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

In the Matter of	)	
	)	
S.O	)	OAH No. 22-0175-MDX
	)	

DECISION

I. Introduction

The applicant in this case, S.O, is a Medicaid recipient. His existing power wheelchair is now at the end of its useful life, and he is eligible for a new power wheelchair through Medicaid. The issue in this appeal is whether Medicaid coverage applies to various requested components associated with the new power wheelchair. These components are an upgraded motor package, traction tires, expandable controller and harness, and an additional actuator.

Mr. O asserts that these items are required so that the wheelchair can function more efficiently and safely in the winter months in Anchorage where he resides and elsewhere in Alaska where he uses the wheelchair. He also contends that they are needed to enable him to perform his job duties and for his integration into the community. While the Health Care Services Division approved purchase of the power wheelchair itself, it denied coverage of the requested components asserting that they are not medically necessary as required by regulation.

Following Mr. O's appeal of the coverage denial, a hearing was held, and testimony presented. The evidence and applicable authority demonstrate that while the requested components may enhance Mr. O's safety and be helpful for him to perform his job and integrate into the community, they are not medically necessary for the diagnosis and treatment of an illness or injury. Consequently, and based on existing regulations, the Division's decision denying coverage for these components is affirmed.

II. Facts

Mr. O has been using a power wheelchair since at least 2016.[1] His current wheelchair was provided through coverage with Native Corporation A while he was employed with the State of Alaska. That chair possesses all the components requested in this case, namely an upgraded motor package, traction tires, expandable controller and harness, and an additional actuator.[2] However, Mr. O is no longer employed by the State and as such, his current coverage is through Medicaid. There is no dispute that Mr. O's current power wheelchair is at the end of its useful life, and he is entitled

[1] Ex. E, p. 7.

[2] Ex. A, p. 2; Ex. E, pp. 2, 5-6, 10-12; S.O Testimony.

to a new power wheelchair through Medicaid. The only issue is whether he is also eligible for Medicaid coverage for the additional requested components.[3]

Mr. O has spastic cerebral palsy and is a quadriplegic. He is dependent on his power wheelchair for his mobility needs, including inside and outside of his home and within the community.[4] He also requires his power wheelchair for his job. He serves as Position 1 for Employer A. His position requires him to travel throughout Alaska and nationally.[5]

Mr. O submitted an authorization request for a new power wheelchair and components on January 21, 2022.[6] Included within that request was a power wheelchair evaluation report. Regarding the components at issue, the evaluation report provides as follows:

Upgraded Motor Package and Traction Tires (referenced in the evaluation report as "Community Access Package including wider, flat free tires and increased power/motors")

> Mr. O is very active in the community including his employment responsibilities and the natural wintry icy environment of Anchorage, Alaska for more than 6 months to a year. He requires appropriate mobility so that he can attend to his employment independently and reliably. This includes navigating snow and ice in dark winter months. The increased motor power and the larger wheels will power through these obstacles and maintaining his independence in the community in a timely manner.[7]

Expandable Controller

> S.O is able to operate the wheelchair and all systems of the chair by means of a hand controlled joystick. The use of an expander controller allows for all functions of the chair to be controlled by the joystick, and for adjustment of parameters for safe operation.[8]

Harness (referenced in the evaluation report as "Harness for expandable electronics")

> Required for mounting of the electronics needed for S.O's safe operation of the wheelchair. These electronics also allow Mr. O to interface with his home electronics environment including computer and phone. Due to his ataxia which severely impairs his fine motor control, he is unable to operate the standard controls of these devices. With the expandable electronics of the power chair,

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3 S.O Testimony; Karen Benson Testimony; Ex. D, p. 1.
4 S.O Testimony; Ex. E, pp. 7-9.
5 S.O Testimony.
6 Ex. E.
7 Ex. E, p. 12.
8 Ex. E, p. 10.

> the joystick can blue tooth to these devices and the joystick can operate as a mouse. This greatly increases his control of his environment.[9]

Additional Actuator (referenced in the evaluation report as "Single actuator driver control")

> S.O is currently able to operate the wheelchair by means of a hand controlled joystick. Due to his severe weakness, he is unable to move between multiple input devices, as would be necessary to operate power tilt. The use of a single point of control allows him a means to operate of all functions of the chair through his hand control.[10]

Mr. O's request for the components was denied by the Division through its contractor, Conduent State Health Care, LLC, on February 21, 2022.[11] The denial specifically provided that, "YOUR OVERALL REQUEST FOR A POWER WHEELCHAIR WAS APPROVED, HOWEVER, THE REQUEST FOR AN UPGRADED MOTOR PACKAGE, TRACTION TIRES, EXPANDABLE CONTROLLER AND HARNESS AS WELL AS THE ADDITIONAL ACTUATOR IS DENIED."[12] Mr. O timely appealed the denial, and a hearing was held, via Zoom, on April 18, 2022.[13]

Participating at the hearing were Mr. O, his care coordinator, N.C, and an individual assisting him as an interpreter, E.Q. Also participating were the Division's representative, Laura Baldwin, an observer from the Division, Katie Fett, and a witness from the Division, Karen Benson. Mr. O, Mr. Q, and Ms. C all testified under oath.

At the hearing, the Division contended that the expandable controller and harness, and additional actuator are only needed in association with the upgraded motor package. In other words, they are items that are needed to reasonably accommodate and use the larger motor and without the larger motor, the items are not required.[14] It also contended that none of the justifications identified in the evaluation report amount to medical necessity, but instead, are properly characterized as non-medical justifications.[15] Mr. O did not meaningfully refute this testimony. Instead, he focused on the need for the components to greatly enhance his safety while

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9 Ex. E, p. 10.
10 Ex. E, pp. 10, 12.
11 Ex. D.
12 Ex. D, p. 1 (emphasis in original).
13 Ex. C; Notice of Rescheduled Hearing (March 25, 2022).
14 Karen Benson Testimony; Areas of Disagreement for Denial of Durable Medical Equipment Submitted by S.O (April 12, 2022).
15 Karen Benson Testimony.

using the wheelchair outdoors in Alaska and said that they are reasonably needed for his integration into the community and performance of his job.[16]

As Mr. O testified, he uses his power wheelchair both in his professional career and personally. In his job, he is required to travel throughout Alaska and nationally. He frequently meets with clients, employers and third parties in a variety of settings and locations throughout Alaska and elsewhere, often during the hazardous and difficult to travel winter months. He is also active in the Anchorage community and uses his power wheelchair to access various locations and places throughout the community.[17]

Mr. O testified that the upgraded motor package is reasonably necessary to not only travel the distances he travels quickly and efficiently but it is also required to negotiate the steep hills and difficult terrain he frequently encounters on these outings. Because of snow conditions throughout Alaska in the winter months, he often encounters unplowed areas and has trouble negotiating the snowy conditions and terrain, even in his current chair which already possesses the upgraded motor and traction tires. He said that without the continuation of these components on the new power wheelchair, not only will his travel be far less efficient, but it will also be far more dangerous. If he becomes stuck or inoperable in his power wheelchair while outside during these travels, the situation could quickly become life-threatening.[18]

Mr. O testified that he does receive transportation and escort services to and from his home for things such as medical appointments. However, he said that these services do not provide transportation for this work-related travel and much of his non-medical travel throughout the community. Further, he said that even trying to use his power wheelchair to travel to and from his residence to the mailbox or to be picked up outside of his residence for medical appointments can be very challenging in certain snow conditions. This occurs even now with his existing wheelchair which possesses the components at issue in this case.[19]

Ms. Benson testified that there is a distinction under the Medicaid regulations between the coverage available for durable medical equipment, such a power wheelchair, regarding use inside the home versus use outside the home.[20] She said that the Medicaid regulations cover use of such equipment, as needed, within the home. While the use of such equipment outside of the home is

16 S.O Testimony; E.Q Testimony.
17 S.O Testimony.
18 S.O Testimony.
19 S.O Testimony.
20 Karen Benson Testimony.

not specifically prohibited, it is generally viewed as a non-covered convenience. As such, the regulations provide coverage for in home applications of a power wheelchair, but not necessarily for applications outside of the home, unless it can be shown that those applications are medically necessary.[21]

Ms. Benson further testified that an example of medical necessity for an upgraded motor package for use outside of the home might exist if, for instance, someone possesses a documented allergic reaction to the cold. In such a situation, an upgraded motor package might be shown to be medically justified because it may be required to minimize the recipient's exposure to the cold by making their outdoor travel quicker and more efficient. But this would involve documenting the need based on an existing, diagnosed condition.[22]

As Ms. Benson elaborated, this example contrasts with Mr. O's situation where the justification is sought for safety or convenience but not because it would enhance or improve his specific medical condition in its absence. As she further indicated, items that might have a secondary benefit concerning safety such as a power wheelchair upgraded motor package or traction tires cannot be covered because of the safety benefits alone. Instead, they must be shown to be medically necessary to address existing medical conditions/complications that might result without their use apart from mere safety or convenience.[23]

Finally, Ms. Benson testified that the applicable regulations incorporate and reference Medicare national and local coverage determinations. Those determinations in turn only provide consideration of power wheelchairs and components as applied within the home. However, those coverage determinations were omitted from the Division's position statement and it offered to supplement the record with citation to the coverage determinations.[24] Mr. O also indicated that regulations exist supporting the integration of Medicaid recipients into the community and that the components at issue in this case may be justified based on those regulations.[25]

Because both parties desired to provide additional authority, the record was kept open to allow them to do so. They were further allowed the opportunity to provide short narratives explaining their reliance on the additional authority and commenting on the other side's reliance

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21 Karen Benson Testimony.
22 Karen Benson Testimony.
23 Karen Benson Testimony.
24 Karen Benson Testimony.
25 S.O Testimony.

on the same.[26] The parties timely supplied supplemental authority and briefing, and it has been considered in issuing this decision.[27]

III. Discussion

The issue in this case is whether Medicaid coverage exists for the power wheelchair components at issue on the basis that they greatly enhance Mr. O's safety for the wheelchair's use outdoors in Alaska and are also reasonably necessary for his integration into the community and to perform his job. Or, as the Division contends, for Medicaid coverage of these components to apply, must it be demonstrated that they are medically necessary to address existing medical conditions and complications that might result without their use apart from mere safety or convenience. As analyzed below, the Division is correct in its interpretation of existing regulations and is prevented by regulation from approving coverage for the components in this case.

Wheelchairs are classified as durable medical equipment by Medicaid. The Medicaid program will pay for durable medical equipment under certain conditions. The equipment must be medically necessary.[28] Medicaid 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;[29]

The facts in this case show that the justifications for the components at issue are related to Mr. O's safe use of his power wheelchair outside of his home. This includes use associated with his job, and integration into the community. However, use of a power wheelchair in conjunction with one's job or profession or for community access is not "not reasonably necessary for the

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[26] Order Regarding the Close of the Record (April 19, 2022).

[27] Mr. O provided the following supplemental documentation: Assurance Care Coordination (April 22, 2022); Provider Conditions of Participation (April 22, 2022); Day Habilitation Conditions of Participation (April 22, 2022); Department of Health and Social Services Specialized Medical Equipment Fee Schedule (April 22, 2022); Supported Employment Services Conditions of Participation (April 22, 2022); Email Exchange Between N.C and Lauren Scarmuzzi (April 22, 2022); and Medicaid Wheelchair Rejection Rebuttal (April 28, 2022). The Division provided the following supplemental documentation: Post-Hearing Record Supplement (April 25, 2022); and Rebuttal to Post-Hearing Record Supplement (April 28, 2022).

[28] 7 AAC 105.100(5).

[29] 7 AAC 105.110.

diagnosis and treatment of an illness or injury, or for the correction of an organic system."[30] As such, Medicaid will not provide coverage for those purposes.

Mr. O has also argued that his use of the power wheelchair in the community and in association with his job without these components will result in him being in unsafe situations. These concerns are certainly valid and undoubtedly true in some circumstances due to dangerous road and weather conditions in Alaska. However, for Mr. O to use his power wheelchair in such circumstances requires that he places himself in danger. It therefore cannot be used as a basis for finding that the power wheelchair components are medically necessary as defined above. Further, cases before OAH have consistently denied Medicaid coverage for power wheelchair components in similar circumstances.[31]

As the Division has correctly indicated, the supplemental authority cited by Mr. O after the hearing relates to various programs unrelated to the Durable Medical Equipment Program at issue in this case.[32] It is this program that is determinative of whether Medicaid coverage exists in this instance, not programs such as the Medicaid Home and Community Based Waiver Program cited by Mr. O. Having applied for durable medical equipment under the Durable Medical Equipment Program, a recipient cannot then rely on authority applicable through another Division addressing a different program, even if within the same State agency.[33] This reality is undoubtedly very confusing and frustrating for many recipients. However, it is fundamental that if a recipient seeks coverage under a specific program, the authority offered as support for coverage must be the regulatory or statutory authority associated with that program as opposed to a different program.

Therefore, Mr. O has failed to demonstrate a medical necessity for an upgraded motor package, traction tires, expandable controller and harness, and an additional actuator for his power wheelchair. As such, they are not items for which Medicaid coverage under the Durable Medical

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30 7 AAC 105.110(1).

31 *In re L.D.*, OAH No. 21-0205-MDX (April 5, 2021) (available at: https://aws.state.ak.us/OAH/Decision/Display?rec=6752); *In re Z.N.,* OAH No. 21-0579-MDX (May 27, 2021) (available at: https://aws.state.ak.us/OAH/Decision/Display?rec=6686); *In re C.U.,* OAH No. 21-2531-MDX (Feb. 23, 2022) (available at: https://aws.state.ak.us/OAH/Decision/Display?rec=6753).

32 Rebuttal to Post-Hearing Record Supplement at 1-2.

33 As the Division points out, the Home and Community Based Waiver Program is managed by Senior and Disability Services, within the Department of Health and Social Services and is governed by other statutes and regulations, including AS 47.07.045 and 7 AAC 130. Whereas the Durable Medical Equipment Program, which is at issue in this case, is managed by the Health Care Services Division within the Department of Health and Social Services and is governed by AS 47.07.040, 7 AAC 120 and 42 U.S.C. 1396-1396p (Title XIX, Social Security Act, Medical Assistance). Post-Hearing Record Supplement at 1-2; Rebuttal to Post-Hearing Record Supplement at 2.

Equipment Program exists. It is certainly understood that these items may be extremely useful and beneficial to Mr. O, including for his safe and reasonable operation of his power wheelchair outside of the home. Unfortunately, there is no basis for Medicaid coverage of these items under the Durable Medical Equipment Program on those considerations alone.

IV. Conclusion

The Division's denial of Mr. O's authorization request for an upgraded motor package, traction tires, expandable controller and harness, and an additional actuator, for his power wheelchair is affirmed.

DATED: This 11th day of May 2022.

Signed

Z. Kent Sullivan
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, 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 May, 2022.

By: *Signed*
Name: Z. Kent Sullivan
Title: Administrative Law Judge

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