

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

In the Matter of )

B. J. )

OAH No. 23-0010-MDX

**DECISION**

**I. Introduction**

B. J. is a disabled minor. A request was made that Medicaid authorize payment for her to receive a specialized enclosure by the name of “Safespace” along with a mattress and other options. The Division of Health Care Services (Division) denied that request as not being medically necessary. B.’s mother, K. J., requested a hearing on her behalf to challenge that denial.

B.’s hearing was held on February 10, 2023. Ms. J. represented B. and testified on her behalf. Laura Baldwin, a Fair Hearing representative with the Division, represented the Division. Karen Benson, a Medicaid Specialist 4 with the Division, who oversees the Medicaid durable medical equipment program, testified for the Division.

The evidence in this case shows that the “Safespace” requested for B., although highly desirable from a safety standpoint, is not medically necessary. Accordingly, B., who had the burden of proof, did not satisfy that burden. The denial of her request is therefore AFFIRMED.

**II. Facts**

B. is currently 15 years old. She has diagnoses of impaired mobility, Down’s syndrome, fetal alcohol syndrome, and autistic spectrum disorder.<sup>1</sup> She is quite active and prone to wandering. Her family has been using an enclosed canopy bed, which could not be opened from the inside, to prevent her from wandering. She has both outgrown the bed and learned how to open it from the inside. She has been found downstairs in the kitchen sitting on the floor eating a tub of ice cream. She eats non-edible items (PICA). She has been found in the backyard in winter in the snow just wearing her pullup. In addition, she has two foster siblings, who are total care. One of those siblings is her sister, with whom she is very close, who she has observed being cared for, including G-tube feedings, suctioning, repositioning, and having her oxygen

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<sup>1</sup> Ex. C, p. 5.

cannula connected. Ms. J. has seen B. mimicking those actions and has found her unaccompanied in her sister's room. Ms. J. is concerned that B., if unsupervised, could attempt to care for her sister and inadvertently harm her. B.'s brother is also total care, and potentially at risk. B. also engages in aggressive behaviors and is destructive if unsupervised.<sup>2</sup>

B.'s parents are understandably very concerned about her safety, and the safety of her siblings, due to her age and her medical conditions. They explored alternatives to her current bed. They located the "Safespace," which is an enclosed "room within a room." It has a foam floor and has room inside for a mattress. It is secured from outside, so that it cannot be opened from the inside.<sup>3</sup>

Ms. J. requested that Medicaid authorize payment for B. to obtain a Safespace enclosure, along with a mattress, Velcro floor attaching system, and other options. The request submitted on B.'s behalf on November 1, 2022, is signed by Dr. Q., MD, certifying that the bed is medically necessary.<sup>4</sup> In addition, the request contained a copy of a "Justification Addendum" signed by Dr. Q. That Addendum recites the following justification:

B. has severe cognitive deficits, impaired safety awareness and judgment due to fetal alcohol syndrome. Yet she is fully mobile and difficult to contain. She requires constant redirection and supervision for safety. She lives in a home with other medically fragile children, and requires secure nighttime positioning to prevent her from getting out of bed and wandering unsupervised while caregivers are sleeping. She will often get up in the middle of the night, move throughout the home, disrupting the sleep of her caregivers and siblings and posing a significant safety risk.

B. has been using a PediCraft hospital bed with padded side rails and canopy enclosure. She has been able to get out of the bed repeatedly, and will often go downstairs to her siblings' bedroom. She will attempt to remove their diapers and roll them over. She will also get into the kitchen seeking food, and has been found to empty the freezer in the past. There is a significant concern with her sustaining an injury, interfering with the care of her medically fragile siblings, and getting out of the home. While 24 hour care is provided for B. and her siblings, B. cannot be left unattended even momentarily. Restraining her limits her mobility as well as quality of life.<sup>5</sup>

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<sup>2</sup> Exs. 1, 2, and Ms. J.'s testimony.

<sup>3</sup> Exs. 1, 2, and Ms. J.'s testimony. *Also see* Ex. F (Safespace brochure).

<sup>4</sup> Ex. E, pp. 15 – 17, 27 – 28. This was apparently a second submission of the request. *See* Ex. E, p. 15.

<sup>5</sup> Ex. E, pp. 22 – 24.

The Division denied the request for a Safespace for B. In its December 30, 2022, denial letter, the Division stated:

The request for a Safespace bed is denied. The documentation submitted with the authorization request does not show a medical necessity for an enclosed bed and only states that the bed is needed to prevent the recipient from wandering at night. The department will only pay for services that are medically necessary as defined by Alaska Medicaid program requirements under 7 AAC 105 – 7 AAC 160.<sup>6</sup>

Ms. J. then requested this hearing to challenge the denial.

### **III. Discussion**

In reviewing the denial of the request for the Safespace, 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>7</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>8</sup>

The evidence shows that B.’s physician has stated that the Safespace is medically necessary by the signature to the provision agreeing with the authorization request.

The federal courts have held that an individual’s physician’s opinion regarding whether a treatment is 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>9</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>10</sup> An examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining physician.”<sup>11</sup> An administrative law judge must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or

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<sup>6</sup> Ex. D, p. 1 (emphasis in original removed).

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

<sup>8</sup> 7 AAC 105.110.

<sup>9</sup> *Weaver v. Reagen*, 886 F.2d 194, 200 (8<sup>th</sup> Cir. 1989).

<sup>10</sup> *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996).

<sup>11</sup> *Lester* at 830 – 831.

examining physician.<sup>12</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>13</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>14</sup>

In this case, however, there is no evidence showing that the Safespace along with its options is required for medical treatment of any kind. There is no showing that it will be used to treat B.’s medical condition. While the request for a Safespace includes a mattress to be contained in it, there is no evidence showing that it 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>15</sup>

The evidence, instead, clearly and convincingly shows that the Safespace’s purpose is purely to keep B. secure and prevent her wandering, i.e., to keep her safe and her medically fragile siblings safe. While those are worthwhile goals, they do not meet the criteria for medical necessity. The Safespace is not “reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system.”<sup>16</sup>

To reject the uncontradicted medical necessity opinion of a treating physician, which Dr. Q. is, there must be “clear and convincing evidence” that the Safespace is not medically necessary. As recited above, the evidence shows that although the Safespace would provide a more secure environment for B., which would help protect both her and her siblings, 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 Safespace was properly denied as not being medically necessary.

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#### **IV. Conclusion**

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<sup>12</sup> *Lester* at 830 – 831.

<sup>13</sup> *Lester* at 830 – 831.

<sup>14</sup> *Lester* at 831.

<sup>15</sup> *See* Ex. G for a discussion of the requirements for approval of a specialized bed.

<sup>16</sup> *See* 7 AAC 105.110(1).

The Medicaid program's denial of the authorization request for a Safespace is  
AFFIRMED.

Dated: March 7, 2023

SIGNED  
Lawrence A. Pederson  
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 21st day of March, 2023.

By: SIGNED

Name: Lawrence A. Pederson

Title: Administrative Law Judge

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