

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

In the Matter of)

S. B.)

OAH No. 23-0011-MDX

DECISION

I. Introduction

S. B. is a disabled minor. Her parents requested that Medicaid authorize payment for her to receive a specialized bed. The Division of Health Care Services (Division) denied that request as not being medically necessary. S.'s parents, T. and J. B., requested a hearing on her behalf to challenge that denial.

S.'s hearing was held on January 25, 2023. Mr. and Ms. B. represented her interests 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 record was held open after the hearing for the B.s to submit additional information and for the Division to respond to that information.

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

II. Facts

S. is currently 2 years and 8 months old. She has diagnoses of autistic spectrum disorder, global developmental delays, mixed receptive expressive language disorder, and a lack of expected normal and physiological development.¹ She is an active child, who "escapes" from her bed and her bedroom. Her family was utilizing a mattress on the floor with a mosquito net canopy/enclosure with zippers to try and keep her safe in her bed and bedroom. She, however, has learned to unzip that enclosure, and been found wandering in other parts of the home, including the kitchen.²

¹ See Dr. G.'s letter dated February 17, 2022, filed on January 26, 2023.

² Ex. F, p. 7; Ex. I; Mr. and Ms. B.'s testimony.

S.'s parents are understandably very concerned about her safety due to her age and her medical conditions. They explored alternatives to the current bed she is using. They were able to locate a "Courtney Bed" which cannot be opened from inside, so that S. cannot let herself out of the bed. The Courtney bed is not adjustable. It is "listed with the FDA as a Class 1 manual hospital bed, listing number E544743."³

The B.es requested that Medicaid authorize payment for S. to obtain a Courtney bed. The request submitted on S.'s behalf on December 8, 2022, is signed by Dr. X., MD, certifying that the bed is medically necessary.⁴ In addition, the request contained a copy of a "Letter of Medical Necessity" signed by Dr. X. and S.'s occupational therapist on December 7, 2022. That letter recites that S. has figured out how to open her current enclosure, wanders, and that the Courtney bed would provide a "safe and secure environment," would remove her ability to get out of bed on her own, remove "the risk of safety hazards," and that the height of the bed was necessary "to increase her ability to independently and safely get in and out with parent supervision due to her current gross motor challenges."⁵

The Division denied the B.es' request. In its December 22, 2022, denial letter, the Division stated:

The request for a Courtney 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 160.⁶

The B.es then requested this hearing to challenge the denial.

III. Discussion

In reviewing the denial of the request for the Courtney bed, 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 items⁷ and will not pay for items and services that are:

³ See FDA listing filed on January 26, 2023.

⁴ Ex. F, pp. 3 – 4.

⁵ Ex. F, p. 6.

⁶ Ex. D, p. 1 (emphasis in original removed).

⁷ 7 AAC 105.100(5).

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;⁸

The evidence shows that S.'s physician has stated that the Courtney bed 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.⁹

In general, more weight is given to a treating physician's opinion than the opinions of those who do not treat a claimant.¹⁰ An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician."¹¹ An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.¹² 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."¹³ "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."¹⁴

In this case, however, there is no evidence showing that the Courtney bed is required for medical treatment of any kind. There is no showing that it will be used to treat S.'s medical condition. While it is listed with the FDA as a Class 1 manual hospital bed, does not mean that it is medically necessary for S.. Instead, the evidence clearly and convincingly shows that the bed's purpose is purely to keep S. secure and prevent her wandering, i.e., to keep her safe. While that is a worthwhile goal, it does not meet the criteria for medical necessity. The bed is not

⁸ 7 AAC 105.110.

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

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

¹¹ *Lester* at 830 – 831.

¹² *Lester* at 830 – 831.

¹³ *Lester* at 830 – 831.

¹⁴ *Lester* at 831.

“reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system.”¹⁵ It is not being used for medically required positioning, or for variable height adjustments necessary to accommodate severe arthritis, lower extremity injuries, severe cardiac conditions, or spinal conditions.¹⁶

To reject the uncontradicted medical necessity opinion of a treating physician, which Dr. X. is, there must be “clear and convincing evidence” that the Courtney bed is not medically necessary. As recited above, the evidence shows that although the Courtney bed would provide a more secure environment for S., 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 Courtney bed was properly denied as not being medically necessary.

It should be noted that the Division raised other reasons for the denial at hearing and in its post-hearing response (improper coding and no primary insurance coverage determinations). However, these were not raised in its initial denial notice, nor is it necessary to discuss them given the outcome of this case. Accordingly, they will not be addressed further.

IV. Conclusion

The Medicaid program’s denial of the authorization request for a Courtney bed is AFFIRMED.

Dated: March 2, 2023

SIGNED
Lawrence A. Pederson
Administrative Law Judge

¹⁵ See 7 AAC 105.110(1).

¹⁶ See Ex. I (Centers for Medicare and Medicaid Services National Coverage Determination – § 280.7 Hospital Beds).

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 16th 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.]