

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

IN THE MATTER OF: )

T G )

OAH No. 12-0236-MDS

Agency No.

**DECISION**

**I. Introduction**

On July 11, 2012, T G's medical provider submitted a request for Medicaid travel benefits for Ms. G to travel to Seattle for evaluation regarding her acute otitis media/vertigo. On July 18, 2012, the Department of Health and Social Services, Division of Health Care Services, through Xerox State Healthcare, LLC (division), denied the travel request. Ms. G requested a Fair Hearing on July 24, 2012.

Ms. G's hearing was held on August 15, 2012. She appeared by telephone. Gerry Johnson represented the division by telephone. The hearing was recorded.

Based on the record as a whole and after due deliberation, the division's decision denying Ms. G's July 11, 2012, application for travel benefits is AFFIRMED.

**II. Facts**

Ms. G first began experiencing dizzy spells in 1995.<sup>1</sup> She was eventually diagnosed with Ménière's disease and underwent a right endolymphatic shunt procedure in 1996.<sup>2</sup> The surgery did not improve her symptoms; in fact, they worsened to the point that she became disabled.<sup>3</sup> She is currently receiving Social Security disability.<sup>4</sup>

Ms. G began seeing Dr. Mary C. Totten in September 2007.<sup>5</sup> Dr. Totten referred her to a specialist at the Virginia Mason Medical Center in Seattle.<sup>6</sup> He confirmed the diagnosis of Ménière's disease and chronic vestibular dysfunction.<sup>7</sup> She began outpatient "vestibular rehab" at a local clinic and subsequently improved considerably.<sup>8</sup>

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<sup>1</sup> Exh. E, pg. 16.

<sup>2</sup> Exh. E, pg. 16.

<sup>3</sup> Exh. E, pg. 16.

<sup>4</sup> Testimony of Stella G.

<sup>5</sup> Exh. E, pgs. 14-16.

<sup>6</sup> Exh. E, pgs. 12-13.

<sup>7</sup> Exh. E, pg. 13. According to Ms. G, her travel to Seattle was provided by Medicaid.

<sup>8</sup> Exh. E, pgs. 8-13.

On April 11, 2012, Ms. G saw Dr. Totten for a "sore right ear."<sup>9</sup> During that visit, Ms. G informed the doctor that she was trying to apply for permanent disability so that her student loans could be forgiven. In order for such an evaluation to be made, Dr. Totten would need "objective data such as an ENG, choleric, and platform testing."<sup>10</sup> Only one doctor in Anchorage provided that testing, but it is the same one who performed Ms. G's surgery many years ago, and who Dr. Totten believes caused the worsening in Ms. G's symptoms. Ms. G refused to submit herself to his care for the necessary testing, and Dr. Totten recommended that Ms. G's evaluation be done instead by a specialist at Virginia Mason in Seattle.<sup>11</sup>

On July 11, 2012, Dr. Totten submitted a request for Medicaid travel benefits for Ms. G to travel to Seattle for evaluation regarding her acute otitis media/vertigo. In the letter referring Ms. G to the Seattle specialist, Dr. Totten wrote "[s]he is up for re-evaluation of her student loan repayment and is still on medical disability."<sup>12</sup> On July 18, 2012, the Department of Health and Social Services, Division of Health Care Services, through Xerox State Healthcare, LLC (division), denied the travel request. The denial stated:

Your provider requested transportation services in order for you to receive treatment in Seattle for acute otitis media/vertigo. Your provider did not provide medical justification for the travel to Seattle for treatment. The department will pay a provider for only those transportation and accommodation services that are provided to assist the recipient is (sic) receiving medically necessary services. 7AAC 120.405(a)(1).<sup>13</sup>

Ms. G requested a Fair Hearing on July 24, 2012.

### III. Discussion

The issue in this case is whether the division correctly denied Ms. G's request for Medicaid travel benefits to Seattle for testing regarding her acute otitis media/vertigo. Ms. G<sup>14</sup> has the burden of proving by a preponderance of the evidence<sup>15</sup> that her request should have been approved.

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<sup>9</sup> Exh. F, pg. 3.

<sup>10</sup> Exh. F, pg. 3.

<sup>11</sup> Testimony of Mary C. Totten, MD.

<sup>12</sup> Exh. F, pg. 2.

<sup>13</sup> Exh. D at pg. 1.

<sup>14</sup> 2 AAC 64.290(e).

<sup>15</sup> Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5<sup>th</sup> Ed. 1979).

Ms. G asserts that she does not have the funds to travel to Seattle for testing regarding her Ménière's disease, and that since Medicaid paid for her first trip, it should pay for this one, as well. The division asserts that it was correct to deny Ms. G's application for Medicaid travel benefits, first because it is not "medically necessary," and second, because there is a provider in the Anchorage area who has the lab facilities and is qualified to perform the tests Ms. G's doctor needs.

Medicaid was established in 1965 to provide medical assistance to certain needy individuals and families.<sup>16</sup> It is a cooperative federal-state program that is jointly financed with federal and state funds.<sup>17</sup> In Alaska, the Department of Health and Social Services (department) administers the Medicaid program in accordance with applicable federal and state laws and regulations.

The cost for transportation and accommodations are provided by the department, so long as, among other things, the services are "provided to assist the recipient in receiving medically necessary services" and "those services are not available in the recipient's community . . . ."<sup>18</sup>

The federal Medicaid Act does not define "medical necessity."<sup>19</sup> Absent a federal definition of medical necessity, the responsibility for defining medical necessity is left to the states. Similarly, the Alaska Medicaid regulations currently do not define the term "medically necessary." Research indicates that although the term "medically necessary" is used in 42 different regulations with the Alaska Administrative Code, it is not defined except in the limited context of mental health rehabilitative services. The Alaska Statutes also do not provide an applicable definition of when a treatment is "medically necessary."

Prior to 2010, regulation 7 AAC 43.860(p) defined "medically necessary and appropriate" as follows:

(p) In this section . . . (2) "medically necessary and appropriate" means

(A) reasonably calculated to diagnose, correct, cure, alleviate, or prevent the worsening of medical conditions that endanger life, cause suffering or pain, result in illness or infirmity, threaten to cause or aggravate a disability, or cause physical deformity or malfunction; and

<sup>16</sup> 42 USC § 1396 *et. seq.*

<sup>17</sup> Wilder v. Virginia Hospital Association, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).

<sup>18</sup> 7 AAC 120.405(a)(1) & 7 AAC 120.405(b)(1).

<sup>19</sup> Thie v. Davis, 688 N.E.2d 182 (Ind.App.1997).

(B) used because an equally effective more conservative or substantially less costly course of medical diagnosis or treatment is not available or suitable for the Medicaid recipient requesting the service; for purposes of this subparagraph, "course of treatment" includes mere observation or, if appropriate, no treatment at all.

However, this regulation was repealed in 2010, so as a result, neither the Alaska Statutes, nor the Alaska Administrative Code, contain a definition of "medically necessary."

Ms. G is requesting Medicaid travel benefits to Seattle for the purpose of being evaluated for a disability waiver for her student loan indebtedness. She has already been diagnosed with Ménière's disease, and she has been on a treatment plan for several years that has seen her condition significantly improve since she was first seen by Dr. Totten in 2007.<sup>20</sup> The purpose of having her evaluated in Seattle at this time is not to initiate or further any diagnosis or medical treatment for Ms. G, but solely in order to assist her in applying for student loan forgiveness. Unfortunately for Ms. G, this is not a "medically necessary" purpose, and thus does not entitle her to Medicaid travel benefits.

Because Ms. G's reason for traveling to Seattle to be evaluated by a specialist there is not "medically necessary," it is not necessary to address the secondary question of whether the services are available in the recipient's community.

#### **IV. Conclusion**

The division's determination that Ms. G is not entitled to receive Medicaid travel benefits to Seattle should be affirmed. Her purpose for being evaluated by a specialist is to further her application for disability and is thus not "medically necessary."

#### **V. Decision**

The division's decision that Ms. G is not entitled to receive Medicaid travel benefits to Seattle is AFFIRMED.

DATED this 24<sup>th</sup> day of September, 2012.

Signed  
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Kay L. Howard  
Administrative Law Judge

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<sup>20</sup> Exh. E, pgs. 8-13.

**Adoption**

The undersigned, by delegation from of 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 9<sup>th</sup> day of October, 2012.

By: Signed  
Name: Kay L. Howard  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]