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

In the Matter of	)	
	)	
D. J.	)	OAH No. 23-0187-MDX
	)	

DECISION

I. Introduction

D. J. is a disabled minor. His mother, B. B., requested that Medicaid authorize payment for him to receive a specialized enclosed bed. The Division of Health Care Services (Division) denied that request as not being medically necessary. Ms. B. requested a hearing to challenge that denial.

D.'s hearing was held on March 31, 2023. Ms. B. represented his interests and testified on his behalf. Laura Baldwin, a Fair Hearing representative with the Division, represented the Division. Tracy Stephens, a Medicaid Specialist 2 with the Division, who helps to provide oversight for the Medicaid durable medical equipment program, testified for the Division.

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

II. Facts

D. is currently 2 years and 6 months old. He has diagnoses of autistic spectrum disorder, seizures – which sometimes require medical intervention, and developmental delays.[1] He has a crib with a pop-up canopy, which keeps him safely secured in the crib. He has not yet learned how to get out of the crib but is rapidly outgrowing it. He is an active child who has learned how to circumvent baby gates, and he wanders around his home. This places him at risk because he will stack toys and furniture and climb on them to try and reach the deadbolt and unlock the outside doors. The deadbolts inside the home can only be unlocked with a key. However, D. has

[1] Ms. B.'s testimony; Ex. C, pp. 11, 13 – 14; Ex. F, p. 25.

learned that keys unlock doors. He eats inedible objects (Pica). He will try and get outside, even in winter, in C.City A., where he and his family reside.[2]

D. requires constant supervision. The family uses a GPS tracker, attached to D.'s clothing, and a video and baby monitor to help supervise him. He, however, likes to disrobe which defeats the GPS tracker. The family also has to travel to Anchorage for his medical care, which requires overnight stays in a hotel, and his crib is not portable.[3]

D.'s family is understandably very concerned about his safety due to his age, his active nature, and his medical condition. They explored alternatives to his current bed. They were able to locate a "Safety Sleeper" which cannot be opened from inside, so that D. cannot let himself out of the bed. The Safety Sleeper is not adjustable. It consists of a tent-like enclosure, with a memory foam mattress and an air mattress for travel. It can only be opened from outside and can be attached to a bed frame. It is portable.[4]

Ms. B. requested that Medicaid authorize payment for D. to obtain a Safety Sleeper. The request submitted on D.'s behalf on December 27, 2022, is signed by Dr. C., MD, certifying that the bed is medically necessary.[5] In addition, the request contained a copy of a "Letter of Medical Necessity" signed by Dr. C. and D.'s occupational therapist on December 27, 2022. That letter recites that D. wanders around the home, can climb the furniture, and use household items to "reach higher surfaces," tries to unlock doors with a key, and "requires constant 1:1 supervision to prevent injuries." The letter does state that D.'s current enclosed crib keeps him contained, but that he is outgrowing it. The letter specifically states that the Safety Sleeper is medically necessary for the following reasons:

- D. does not have the cognitive ability or body awareness to assess safety.
- D. experiences night wandering and elopement.
- The Safety Sleeper includes padding for safety with seizure disorders.
- Previous attempts to prevent elopement and injury have failed and D. has grown out of his current set up.
- The Safety Sleeper is designed for children with developmental delay.[6]

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2 Ex. C, pp. 3 -5; Ms. B.'s testimony.
3 Ex. C, pp. 3 -5; Ms. B.'s testimony.
4 Ex. G (Safety Sleeper brochure).
5 Ex. F, p. 4.
6 Ex. F, pp. 6 -7.

The Division denied the request. In its February 8, 2023, denial letter, the Division stated:

> The request for a Safety Sleeper bed is denied. The submitted documentation does not support the medical necessity for the enclosed bed and states the bed is to be used to prevent D. from roaming the apartment at night and injuring himself. The possibility of injury due to safety concerns is not sufficient to document medical necessity. Per the Alaska Administrative Code, 7 AAC 105.100(5), the Department will only pay for items and services that are medically necessary as defined by Alaska Medicaid Program requirements under 7 AAC 105 – 7 AAC 160. 7 AAC 105.110(1) further clarifies that the Department will not pay for a service that is not reasonably necessary for the diagnosis and treatment of an illness or injury, or the correction of an organic system as determined upon review by the Department.[7]

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

III. Discussion

In reviewing the denial of the request for the Safety Sleeper, 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[8] 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;[9]

The evidence shows that D.'s physician has stated that the Safety Sleeper 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.[10]

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7 Ex. D, p. 1 (emphasis in original removed).
8 7 AAC 105.100(5).
9 7 AAC 105.110.
10 *Weaver v. Reagen*, 886 F.2d 194, 200 (8th Cir. 1989).

In general, more weight is given to a treating physician's opinion than the opinions of those who do not treat a claimant.[11] An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician."[12] An administrative law judge must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.[13] 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."[14] "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."[15]

In this case, however, there is no evidence showing that the Safety Sleeper is required for medical treatment of any kind. There is no showing that it will be used to treat D.'s medical condition. Instead, the evidence clearly and convincingly shows that the bed's purpose is purely to keep D. secure and prevent him from wandering, i.e., to keep him safe. While that is a worthwhile goal, it does not meet the criteria for medical necessity. The bed is not "reasonably necessary for the diagnosis and treatment of an illness or injury, or for the correction of an organic system."[16] Examples of medically necessary justification would include the bed 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.[17] None of these are present in this case.

To reject the uncontradicted medical necessity opinion of a treating physician, which Dr. C. is, there must be "clear and convincing evidence" that the Safety Sleeper is not medically necessary. As recited above, the evidence shows that although the Safety Sleeper would provide a more secure environment for D., 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

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11 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).
12 *Lester* at 830 – 831.
13 *Lester* at 830 – 831.
14 *Lester* at 830 – 831.
15 *Lester* at 831.
16 *See* 7 AAC 105.110(1).
17 *See* Centers for Medicare and Medicaid Services National Coverage Determination – § 280.7 Hospital Beds, located online at https://www.cms.gov/medicare-coverage-database/view/ncd.aspx?NCDId=227 (date accessed April 7, 2023).

Medicaid authorization for the Safety Sleeper was properly denied as not being medically necessary.

IV. Conclusion

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

Dated: April 10, 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 25th day of April, 2023.

By: *Signed*
Name: Lawrence A. Pederson
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.]