. 1, pg. 5.

⁹ Ex. F.

¹⁰ Ex. F, pg. 3.

An amendment to Mr. P.’s plan of care was submitted by Ms. O. L. on April 18, 2024.¹¹ Ms. McCafferty, Health Program Manager 2 in SDS, reviewed the amendment. She determined that the amendment had not been submitted within 10 working days prior to the change in circumstances or at least ten days after the change (i.e., placement in the group home). Ms. McCafferty determined that the delay in reinstating Medicaid and the outages at the submission site (Harmony) did not justify the lateness of the submission. May 3, 2024, Ms. McCafferty issued the denial of the IDD Waiver Service – Residential Habitation – Group Home 37 units.¹² Ms. X. requested a fair hearing appealing the denial on May 30, 2024.¹³

A hearing was held on July 16, 2024, as scheduled. Ms. X. (Mr. P.’s guardian), Ms. K. O. L. (Mr. P.’s care coordinator), Ms. Terri Gagne, (representing the Division) and Ms. Liza McCafferty (Health Program Manager, Senior and Disability Services) were present telephonically. During the hearing, following the testimony of Ms. McCafferty, it became apparent that one party had not received any of the exhibits in the case and the administrative law judge had not received two exhibits. The Division was directed to provide the missing exhibits as soon as possible and the hearing was continued until July 22, 2024.

On July 22, 2024, hearing reopened. The Division was again represented by Ms. Gagne. Ms. McCafferty appeared and again testified. Mr. P.’s guardian, Ms. X., again appeared. She presented testimony of Ms. O. L., Mr. P.’s care coordinator, and cross-examined Ms. McCafferty. Also present on Mr. P.’s behalf was his care coordinator, Ms. O. L., who testified.

III. Discussion

A. Applicable Burden of Proof and Standard of Review

Because this amendment request seeks additional waiver services, Mr. P. bears the burden of proof in this case.¹⁴ A Medicaid “Fair Hearing” proceeding is a *de novo* hearing.¹⁵

¹¹ Ex. H, pg. 1.

¹² Ex. C, pg. 2.

¹³ Ex. C, pg. 1.

¹⁴ 7 AAC 49.135 provides

For actions involving termination or reduction of benefits, the burden of proving evidence supporting the termination or reduction is on the department and is by a preponderance of evidence, unless otherwise provided by law. For a request for new or additional benefits, the burden of proof is on the applicant or recipient requesting the service, and is by a preponderance of evidence.

¹⁵ 42 CFR § 431.232(c), .244. See also *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-1236 (Ind. App. 2010).

The administrative law judge may independently weigh evidence and reach a different conclusion than did the Division’s staff, even if the original decision is factually supported and has a reasonable basis in law.

B. Relevant Statutes and Regulations

States participating in Medicaid must provide certain mandatory services under a state medical assistance plan.¹⁶ States may also provide certain additional services, one of which is the Home and Community-Based Waiver Services program.¹⁷ Congress created the Waiver Services program to allow states to offer long-term care, not otherwise payable by Medicaid, in their own homes or community instead of in a hospital, nursing facility or “intermediate care facility for the mentally retarded.”¹⁸ While states must provide that such service be “sufficient in amount, duration, and scope to reasonably achieve its purpose,”¹⁹ states may “place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.”²⁰

Alaska’s IDD Home and Community Based Waiver program requires an application. If the recipient meets the level of care requirement, then recipient’s “care coordinator shall submit a support plan to the department for approval.”²¹ Once approved, not less than every 12 months, the care coordinator shall submit a new support plan based on the recipient's current needs, the most recent assessment and level-of-care assessment or review, and submit a completed support plan and documentation 30 days prior to expiration of the current plan year.²²

7 AAC 217(d) provides that if an amendment is required after an annual support plan is approved, the care coordinator shall

(1) prepare an amendment to the recipient's support plan if

(A) a modification is required to meet the recipient's needs because of a change of circumstances related to the health, safety, and welfare of the recipient; or

¹⁶ See 42 USC §§ 1396a(a)(1)-(5), 1396a(a)(17), and 1396a(a)(20)-(21).

¹⁷ See 42 USC § 1396a(a)(10)(A). The program is called a “waiver” service because the U.S. Secretary of Health and Human Services waives certain statutory requirements. See 42 USC § 1396n(c).

¹⁸ 42 USC § 1396n(c)(1). See also 42 CFR 440.180(a)-(b). See 7 AAC 130.200, “The purpose of this chapter is to offer . . . the opportunity to received home and community-based waiver services as an alternative to institutional care. . . . implemented through a person-centered support plan.....”

¹⁹ 42 CFR § 440.230(b).

²⁰ 42 CFR § 440.230(d).

²¹ 7 AAC 130.209(d).

²² 7 AAC 130.217(a).

(B) the recipient needs an increase or decrease in the number of service units approved under (a) - (c) of this section or in a prior amendment to the support plan;

(2) secure the signature, either in person or electronically, of

(A) the recipient or recipient's representative indicating that the recipient or recipient's representative agrees to the plan of care amendment; and

(B) a representative of each provider of services that are modified by the amendment indicating the provider agrees to render the services as specified in the plan of care amendment; and

(3) submit the support plan amendment to the department not later than 10 business days after the date of a change in circumstances or a change in the number of service units, unless the care coordinator has submitted to the department written documentation of unusual circumstances that prevent timely completion of a support plan amendment, and the department has approved a later submission date.

The division must then approve or disapprove the amendment within 30 days.²³ Although the regulation sets deadlines for the care coordinator and the division, it is silent as to what happens if those deadlines are not met.

C. The reason for denying the requested amendment is supported by the regulations and evidence presented

In this case, the 10-business-day deadline in 7 AAC 217(d)(3) began to run November 7, 2023, when Mr. P. was released from prison, necessitating additional services in the form of “residential habilitation” or the group home.²⁴ Excluding two weekends and the Veteran’s Day holiday, the amendment was due no later than Wednesday, November 22, 2023. The amendment was submitted on April 18, 2024. The SDS denial letter of May 3, 2024, states

On 04/18/24, Senior and Disabilities Services received a proposed amendment for U., effective 11/07/23, 21 weeks or 101 business days after the effective start date This request did not supply documentation of [unusual circumstances that prevent timely completion of a Plan of Care amendment] and the start dates of the request are not aligned with our regulations.

On the Late Support Plan Submission Form, the reason given for the late submission was “Client lost Medicaid eligibility – was just reinstated in March, then had had a number of Harmony outages/issues since then.” The request to add Res Hab – Group Home services is denied due to untimely submission and lack of justification and supporting documentation.

²³ 7 AAC 130.217(e).

²⁴ Ms. O. L. testified that placement in a group home or home was a requirement of Mr. P.’s release, but she had difficulty finding a placement.

From November 22, 2023 to April 18, 2024 is 21 weeks or 148 days. SDS is correct that the amendment was late, and, indeed, the witnesses for Mr. P. do not deny that it was late. Rather, the issue is whether there were “unusual circumstances that prevent timely completion” of the amendment.

Ms. X. assumed that Mr. P. was “cut off” from Medicaid while he was in prison notwithstanding that she had not received anything from Medicaid or Public Assistance saying so. As a private guardian, she had not previously had a client who went to jail (her other clients are all in assisted living homes), so she had no experience with this situation. Ms. X. said she only learned two days prior to his release that Mr. P. was to be released. She called to tell Medicaid that Mr. P. was out of prison, but, she testified, she didn’t hear back from a long-term care worker until February²⁵ or March.²⁶ At that point she was told that Mr. P.’s Medicaid was approved from the time he left prison until he reentered prison. Ms. X.’s testimony, while credible, centered on her complaints that she was not kept informed by various state agencies, including the Department of Corrections, about Mr. P., or that state agencies were slow to respond to her. She did not provide evidence of some unusual event that prevented Ms. O. L. from filing the plan amendment.

Ms. O. L. was also unfamiliar with incarcerated clients, but she has had experience with clients who have Medicaid eligibility lapses. Ms. O. L. said that she was informed through the Enterprise (billing) system that Mr. P. was “not eligible” for services and therefore her bills as care coordinator were denied, but the billing system didn’t say why he was ineligible. Ms. O. L. believed that submitting an amendment would only result in denial of the services, just as she was denied payment for her services. Because the billing system said Mr. P. was ineligible, his care coordinator and his guardian assumed that his Medicaid eligibility was terminated (instead of suspended during incarceration) and prioritized reinstatement of Medicaid. Not until the billing system indicated that Mr. P. was eligible for Medicaid did Ms. O. L. begin working on the plan amendment.²⁷

²⁵ Ex. 1, pg. 5 states Ms. X. learned that the Medicaid was approved retroactively in “mid February.”

²⁶ In testimony, the date cited was “in March,” but the witnesses’ Points of Disagreement states that the care coordinator “was not able to get anything processed through Alaska Medicaid Enterprise / Gainwell (the billing system) *and approved* until late March.” Ex. 1, pg. 5. (emphasis added).

²⁷ Ex. 1, pg. 5.

However, Ms. O. L. had submitted several forms through the Harmony website in March and April 2023, including a Renewal Application and Cost of Support Plan, despite Mr. P. being incarcerated.²⁸ Ms. O. L. admitted she knew about the 10-day deadline for a Waiver service plan amendment, but her experience was that support plans can be approved late by SDS. Ms. O. L. had submitted a late amendment in Mr. P.'s case on May 26, 2022, which was approved the same day.²⁹ The amendment noted that the support plan was for care coordination only effective November 10, 2021.³⁰ However, this approval was followed May 30, 2022 by a note on the Amendment by Lori Gaetzman, a Medicaid Program Specialist, that "Client incarcerated DOC since 11.10.21... ends service temporarily, Cc [Care coordinator] should submitted COS when happened."³¹ Evidently, this advice went unread. Neither Ms. O. L. or Ms. X. contacted SDS to inquire about the need to submit a plan amendment for the Group Home placement before or immediately after November 7, 2023. Ms. O. L.'s testimony was credible, but it was mostly directed to justifying her decision to wait for Medicaid eligibility to file a plan amendment in the belief it would only be denied, instead of providing evidence that she was prevented from filing by some unusual circumstance.³² While the documentation of outages (planned or otherwise) with the Harmony data system from March 22-26, April 2-8 and April 12-15 indicates that there were reasons to avoid using the system during those times, this information does not excuse the delay between November 22, 2023 and March 21, 2024. By the time the Harmony website began its migration, the plan amendment was already late.

Ms. McCafferty's testimony was credible, clear, and pertinent. SDS has staff available to answer questions from providers and care coordinators. If a support plan amendment is submitted, but Medicaid is not yet available, the decision will be to suspend the amendment's approval until there is a decision on Medicaid eligibility, or to "approve pending Medicaid."³³ This permits an amendment to be filed while Medicaid eligibility is undecided, or a suspension is

²⁸ Ex. 2, pg. 2.

²⁹ Ex. 2, pg. 2.

³⁰ *Id.*

³¹ *Id.*

³² Much of Ms. O. L.'s testimony concerned the issue of "lack of justification and supporting documentation." She did not deny she was late, but explained that she had only limited space on the amendment form to provide justification and that she had been instructed in training "not to write a novel." However, elaborating on her chief reason for delay (lack of Medicaid eligibility for billing purposes) does not make it an unusual circumstance that *prevented* her filing a timely amendment.

³³ Testimony of L. McCafferty.

being reinstated. Payment then occurs from the date of services provided as authorized, once Medicaid is approved. Waiver services for residential habilitation services cannot be paid retrospectively because payment may only be made for residential habilitation services that receive *prior* authorization.³⁴ Ms. McCafferty also addressed the issue of the lack of justification for the delay, pointing out that Ms. X. could have provided an attachment to the Harmony form. In any case, nothing in Exhibit 1, Ms. X.'s testimony or Ms. O. L.'s testimony pointed to an unusual circumstance that *prevented* filing a timely amendment for the new, additional services.

Here, the phrasing of 7 AAC 130.217(d)(3) indicates the intent that the recipient or care coordinator seek and extension of time for filing a support plan amendment *before the amendment request is late*. In this case, the late submission form was filed after the amendment was 21 weeks late and no effort was made to request an extension of time within the November 22, 2023 deadline. Thus, the correct application of the regulations to the facts shown at hearing is to deny Mr. P.'s support plan amendment for Residential Habilitation Group Home services based on untimeliness.

IV. CONCLUSION

Mr. P.'s amendment request must be denied on the grounds that it was filed late and because no legitimate basis to excuse the late filing was provided either in the request or at hearing. Accordingly, the Division's denial of the amendment request of April 18, 2024 is AFFIRMED.

DATED this 23 day of September 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.]

³⁴ *Id.*

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 4th 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.]