

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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CEDRICK JONES  
Petitioner,

v.

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH CARE  
FINANCE

UNISON HEALTH PLAN OF THE CAPITAL  
AREA, INC.  
Respondents.

Case No.: 2010-DHCF-00074

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**FINAL ORDER**

**I. Introduction**

**A. Summary of this Final Order**

This Final Order grants summary adjudication in favor of Respondents, denies Petitioner's motion for summary adjudication, and dismisses this case with prejudice. Respondents properly denied Petitioner coverage for emergency medical services rendered to him by providers who were not in the Alliance program's provider network.

**B. Procedural History**

On August 31, 2010, Petitioner Cedrick Jones filed a hearing request concerning the Alliance program, which is administered by Respondent District of Columbia Department of Health Care Finance (DHCF). Under the Alliance program, DHCF has a contract for service coverage with Unison Health Plan of the Capitol Area, Inc., which is a managed care

organization (Unison). Petitioner challenges Respondents' denial of coverage for hospital, physician and radiology services from out-of-network providers for emergency care. Consequently, the Office of Administrative Hearings (OAH) issued an Order and Notice of Status Conference, scheduling a status conference on October 26, 2010.

On October 26, 2010, the status conference proceeded as scheduled. Petitioner appeared and represented himself. Ajay Gohil, Esq., Assistant Attorney General, appeared on behalf of DHCF. Herbert Spencer, Compliance and Government Relations Officer for Unison, accompanied Mr. Gohil. At the onset of the status conference, the parties jointly requested a continuance to allow them additional time to discuss possible resolution of this matter. I granted the request and continued the status conference to December 13, 2010.

On December 13, 2010, the status conference proceeded as scheduled. Petitioner appeared and represented himself. Mr. Gohil appeared again on behalf of DHCF. Mr. Spencer participated by telephone. Petitioner requested a continuance of the status conference. In support of his request, Petitioner explained that he wished time in which to contact the health care providers whose bills are at issue to ascertain whether they have cleared balances charged him following their receipt of letters from Unison. The Government did not oppose Petitioner's request. I granted the request and continued the status conference to February 1, 2011.

On January 28, 2011, Petitioner filed a request for a continuance of the February 1, 2011 status conference. I granted Petitioner's request and re-scheduled the status conference for March 15, 2011.

On March 15, 2011, the re-scheduled status conference proceeded as scheduled. Petitioner appeared and represented himself. Mr. Gohil appeared on behalf of DHCF. And, Mr.

Spencer accompanied Mr. Gohil. Petitioner requested another continuance of the status conference. In support of his request, Petitioner explained that he wished time in which he, along with Mr. Gohil and Mr. Spencer, could contact the health care providers whose bills are at issue to ascertain whether they had cleared or would clear balances charged him. DHCF did not oppose Petitioner's request and agreed to work with Mr. Jones in contacting the health care providers. I granted the request and, with the agreement of the parties, continued the status conference to May 10, 2011.

At the May 10, 2011 status conference, the parties appeared and represented that they had been unable to resolve their dispute. Based on the parties' representations that the facts of this case are undisputed and at their request, I issued a Briefing Order to allow the parties to submit legal argument on whether the law requires Alliance to cover emergency care when out-of-network providers are used. On August 1, 2011, Petitioner filed a brief, which I have construed to be Petitioner's motion for summary adjudication. On October 7, 2011, Unison filed Respondent Unison Health Plan of the Capital Area, Inc.'s Brief in Opposition to Brief of Petitioner or, in the Alternative, Motion for Summary Adjudication. When Petitioner did not file a response to Unison's Motion for Summary Adjudication, I issued an Order scheduling a status conference for November 29, 2011.

At the November 29, 2011 status conference, Petitioner appeared and represented himself. Mr. Gohil appeared on behalf of DHCF. And, Mr. Spencer again accompanied Mr. Gohil. Petitioner requested additional time in which to file a response to Unison's motion. I granted Petitioner's request and set a January 3, 2012 deadline for Petitioner's filing of a response.

On January 3, 2012, Petitioner filed a response to Unison's Motion for Summary Adjudication. In his response, Petitioner requested a hearing. Therefore, I scheduled a hearing on the pending motions for March 29, 2012.

Matthew Piehl, Crowell Moring LLP, filed a Notice of Appearance on behalf of Unison<sup>1</sup>, together with an Application for Admission *Pro Hac Vice*. Neither Petitioner nor DHCF opposed Mr. Piehl's Application for Admission *Pro Hac Vice*.

The March 29, 2012 hearing proceeded as scheduled. Petitioner appeared and represented himself. Surobhi Naz Mansur, Esq. Assistant Attorney General, appeared on behalf of DHCF. Matthew Piehl, Crowell Moring LLP, appeared on behalf of Unison. Unison, through counsel, agreed to be joined as a party-Respondent along with DCHF and, without objection from Petitioner or DHCF, was added as a Respondent pursuant to OAH Rule 2816.1. Petitioner then clarified that he requested a hearing to underscore his argument that Respondents' denial of coverage for his out-of-network emergency care is a violation of his equal protection rights. Finally, without objection from Petitioner or DHCF, Unison filed the UnitedHealthcare Community Plan - Alliance Member Handbook as an appendix to its previously filed brief<sup>2</sup>. The parties agreed that the facts of the case are not in dispute and that the case can be summarily adjudicated on the filings.

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<sup>1</sup> The Notice of Appearance indicated that the entry of appearance was on behalf of DHCF. However, at the March 29, 2012 hearing, Mr. Piehl clarified that his entry of appearance was on behalf of Unison.

<sup>2</sup> Unison previously filed the Alliance Member Handbook on October 7, 2011, as Exhibit 2 to its Brief in Opposition to Brief of Petitioner or, in the Alternative, Motion for Summary Adjudication

Upon consideration of the parties' cross motions for summary adjudication and the entire record herein, I hereby grant Unison's Motion for Summary Adjudication. The material facts are undisputed and coverage of out-of-network emergency services is not required by the law.

### **III. The undisputed material facts**

The material facts are undisputed. Petitioner was enrolled in the DC Healthcare Alliance Program (the Alliance program) through Unison from September 1, 2008 through June 30, 2010.

Unison is a managed care organization that entered into a contract with DCHF to provide service coverage to Alliance members. The contract provides coverage exclusions for out of network providers. There is no exception for emergency services. The contract authorizes medical services for emergency care, but limits this coverage by the exclusion of out-of-network providers unless pre-authorization is obtained. Unison's Motion for Summary Adjudication, Exh. 3, Affidavit of Marcia Jones, paras. 7 and 8.

Petitioner received emergency health care services from several out-of-network health care providers while enrolled in the Alliance program. Specifically, on March 3, 2009, Petitioner received services from Northwest Hospital Center, American Radiology Associates, and Randall Emergency Physicians; on July 1, 2009, from Bon Secours Baltimore/William Crittenden Hospital and American Radiology Associates/Joan Bennett; and, on November 7, 2009, from John Rush/Contee Emergency Physicians. Neither Petitioner nor the providers sought pre-authorization from Unison. Unison denied coverage for the bills from each of these out-of-network providers because they were not in the Unison network of participating providers.

#### **IV. Summary dismissal is appropriate**

##### **A. Summary of the parties' arguments**

Petitioner challenges Unison's denial of coverage for the out-of-network providers' bills. Petitioner argues that D.C Official Code § 31-2802, as well as the member handbook, which he refers to as a manual, require the coverage. Unison argues that D.C. Official Code § 7-1405 does not require reimbursement to out-of-network providers, even in emergency situations, without pre-authorization, and that its contract excludes coverage for out-of-network providers, including those from whom Petitioner received services.

##### **B. Overview of the Alliance Program**

The Alliance program is a locally funded program for comprehensive medical services for low-income persons who do not qualify for Medicaid but who meet the income and other requirements of the Alliance program. It is funded by the District of Columbia Government and administered by DHCF. D.C. Official Code §§ 7-1401 – 1405.01; 22B DCMR Chapter 33. In turn, DHCF is authorized to contract out for comprehensive health care services for eligible persons. D.C. Official Code § 7-1405(a).

Both the statutes and the regulations authorize and require DHCF to limit services provided to Alliance members, in accordance with contracts between it and its contractors.

Sections 7-1405(c) and (d) provide:

(c) Notwithstanding any other provision of the District's health insurance laws, a health maintenance organization that has a contractual obligation to provide health care services to persons enrolled in the [Alliance program] shall be

required to provide to persons enrolled in the Alliance **only those health benefits specified in its contract with the District of Columbia.**

(d) A health maintenance organization or health insurer under contract to the District to deliver services to persons enrolled in the Alliance **is not required to reimburse non-participating hospitals for services provided to Alliance enrollees.**

[emphasis added]

These statutory exclusions of coverage under the Alliance program exclude application of the more general provisions of the Access to Emergency Medical Services Act of 1988, D.C. Official Code §§ 31-2801 - 2803, which requires, among other things, that health insurers and others provide reimbursement for emergency services due to a medical emergency.

The regulations for the Alliance program also limit the coverage provided to Alliance members. 22B DCMR 3302 states that nothing in the chapter is deemed to “create or constitute an entitlement or right” to medical services or payment for services. As part of the program, DHCF or its authorized managed care organization is permitted to limit health care services, “including requiring prior authorization, limiting referrals, or instituting other measures to limit health care services.” 22B DCMR 3302.4.

In this case, there is no question that the Alliance program, and the managed care organization, Unison, are authorized to limit coverage of services performed by authorized medical providers, unless pre-authorization for treatment through an out-of-network provider is obtained. There is no exception to this exclusion in the contract between DHCF and Unison. The Alliance Member Handbook expressly informs members that “Alliance members do not have coverage for any service outside of the network including emergency services” when out of town. Unison’s Motion for Summary Adjudication, Exh. 2, p. 2.

In addition, it is undisputed that Petitioner used the services of out-of-network providers, Northwest Hospital Center, American Radiology Associates, Randall Emergency Physicians, Bon Secours Baltimore/William Crittenden Hospital, American Radiology Associates/Joan Bennett, and, John Rush/Contee Emergency Physicians Sibley, all of whom are out-of-town, out-of-network providers, without obtaining prior approval from Unison.

### **C. Analysis**

An administrative law judge may decide a case summarily, without an evidentiary hearing. OAH Rule 2819.1. Beyond allowing that a case may be decided summarily, the rules of this administrative court do not specifically address when summary adjudication is appropriate. When the rules do not address a procedural issue, the rules provide that I may be guided by the District of Columbia Superior Court Rules of Civil Procedure. OAH Rule 2801.1.

District of Columbia Superior Court Rules of Civil Procedure allow for summary judgment if, among other things, the pleadings, discovery responses, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. D.C. Sup. Ct. Civ. R. 56(c). A party is entitled to summary judgment if the evidence in the record “show(s) that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Musa v. Continental Insurance Co.*, 644 A.2d 999, 1001 (D.C. 1994). Summary judgment is appropriate absent a “genuine issue as to any material fact.” *See, e.g., Morgan v. Psychiatric Inst. of Washington*, 692 A.2d 417, 420 (D.C. 1997). The court is obligated to view the facts, as well as inferences drawn from the facts, in the light most favorable to the non-

moving party. *See Matsushita Ele. Indus. Comp. v. Zenith Radio Corp.*, 475 U.S. 574, 587-588 (1986).

Material facts are those “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The material facts in this case---that Petitioner had health care coverage through the Alliance program and while covered incurred bills from out-of-network emergency health care providers, without prior authorization from Unison --- are undisputed.

When the undisputed material facts are viewed in the light most favorable to Petitioner, Respondents are entitled to judgment as a matter of law. The law clearly provides that a managed care organization under contractual obligation to provide health care services to persons enrolled in the Alliance program is required to provide only those health benefits specified in its contract with the District of Columbia. D.C. Official Code § 7-1405(c). Because the Alliance program provides coverage through only in-network providers, Unison has properly limited coverage to Petitioner. Unison’s exclusion of coverage for services at Northwest Hospital Center, American Radiology Associates, and Randall Emergency Physicians, Bon Secours Baltimore/William Crittenden Hospital, American Radiology Associates/Joan Bennett, and John Rush/Contee Emergency Physicians is proper as each of these providers is out-of-network. Therefore, Unison is entitled to a decision in its favor as a matter of law.

Petitioner argues that Respondents’ denial of coverage for out-of-network providers is discriminatory, in violation of the Equal Protection Clause. In sum, Petitioner argues that the out-of-state emergency health care coverage that is allowed under other programs, presumably

the Medicaid program or private insurance programs, should be allowed to participants in the Alliance program and that to not allow that coverage violates the Equal Protection Clause<sup>3</sup>.

If what Petitioner seeks is to overturn or to change the law that limits Alliance coverage, this administrative court lacks jurisdiction to do either. *See Archer v. D.C. Dep't. of Human Res.*, 375 A.2d 523, 526 (D.C. 1977). A constitutional challenge to a statute may be appropriately asserted in another forum, but not at OAH. And, a change to the legislation may be appropriately requested in a legislative forum, but not at OAH.

If OAH has authority to hear a claim under the Equal Protection Clause, Petitioner's equal protection argument does not appear to be persuasive. The Equal Protection Clause stands for the general proposition that states cannot deny equal protection of the laws to persons similarly situated. Under the Equal Protection Clause, states may not pass discriminatory laws that deny equal rights to people in similar circumstances, but of different classes. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Petitioner has not demonstrated that the Alliance program coverage exclusions are based on similar circumstances, but difference classes, and, therefore, prohibited by the Equal Protection Clause.

For the foregoing reasons, Unison's Motion for Summary Adjudication is granted and this case will be dismissed with prejudice.

#### **IV. Order**

Accordingly, it is this 17th day of May 2012:

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<sup>3</sup> DC Medicaid must pay Medicaid recipients' emergency services bills when they are absent from the District of Columbia. 42 U.S.C. 1396(a)(16), 42 C.F.R. 431.52(b), and Section 2.7 of the District of Columbia State Plan for Medicaid.



