NO. CAAP-14-0000433

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

FENNY CSASZAR as Parent and Next Friend of
CHILD A and CHILD B, Appellant/Claimant-Appellant,
v.
MED-QUEST DIVISION, and HAWAII MEDICAL SERVICE
ASSOCIATION, Appellees/Respondents-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NOS. 12-1-2825, 13-1-0422, and 13-1-1580)

SUMMARY DISPOSITION ORDER
(By: Foley, Presiding J., Fujise and Ginoza, JJ.)

This consolidated appeal arises from three cases brought under the Federal Medicaid Act (42 U.S.C. §§ 1396-1396w-5 (2012)) (**Medicaid**) and Hawaiʻi's implementing regulations. In Hawaiʻi, Medicaid is administered by Appellee/Respondent-Appellee Med-QUEST (**Med-QUEST**), a Division of the State of Hawaiʻi Department of Human Services' (**DHS**), through the QUEST Hawaiʻi medical assistance program and in cooperation with the federal government.[1] In each of the three cases subject to this appeal, Appellant/Claimant-Appellant Fenny Csaszar (**Mrs. Csaszar**) contested Med-QUEST's denial of her request to be reimbursed for the costs she accrued when one of her three children, Child C, accompanied Mrs. Csaszar, her husband (**Mr. Csaszar**), and the Csaszars' two other children, Child A and Child B, to Michigan

[1] QUEST Hawaiʻi [FAQs], http://www.med-quest.us/FAQ/mqdfaq.html (last visited June 9, 2015).

for Child A and Child B's medical treatment. Mrs. Csaszar appeals from the January 16, 2014 "Order Dismissing Appellant's Appeals Filed November 9, 2012, February 13, 2013, and May 30, 2013 and Affirming the Department of Human Services' Administrative Hearing Decisions Dated October 10, 2012, January 14, 2013, and May 8, 2013," (**Order Dismissing**) and the January 16, 2014 Judgment entered in favor of Med-QUEST and Appellee-Appellee Hawaiʻi Medical Service Association (**HMSA**), and against Mrs. Csaszar, both entered in the Circuit Court of the First Circuit[2] (**circuit court**).

On appeal, Mrs. Csaszar contends the circuit court erred by affirming three administrative hearing decisions rendered in favor of Med-QUEST and HMSA and against Mrs. Csaszar because Child C's round-trip travel between Hawaiʻi and Michigan was a necessary arrangement under 42 U.S.C. § 1396a(a)(43)(C) (2014) with regard to the medical treatment of Child A and Child B.[3] Mrs. Csaszar further contends that by refusing to arrange for Child C's travel or reimbursing Mrs. Csaszar for Child C's travel costs, Med-QUEST, through HMSA, forced Mrs. Csaszar to share the cost of necessary medical treatment for Child A and Child B and therefore violated the prohibition against cost-sharing set forth by 42 U.S.C. § 1396o(a)(2)(A) (2010). Mrs. Csaszar's appeal is without merit.

Mrs. Csaszar argues the circuit court erred in affirming the administrative hearing decisions because: (1) under 42 U.S.C. § 1396a(a)(43)(C), Med-QUEST is required to make arrangements for "a paid, non-relative attendant to accompany one of the children to [the UM-CFCC]"[4] but Med-QUEST never made such

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[2] The Honorable Rhonda A. Nishimura presided.

[3] Through the HMSA QUEST health plan, Child A and Child B receive treatment for cystic fibrosis (**CF**) at the University of Michigan CF Care Center (**UM-CFCC**) on a quarterly basis.

[4] Mrs. Csaszar, however, implies that she would not request or accept a non-relative attendant in place of herself or her husband because

> [the Csaszars] are instructed in the care of Child A and Child B which they must deliver 24/7 in Hawaii [Hawaiʻi]. A non-relative attendant is utterly useless to ensuring that the parents

(continued...)

arrangements and therefore the "cost of hiring a non-relative attendant . . . has been shifted to Child C's airfare"; (2) reimbursing Mrs. Csaszar for Child C's airfare is the lowest cost alternative available to Med-QUEST; (3) Med-QUEST's denial of Mrs. Csaszar's request to be reimbursed for Child C's airfare constitutes prohibited cost-sharing under 42 U.S.C. § 1396o(a)(2)(A); and (4) a child's right to childcare is not comparable to an adult relative's need for care and therefore reimbursing Mrs. Csaszar for Child C's airfare would not result in an expansion of the rule to dependent adults. Mrs. Csaszar also argues that 42 U.S.C. § 1396d(r)(5) (2013) indicates that the applicable federal law is to be interpreted broadly to "eliminat[e] barriers to accessing medically necessary care." Mrs. Csaszar further argues that each hearing officer erred by not addressing "HMSA's breach of the duty to make all necessary arrangements for the journey to [UM-CFCC] so that the Csaszar family would not be burdened with substantial out-of-pocket costs" and "[Mrs.] Csaszar was entitled to reimbursement of the costs she incurred to remedy the breach."

Med-QUEST contends the circuit court did not err in affirming the administrative hearing decisions because Child C was neither in need of necessary medical care nor an attendant to Child A or Child B and therefore Mrs. Csaszar was not entitled to reimbursement of Child C's out-of-state travel costs. Med-QUEST argues that the relevant laws relied upon by Mrs. Csaszar pertain to costs associated only with the necessary medical treatment or services for the recipient child and do not extend to the out-of-state travel costs of dependent family members. Med-QUEST also argues that it was not medically necessary for the entire family to travel together; Mrs. Csaszar could have opted to have either

[4](...continued)

> are properly and thoroughly instructed and thereby able to provide the care at home which has kept the children relatively healthy and out of the hospital where they would likely have spent far more time. . . . [S]ending the parents as attendants is preferable for implementing the complex plans for Child A's [sic] and Child B's individual care plans.

Child A and Child B travel at different times or a non-relative attendant travel with Child A and Child B and one parent so that the other parent could stay in Hawaiʻi with Child C.

42 U.S.C. § 1396a(a)(43)(C) provides that a "State plan for medical assistance must . . . provide for . . . arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services[.]" Mrs. Csaszar points to no case law that suggests Med-QUEST's duty to arrange for a recipient's corrective treatment under 42 U.S.C. § 1396a(a)(43)(C) should extend to the travel arrangements for a recipients' dependent family member.

42 U.S.C. § 1396o(a)(2)(A) provides that "no deduction, cost sharing or similar charge will be imposed under the plan with respect to . . . services furnished to individuals under 18 years of age[.]" We are not persuaded by Mrs. Csaszar's argument that the cost-sharing prohibition set forth by 42 U.S.C. § 1396o(a)(2)(A) applies to costs associated with the out-of-state travel of a dependent family member such as Child C.

42 U.S.C. § 1396d(r)(5) provides that "[t]he term 'early and periodic screening, diagnostic, and treatment services'" includes screening, vision, dental, and hearing services, and "[s]uch other necessary health care, diagnostic services, treatment, and other [medical assistance] measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." This court is not persuaded by Mrs. Csaszar's argument that Child C's travel costs qualify as "other necessary health care, diagnostic services, treatment, and other [medical assistance] measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan" under 42 U.S.C. § 1396d(r)(5).

This court's interpretation of the relevant federal statutory provisions is consistent with the plain language of the corresponding state administrative rules.

Hawaiʻi Administrative Rules (**HAR**) § 17-1737-83 (am 02/07/05) provides:

> §17-1737-83 Out-of-state transportation.
>
> (a) Out-of-state transportation may be provided to eligible recipients for covered medical services which are unavailable in Hawaii [Hawaiʻi] and with prior authorization by the department's medical consultant.
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> . . . .
>
> (e) Out-of-state transportation may be . . . issued to:
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> (1) The recipient when the recipient is expected to return home in thirty days or less as determined by the attending physician or medical facility. . . . .
>
> (2) Any person accompanying the recipient without regard to the person's relationship to the recipient, if an attendant is required by the transportation carrier or recommended by the attending physician or the medical facility and authorized by the department's medical consultant.
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> (f) Other related travel expenses may be allowed with prior authorization by the department's medical consultant and may include but not be limited to:
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> (1) Cost of meals and lodging for the recipient and one attendant;
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> (2) Taxi or other non-emergency ground transportation when such transportation is related to the provision of authorized medical coverage; and
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> (3) Services of an attendant provided the attendant is unrelated to the recipient.
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> (g) Transportation services shall be available for those individuals eligible for medical assistance, provided all the provisions in this section are met. An individual who utilizes benefits for other than their intended purpose, may be referred for potential prosecution of fraud. A provider who knowingly and willfully falsifies, misrepresents, conceals, or fails to disclose material facts to obtain transportation services for an individual, may be referred by the department to the Medicaid fraud control unit for investigation and potential prosecution of fraud. The department may seek the recovery of monies associated with the fraudulent act.

(Emphases added.)

HAR § 17-1739.1-4 (2004) provides:

> §17-1739.1-4 Authorization of services. (a) The department shall provide:
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> . . . .

> (2) Procedures relating to the utilization of and the payment for care and services available under the program. Among the procedures the department may employ shall be a system of authorization of selected types of costly health care.
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> (b) Authorizations shall insure that:
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> (1) Requested services and materials are medically necessary;
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> (2) Any adequate and less expensive alternatives are considered; and
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> (3) Any services and materials provided conform to currently accepted community standards of the profession involved.
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> . . . .
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> (e) The department, through its medical consultants, may place appropriate limits on a Medicaid service based on such criteria as medical necessity or utilization control procedures. The department shall pay for health care services when the department's medical consultants determine that the services are necessary to the patient's well-being and the services are provided under standards accepted by the medical profession. However, no payment shall be made in a situation where the program rules were violated or when services furnished did not involve economical or effective health care management of the patient.
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> . . . .
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> (g) The following services require medical authorization prior to the service being rendered.
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> . . . .
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> (7) Lodging, meals, and transportation for recipients and medical attendants to accompany a recipient for medical purposes, including out-of state and inter-island transportation by scheduled carrier, air ambulance, ground ambulance, handicab, or taxi[.]
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> . . . .
>
> (h) Services provided without the necessary prior authorizations are subject to denial of payment.

(Emphases added.)

Mrs. Csaszar is not entitled to reimbursement of Child C's travel costs because Child C was neither a recipient of necessary medical care nor an attendant, HAR § 17-1737-83(e), and nothing in the record indicates that Mrs. Csaszar received prior authorization for Child C's travel. HAR §§ 17-1737-83(f), 17-1739.1-4(g)(7). Mrs. Csaszar did not meet her burden of persuasion under Hawaii Revised Statutes § 91-10(5) (2012 Repl.) ("[T]he party initiating the proceeding shall have the burden of

proof . . . [which] shall be a preponderance of the evidence."). The circuit court did not err in affirming the administrative hearing decisions and therefore we affirm the circuit court's Order Dismissing and Judgment.

Therefore,

IT IS HEREBY ORDERED that the January 16, 2014 "Order Dismissing Appellant's Appeals Filed November 9, 2012, February 13, 2013, and May 30, 2013 and Affirming the Department of Human Services' Administrative Hearing Decisions Dated October 10, 2012, January 14, 2013, and May 8, 2013", and the January 16, 2014 Judgment, both entered in the Circuit Court of the First Circuit are affirmed.

DATED: Honolulu, Hawaiʻi, June 24, 2015.

On the briefs:

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