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

In the Matter of	)	
	)	
F. D.	)	OAH No. 23-0090-MDX
	)	

DECISION

I. Introduction

On January 9, 2023, National Seating and Mobility, a durable medical equipment supplier, requested Alaska Medicaid coverage for equipment for a power wheelchair for F. D.. The request was for a replacement offboard charger and a Community Access package that included specialized wheels, hubs and spokes. The replacement offboard charger was approved, but on January 31, 2023, the Division of Health Care Services (Division) denied the request for the Community Access package based on failure to submit documentation establishing that it was medically necessary for Mr. D. Mr. D. requested a fair hearing to contest the denial.

The evidence in this case shows that the requested Community Access package is not medically necessary, and therefore is not covered under the regulations that apply to the Medicaid program. As a result, the Division's decision denying coverage for the specialized wheels and related components is AFFIRMED.

II. Facts

There were no disputed facts at the hearing.

Mr. D. is an eligible recipient of Medicaid benefits for his health care. He has impaired mobility due to "a history of cerebrovascular accident that caused left-sided hemiplegia, congenital cervical fusion with paralysis, diabetes mellitus with severe upper extremity and lower extremity neuropathy."[1] He has end stage neuropathy and has no feeling from his hips down, and he recently underwent a left below-knee amputation.[2] As a result, he has been using a power wheelchair since 2011.[3] Mr. D. is also deaf.

Mr. D. testified that the tires on his power wheelchair offer poor traction during inclement weather, and he regularly struggles to navigate snowy streets, sidewalks, and the ramp leaving his home. He estimated that he and his wheelchair combined weigh over 600 pounds, making it difficult for another person to assist him.[4] He testified that due to the inadequacy of his tires, the

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1 Ex. C
2 *Id.*
3 *Id.*
4 D. test.

weather often prevents him from leaving his home to attend community events or medical appointments. He recounted having to call the fire department at one point when he got stuck in the snow, and often having to wait in the cold for help to arrive. Because of the issues he has due to his subpar tires, National Seating and Mobility submitted a request on his behalf for a Community Access package for his wheelchair that includes more substantial wheels with larger tread.[5]

III. Procedural History

A Zoom hearing was held over the course of two dates, February 22 and March 2, 2023. Mr. D. participated on both dates and represented himself, and he was assisted by his Personal Care Attendant B. C. and his friend K. F. Mr. D. is deaf but was able to comment and ask questions through the Zoom chat feature. On both dates the Division was represented by Laura Baldwin. Other individuals who testified were Carrie Silvers, Medicaid Program Specialist, and U. T., Mr. D.'s Care Coordinator.

IV. Discussion

The issue before this tribunal is whether Mr. D. is entitled to a Community Access package as a Medicaid benefit. As the party requesting the hearing, Mr. D. bears the burden of proof to establish by a preponderance of the evidence that his request should have been approved.[6]

Medicaid was established in 1965 to cover the basic healthcare needs of lower income individuals and families.[7] It is a cooperative federal-state program that is jointly financed with federal and state funds.[8] In Alaska, the Department of Health administers the Medicaid program in accordance with applicable federal and state laws and regulations. Alaska Medicaid covers a panoply of medical services, albeit with certain specified restrictions.

Medicaid coverage for medical services is determined by the Division's regulations. A list of covered services is set out in 7 AAC 105.100, which establishes that the Division will only pay for a service that is "medically necessary as determined by criteria established under 7 AAC 105 - 7 AAC 160 or by the standards of practice applicable to the provider."[9] Medical necessity

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5 Ex. E.
6 2 AAC 64.290(e); 7 AAC 49.135.
7 42 USC § 1396 et. seq.
8 *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).
9 7 AAC 105.100 (5).

can be demonstrated by meeting criteria set forth in the Medicaid regulations, or by showing the request conforms with standards of practice applicable to the prescribing provider.[10]

In November 2022 Mr. D., accompanied by a representative from National Seating and Mobility, was seen at the Providence Rehabilitation Services for modifications to the back and seat angles of his new power wheelchair.[11] Submitted with his request to Medicaid for the tire coverage was the resulting written assessment by his provider, which included notes about his background, mobility skills and various trials with the wheelchair equipment. At the very bottom of the tenth and final page there is a three-line note about Mr. D.'s difficulty navigating the "community environment."[12] His provider recommends that Mr. D.'s wheelchair be equipped with larger wheels with more aggressive tread to help ensure he is not injured or stranded while performing "community mobility related activities of daily living."[13]

On January 31, 2023, the Division sent Mr. D. a letter denying his request for the Community Access package, stating that he had failed to establish medical necessity for the upgraded tires as required by the relevant Medicaid regulation.[14] The provider's note only mentioned that the Community Access package could be potentially helpful to Mr. D. or could mitigate possible safety risks, but did not state the upgraded wheels were a medical necessity.[15]

During the hearing there was much discussion about the meaning of the term "medical necessity" as applied to questions regarding durable medical equipment such as a wheelchair. 7 AAC 105.100(5) states that Alaska Medicaid will only pay for items that are medically necessary, which is further defined at 7 AAC 105.110(1) as "reasonably necessary for the diagnosis or treatment of an illness or injury, or for the correction of an organic system." A definition more directly pertinent to medical equipment such as wheelchairs is found at guidelines of the Centers for Medicare and Medicaid Services (CMS), adopted by reference into Alaska regulations.[16] CMS guidelines provide that durable medical equipment such as power wheelchairs is defined to

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10 7 AAC 105.100 (3), 7 AAC 120.210(c).

11 Ex. C.

12 Ex. C, p. 18.

13 *Id.* While the medical note references Mr. D.'s "community environment," covered durable medical equipment is almost consistently evaluated for use in the home, not within the community. Ex. B.

14 Ex. D.

15 Although outside the scope of this appeal, significant testimony was elicited from various parties, including Mr. D.'s care provider, addressing his difficulties exiting his home and getting around in bad weather. There was an acknowledgment of possible gaps in Mr. D.'s covered services that could be remedied, including door to door wheelchair assistance for his medical appointments. Hopefully, these conversations have resulted in effectuating the changes needed to allow Mr. D. to consistently rely on the assistance he needs to keep scheduled appointments.

16 *See* 7 AAC 120.210(c).

include equipment which is "primarily and customarily used to serve a medical purpose" and "is appropriate for use in the home."[17]

The Community Access package sought by Mr. D. in this case is not primarily and customarily designed for use in the home; rather it is designed to aid him in locomoting outside of his home, within the community. As it does not fall within the definitions of equipment that Alaska Medicaid can pay for, it was appropriately deemed to not be medically necessary and therefore is not a covered service under Medicaid regulations.[18] Neither the Division nor this tribunal are at liberty to ignore the Medicaid regulations or to interpret them differently for specific Medicaid recipients. Therefore, the request for Medicaid coverage of the Community Access package was appropriately denied.[19]

Of note for future reference, at the hearing another issue arose following testimony that Mr. D. is covered by both Medicaid and Medicare. Under a regulation regarding medical equipment, 7 AAC 120.205(h), if an individual is eligible for both programs, Medicaid will not pay for durable equipment such as a Community Access package until Medicare has first deemed the item or service medically necessary. Therefore, if Mr. D. or National Seating and Mobility elects to resubmit to Medicaid a service authorization for the Community Access package, it must be preceded by a medical necessity determination by Medicare.

V. Conclusion

The Division's denial of Mr. D.'s request for coverage of a Community Access package is affirmed, as the request failed to establish the medical necessity of the components, including specialized wheels, hubs and spokes.

DATED: April 28, 2023.

By: SIGNED
Andrew M. Lebo
Administrative Law Judge

Adoption

[17] Ex. B-13.
[18] 7 AAC 105.100 (5).
[19] "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

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 May, 2023.

By: SIGNED

Name: Andrew M. Lebo

Title: Administrative Law Judge

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