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

In the Matter of	)	
	)	
F. F.	)	OAH No. 25-1062-MDX
	)	

DECISION

I. Introduction

F. F. is 17 years old. He lives with his mother and legal guardian, K. F., in Community A. He requested Medicaid payment for travel to Phoenix for himself and two escorts for an evaluation and work-up for deep brain stimulation (DBS) to control his severe spastic-dyskinetic cerebral palsy. The Division of Health Care Services (Division) does not object to the request for first class seating for F. and one escort, for coach seating for a second escort, or to the request for the evaluation and work-up for DBS. The Division objects to paying for travel to Phoenix, Arizona, because the regulations that govern provision of travel only permit travel to the "closest appropriate provider."[1] The Division maintains that the closest appropriate provider is Seattle Children's Hospital; Mr. F. argues that Phoenix Children's Hospital, and specifically Dr. Michael Kuer, a specialist in pediatric movement disorders, neurology and developmental medicine, is the appropriate provider in his case.

Following denial of authorization for travel to Phoenix, and failure of mediation, Mr. F. requested a hearing on an expedited basis. The hearing was convened by the Office of Administrative Hearings on May 14, 2025, at 10:00 a.m. by Zoom video call. Mr. F. was present and participated with his guardian, K. F.. Also present and participating were F. T., M.D., Mr. F.'s long-time pediatrician; Laura Baldwin, the Division representative, John Boston, M.D. Medical Director for the Division and practicing internal medicine physician; and Carrie Silvers, a Medicaid Program Specialist. Also present, but observing only were L. Q. and N. C.. The Division's Exhibits A-F were admitted without objection; the recipient's Exhibit 1 was also admitted without objection. The record closed at the end of the hearing.

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[1] 7 AAC 120.410(a).

II. Facts

F. F. is 17 years old and resides with his adoptive mother. He has severe mixed quadriplegic cerebral palsy and uses an eye movement activated computer to communicate. He has a baclofen pump and is fed through a gastrostomy tube. He suffers from severe spastic dystonia, which causes pain. He seeks approval to travel to Phoenix, Arizona for evaluation for deep brain stimulation by Dr. Michael Kruer, a neurologist, research professor at the University of Arizona[2], and leader of a nationwide study of cerebral palsy.[3] While F. was in Arizona for a family visit, he was referred by a local physician at Phoenix Children's Hospital to Dr. Kruer, who met with him via telehealth for 62 minutes.[4] After F. returned home to City A, his physician, F. T., M.D., made a referral to Dr. Kruer.[5] The referral was supported by Dr. D. N., M.D., F.'s pediatric neurologist.[6]

Dr. T. and Dr. N. emphasized Dr. Kruer's credentials as a specialist in childhood movement disorders, particularly those related to cerebral palsy and other neurogenetic disorders. Dr. N. pointed to his focus on genetic diagnoses and the management of "dystonia, chorea, and other movement abnormalities in children" and his "experience treating children with complex movement disorders."[7] Dr. T. testified that the Seattle Children's Hospital is not as experienced and that Dr. Kruer, having already established a relationship with the F., is better equipped to treat F.'s very complex medical problems. She emphasized the importance of continuity of care. In her opinion, the complexity of F.'s condition and possibility of complications also merited the referral to Dr. Kruer.

The Division does not oppose the evaluation for deep brain stimulation, which is not available in Alaska. However, because the procedure is available at Seattle Children's Hospital, the Division refused transportation to Phoenix because it is not the "closest, most appropriate

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2 University of Arizona College of Medicine, Directory, Michael C. Kruer, available at https://phoenixmed.arizona.edu/directory/kruer-michael (last accessed May 21, 2025).

3 *See,* Cerebral Palsy Research Network, *Michael Kruer, MD,* available at https://cprn.org/portfolio-item/michael-kruer-md/ (last accessed May 21, 2025). Dr. Kruer is an author of over 100 journal articles, (most recently with Lewis, S.A., Chopra, M., Cohen, J.S., Bain, J.M., et al. 2025, "Clinical Actionability of Genetic Findings in Cerebral Palsy: A Systematic Review and Meta-Analysis", *JAMA Pediatrics*, vol. 179, no. 2, pp. 1.) .and a chapter in a textbook: Kruer, M.C. 2015, "Chapter 43 - Pantothenate Kinase-Associated Neurodegeneration" in *Rosenberg's Molecular and Genetic Basis of Neurological and Psychiatric Disease*, Fifth edn, Elsevier Inc,, pp. 473-481.

4 Ex. F, pg. 36.

5 Ex. F, pgs. 5-7

6 Ex. 1, pgs. 2-3.

7 Ex. 1, pg. 2.

provider." Dr. John Boston, Medicaid Medical Director, testified that deep brain stimulation has proven helpful in Parkinson's disease, which is where he has had experience of it. He testified it is available at Seattle Children's Hospital, and that the "team" is not the same team that most recently provided care to F. when he experienced an increase in dystonia.[8] He pointed out that Alaska has "an agreement" with Seattle Children's Hospital, which sees many Alaskan children. Seattle is also closer than Phoenix, which, in Dr. Boston's opinion, presents less risk to F. because the flight duration is shorter. Dr. Boston also asserts that F. will need to fly several times to have the stimulation device "titrated" so that F.'s response if optimal. The risk to F. (and expense) is thus not limited to a single trip. In his view, weighing the risks associated with travel, he believes Seattle is the appropriate choice for F..

III. Discussion

7 AAC 120.405(a) provides that the department will pay for transportation and accommodation services that are "provided to assist the recipient in receiving medically necessary services" and "authorized by the department." It will approve nonemergency transportation outside the recipient's community of residence if the prior authorization requirements of 7 AAC 160.410 are met and the services are not available in the recipient's home community.[9] However, it will not pay for

> transportation or accommodations that the department determines to be excessive of inappropriate for the distance traveled or inconsistent with the medical needs of the recipient.[10]

In determining what is "excessive or inappropriate for the distance traveled" the department is guided by 7 AAC 120.410, which provides in relevant part:

> (a) The department will pay for the least expensive mode of nonemergency transportation to and from an appointment with the closest appropriate provider for a recipient if the
>
> (1) services are medically necessary and covered under 7 AAC 105 - 7 AAC 160;
>
> (2) provider is enrolled under 7 AAC 105.210 at the time the travel occurs; and

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8 O. G., MD, part of his team at Children's Hospital, reportedly linked significantly increased dystonia in 2021 to a healing femur fracture "possibly to likely" sustained on the return from Shriner's Children's Hospital in Portland, Oregon. Ex. F, pg. 11. According to Ms. F.'s , F. was prescribed oral painkillers, but it was later discovered that his baclofen pump was empty – which the team at Seattle Children's failed to discover. Evidently, this has left a bad impression. As F. testified, "Seattle bad."

9 7 AAC 120.405(b).

10 7 AAC 120 405(c)(1).

(3) recipient does not have transportation available on the recipient's own or through any voluntary source.

(b) In determining the mode of nonemergency transportation authorized, the department will consider the
(1) recipient's physical and mental condition;
(2) distance to the appointment;
(3) length of time that travelling to the appointment will take; and
(4) availability of commercial transportation providers.

Setting aside for the moment the question whether Dr. Kruer is the "closest appropriate provider," there is another issue raised by Dr. Boston's testimony regarding the Alaska Medicaid relationship with Seattle Children's Hospital. There is no dispute that the service (deep brain stimulation evaluation) F. seeks are medically necessary and covered by Medicaid. The recipient does not have transportation available on his own, according to his mother,[11] and there is no evidence it is available through any voluntary source. That leaves the question whether Dr. Kruer is "*enrolled under 7 AAC 105.210 at the time the travel occurs*."

7 AAC 105.210(b) requires that to be enrolled in this state, a provider

(1) must submit a completed provider enrollment form and provider information submission agreement on forms provided by the department;
(2) must verify that the provider meets all other applicable requirements of 7 AAC 105 - 7 AAC 160 and all applicable federal and state licensing and certification requirements;
(3) must comply with all federal and state laws as they apply to providing health care or related services to Medicaid recipients in this state, including laws related to recipient confidentiality, electronic transactions, and civil rights;
(4) must assume responsibility for all information and claims submitted to the department by that provider or that provider's billing agent;
(5) must agree to submit claims in the form or format required by the department for claim submission;
(6) must comply with the requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes and conditions; background checks), if applicable to that provider type; and
(7) if an out-of-state provider, must
(A) verify enrollment in the Medicaid program in the jurisdiction in which services are provided if Medicaid enrollment is available for that type of provider in that jurisdiction; or

[11] Ms. F. testified that she would go into debt if necessary, but her willingness to borrow money does not mean that the transportation cost is "available" to F..

> (B) provide documentation from the jurisdiction in which the provider provides services that Medicaid enrollment is not available in the jurisdiction for that type of provider.

Undoubtedly, Phoenix Children's Hospital provides services to Medicaid recipients and is very likely enrolled in Medicaid in Arizona. However, the regulation specifically requires that the department will pay *if* the out-of-state provider is enrolled in Alaska under 7 AAC 105.210 *at the time the travel occurs.* While there is a mechanism in place at 7 AAC 105.210(e) to enroll a provider with a retroactive date of enrollment if the provider meets the above requirements and provides services to a Medicaid recipient for which the provider has not been paid, retroactive enrollment does not meet the requirement that the provider be enrolled at the time the travel occurs.

While it is clear, based on Dr. T.'s testimony, the public record of his many scientific and medical journal publications and specialization in the kind of disorder F. suffers, and Dr. N.'s letter, that Dr. Kruer is the *most* appropriate provider to address F.'s very complex condition, there is no evidence that he is currently enrolled under 7 AAC 105.210. Therefore, the department cannot pay transportation 7 AAC 105.410(a)(2). Interpreting the reference Dr. Boston made to "agreement", it seems Seattle Children's Hospital is enrolled. The department can pay transportation to Seattle Children's Hospital under 7 AAC 105.410(a)(2).

Seattle Children's Hospital does provide deep brain stimulation for dystonia, and while the focus of its Neuromodulation Program Team is epilepsy, not cerebral palsy, a member of the program, Dararat Mingbunjerdsuk, MD, does specialize in movement disorders like cerebral palsy and is conducting a national pilot study on spastic paraplegia.[12] No evidence presented that Seattle Children's refused to accept F. for treatment, or that a referral to the Neuromodulation Team specifically would be *inappropriate*.[13] Dr. Kruer is clearly the most appropriate provider to evaluate F., but 7 AAC 160.410(a) specifies "closest appropriate" not "most appropriate." Therefore, the department is not required to pay transportation and accommodation to Phoenix instead of Seattle. On the other hand, this decision in no way is intended to affect the department's potential obligation to pay for services provided by Dr.

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[12] Seattle Children's Hospital, Directory, Dararat Mingbunjerdsuk, MD, available at https://www.seattlechildrens.org/directory/dararat-mingbunjerdsuk (last accessed May 21, 2025).

[13] Dr. T., by testifying to the relative inexperience of the Seattle Children's team with F.'s condition, came close to suggesting it was not appropriate, but in context, the thrust of her testimony was that Dr. Kruer was more appropriate, both because of his experience and expertise and the "continuity of care." However, Dr. Kruer has not actually evaluated F.; he has only consulted with him and his mother via telemedicine.

Kruer, in the event he treats F. in the future, as the services (evaluation for deep brain stimulation) are recognized by the Division as medically necessary.

IV. Conclusion

The denial of transportation and accommodation for the trip to Phoenix is AFFIRMED.

Dated: May 15, 2025.

SIGNED
Kristin S Knudsen
Administrative Law Judge

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 24th day of July, 2025.

By: SIGNED
Name: Kristin S. Knudsen
Title: Administrative Law Judge

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