

HEALTH APPEAL PACKET NO. 4

Appealing to Superior Court

There are 4 levels of appeal for denied health claim and pre-certification requests. Each level has its own packet of instructions and forms. This packet is for level 4. You must follow the appeal process in the **correct order** and **on time**. You may withdraw your appeal at any step.

Form Number	Form Name
INSTRUCTIONS	
Instructions for appealing to superior court start on the next page. For more detail, see form AP-210 at https://public.courts.alaska.gov/web/forms/docs/ap-210.pdf or email the healthcare advocates.	
FORMS DISCUSSED IN THIS PACKET	
<u>AP-101</u>	Notice of Appeal from Administrative Agency to Superior Court
<u>AP-135</u>	Request and Order (to waive filing fee)
<u>AP-120</u>	Motion to Waive or Reduce Cost Bond
<u>AP-130</u>	Draft Order for Motion to Waive Cost Bond
<u>CR-206</u>	Financial Statement (in support of fee or cost bond waiver)
<u>HCA-405</u>	Motion to Seal or Make Medical Records Confidential (includes draft order)
<u>HCA-410</u>	Sample Letter About Errors in the Agency Record
<u>HCA-415</u>	Motion to Supplement the Record or for Partial New Review (includes draft order, affidavit, and certificate of service)
OTHER TOOLS AND PACKETS	
<u>Flowchart</u>	https://public.courts.alaska.gov/web/forms/docs/wfd-aetna.pdf
<u>Links</u>	https://public.courts.alaska.gov/web/forms/docs/hcatoolkit-links.pdf
<u>Level 1 Packet</u>	https://public.courts.alaska.gov/web/forms/docs/hca-100.pdf
<u>Level 2 Packet</u>	https://public.courts.alaska.gov/web/forms/docs/hca-200.pdf
<u>Level 3 Packet</u>	https://public.courts.alaska.gov/web/forms/docs/hca-300.pdf

April 2019-Alaska Court System

This packet was prepared by the healthcare advocates at the Alaska Court System for employees of the Alaska Court System and their dependents who are members of the AlaskaCare Active Employee Plan. For more information or assistance, please email: HealthcareAdvocates@akcourts.us.

HOW TO FILE IN SUPERIOR COURT

INTRODUCTION	
<p>What is this packet for?</p>	<p>Use this packet:</p> <ul style="list-style-type: none"> ▪ If you want to appeal a health claim that Aetna or OptumRx denied or partially denied, or a pre-certification request that Aetna or OptumRx denied; <u>and</u> ▪ You already submitted a level 2 appeal and it was denied, or you submitted a request for external review and it was denied; and ▪ If the services were received after January 1, 2018, you already submitted a Level 3 appeal and it was denied by the DRB; <u>and</u> ▪ You are an active employee of the Alaska Court System or a dependent. <p>Do <u>not</u> use this packet:</p> <ul style="list-style-type: none"> ▪ This packet is <u>not</u> for emergency appeals. For help with emergency appeals, refer to the health PLAN or e-mail the Healthcare Advocates. ▪ This packet is <u>not</u> for dental or vision appeals. For help with those, refer to the health PLAN or e-mail the Healthcare Advocates. ▪ This packet is also <u>not</u> for level 1 or 2 appeals to Aetna. Use form HCA-100, Health Appeal Packet 1 or form HCA-200, Health Appeal Packet 2 for those. ▪ This packet is <u>not</u> for Level 3 appeals. Use form HCA-300, Health Appeal Packet 3, for those.
<p>What are the basic steps for appealing?</p>	<p>The active employee health plan for 2018 includes a new level of appeal. For services received on or after January 1, 2018, there are 4 levels of appeal. This includes 2 appeals through Aetna or OptumRx, 1 appeal to DRB, and then 1 appeal to court. (For services received before January 1, 2018, there are 3 levels of appeal.) You must go through each level of appeal in the correct order, and on time. You may withdraw your appeal at any step.</p> <p>Step 1 is a LEVEL 1 APPEAL to Aetna or OptumRx. For level 1 appeals, use form HCA-100, Health Appeal Packet 1. If your level 1 appeal is granted, then you won, and the process is finished. If your level 1 appeal is denied, then go to step 2.</p> <p>Step 2 will be either a LEVEL 2 APPEAL or a REQUEST FOR EXTERNAL REVIEW, depending on the reason why your level 1 appeal was denied. For step 2, use form HCA-200, Health Appeal Packet 2.</p> <p>Step 3 is only for services received on or after January 1, 2018, and will be a LEVEL 3 APPEAL to DRB. For step 3, use form HCA-300, Health Appeal Packet 3. If DRB denies your level 3 review, then go to Step 4.</p>
<p>This packet is for step 4.</p>	<p>Step 4 is filing an appeal to SUPERIOR COURT if you do not win at the earlier steps. For appeals to superior court, use form HCA-400, Health Appeal Packet 4.</p>

FIND THE DENIAL LETTER

Find your latest denial letter.

If your services or initial pre-certification denial occurred **on or after January 1, 2018**, you will have submitted a level 3 appeal to DRB. DRB will mail you a letter explaining that your level 3 appeal was denied. In that denial letter, DRB will explain the reason for denial. Find the denial letter.

If your services or pre-certification denial occurred **before 2018**, you will not have any level 3 denial from DRB. Instead, you will have a level 2 denial from Aetna. In the level 2 denial letter there will be a reason for the denial. Find the denial letter.

(If more than 50 days passed since you submitted your level 2 or 3 appeal, and you have not received a final decision, email HealthcareAdvocates@akcourts.us.)

DEADLINE FOR SUBMITTING THE APPEAL TO COURT

When is your court appeal due?

IMPORTANT!!! You have **30 calendar days** to file your appeal in superior court. Calculate 30 days from the date you received notice of the Level 3 denial from DRB (or level 2 denial from Aetna, if pre-2018 claim).

PREPARE THE SUPERIOR COURT APPEAL

Prepare and file your superior court appeal.

For detailed instructions about appealing an agency decision to superior court, see form [AP-210](#). Not all of the process described in the AP-210 will apply (for example, there is no agency hearing before filing in superior court), but there is some helpful detail. For general steps, see below:

1. ***FILL OUT FORM [AP-101](#) TO PREPARE YOUR NOTICE OF APPEAL.*** Fill out the form and explain the reasons for your appeal. Use more pages if needed. Then sign and date the form, and give current contact information.
2. ***PAY THE \$250 COURT FILING FEE OR ASK FOR A WAIVER.*** If you cannot afford the filing fee, you may ask the court to waive it. To request a waiver, file form [AP-135](#) and a financial statement (such as form [CR-206](#)).
3. ***PAY THE \$750 COST BOND OR ASK FOR A WAIVER.*** In addition to the filing fee, you will need to pay a cost bond of \$750. If you cannot afford a cost bond, you may ask the court to waive or reduce it. Use form [AP-120](#) to ask for a cost bond waiver or reduction. You should also file a financial statement (form [CR-206](#)), and a draft order for the court to sign (form [AP-130](#)).
4. ***WHERE TO FILE THE CASE?*** The health plan says to file your appeal in Juneau Superior Court. But if there is an Alaska superior court closer to where you live, you can file in the closer superior court instead.
5. ***GIVE A COPY OF THE PAPERS TO THE OTHER SIDE.*** You must give a copy of everything you first file at court to the head of the DRB and the Alaska Attorney General. (Except, see paragraph 6 about medical records.) The DRB is the "other side" of the case (the Appellee), and the Attorney General is the DRB's attorney. When you give a copy of papers to the other side, it is called "service." You will be "serving a copy."
6. ***DO YOU WANT YOUR MEDICAL RECORDS KEPT CONFIDENTIAL?***
If yes, use court form [HCA-405](#) to ask the court to order that your records be kept confidential. When you file this (usually at the start of the court appeal), put your medical records in a sealed envelope for the Court's review only. After the court rules on your motion, then you can give the other side a copy.

Finding your court case online.	7. <u>CHECKLIST OF PAPERS FOR THE COURT AND THE OTHER SIDE.</u>		
	<i>Checklist</i>	<i>Submit to court?</i>	<i>Copy for other side?</i>
	Form AP-101 , <i>Notice of Appeal</i>	Yes	Yes
	\$250 Court Filing Fee	Yes	No
	\$750 Cost Bond (if not asking for a waiver)	Yes	No
	Form AP-120 , <i>Motion to Waive/Reduce Cost Bond</i> (if asking to waive or reduce cost bond)	Yes	Yes
	Form AP-130 , <i>Order re Cost Bond</i> (if asking to waive or reduce cost bond)	Yes	Yes
	Form CR-206 , <i>Financial Statement</i> (if asking to waive or reduce cost bond or filing fee)	Yes	Yes
	Copy of Aetna’s “FINAL” DECISION letter (for claims before 2018)	Yes	Yes
	Copy of DRB’s decision letter (for claims on or after 1/1/2018)	Yes	Yes
Copy of other relevant materials and motions	Yes	Yes	
	8. <u>KEEP TRACK OF YOUR SUPERIOR COURT APPEAL.</u> You can check the status of your court case at: https://records.courts.alaska.gov/eaccess/home.page.2 . See the “search cases” button and then search by case number or name.		

FIX THE RECORD

What is “the record”?	<p>After you file your appeal in superior court, DRB’s attorney must put together “the record” about what happened during your level 1, level 2, and level 3 appeals. The record will be used by the superior court to review your claim. DRB sometimes makes mistakes when it puts the record together. For example:</p> <ul style="list-style-type: none"> • Sometimes DRB includes the wrong health plan, like the retiree plan instead of the active employee plan. • Sometimes DRB forgets to include medical records or letters that you or your doctor sent with your level 1, level 2, and level 3 appeals. • Sometimes DRB tries to keep your medical records out of the record on purpose because they think the medical records do not apply to the decision being made. We have seen this happen, for example, with claims that Aetna said were above the “recognized charge.”
What should I do if DRB’s record is wrong or incomplete?	<p>If you think the record is wrong or missing something, ask the court to have it corrected by making a motion. But first, you should try and work the problem out with DRB’s attorney. You may use form HCA-410 to document your efforts:</p> <ol style="list-style-type: none"> 1. Make sure you and DRB both agree to an extension of time to file anything while you try to work things out. Either side may file a request for more time from the court. 2. Keep notes about your discussions with DRB’s attorney while you try and work things out. This will help you prove to the court later on that you made a good faith effort to get the record fixed.

3. If you cannot get the record fixed by informal talks with DRB’s attorney, file a motion asking the judge to fix it instead. You may use form [HCA-415](#), *Motion to Supplement the Record or for Partial New Review.*”

PREPARE YOUR BRIEF

This is just the basic outline of a brief.

When the time comes, you will start preparing your “brief” for court. Your brief will be your explanation to the court about what happened during the level 1, level 2, and level 3 appeals, and why you think DRB/Aetna/OptumRx was wrong. For more information:

- see the sample documents on the court’s [self-help center appeal page](#);
- read [Appellate Rule 212\(c\)](#);
- read the instructions in court form AP-210 at <https://public.courts.alaska.gov/web/forms/docs/ap-210.pdf>;
- email the advocates at HealthcareAdvocates@akcourts.us.

Here is an outline for a sample brief:

- I. Introduction and table of contents
- II. Statement of the issues
[These are the facts or legal issues DRB or Aetna or OptumRx decided incorrectly and which you want the court to review.]
- III. Statement of the facts
[This is a summary of the events that happened which caused you to appeal your case. Just list the facts connected to the issues being appealed.]
 - A. Initial denial of health claim or precertification request
 - B. Your level 1 appeal and Aetna’s or OptumRx’s level 1 denial letter
 - C. Your level 2 appeal and Aetna’s or OptumRx’s level 2 denial letter

—or—

Your request for external review and the external review company’s denial letter (and Aetna’s or other related letter)

 - D. Your level 3 appeal and DRB’s level 3 denial letter (if you had a Level 3 appeal)
 - E. Other relevant facts and proceedings
- IV. Statement of the law
[This is where you explain why the decision by DRB/Aetna/OptumRx was wrong under the law. Your statement should be about how the law applies to the facts and why the denials violate the law.]
- V. List of appendices
- VI. Short conclusion
[This is a short conclusion explaining what exactly you want the court to fix. This is also called “relief requested.”]

When in doubt, email the healthcare advocates at HealthcareAdvocates@akcourts.us

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

Appellant (person bringing appeal)
vs.

Appellee

APPEAL CASE NO. _____ CI

REQUEST AND ORDER

FOR: _____

REQUEST

Appellant Appellee requests that _____

Reason: _____

Date

Signature of Appellant/Appellee

I certify that on _____
a copy of this request and Form AP-140
were mailed personally delivered
to (list names): _____

Print Name and Title (if applicable)

Mailing Address City State ZIP

Home Phone Work Phone

By: _____

ORDER

Hearing ordered. Date _____ Time _____ a.m./p.m. Courtroom _____
 Request granted. Request denied because _____

Date

Judge/Clerk*

I certify that on _____
a copy of this order was sent
to (list names): _____

Type or Print Name

Clerk: _____

*Clerk may sign only those orders authorized by
Appellate Rule 612.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

<input type="checkbox"/> State of Alaska) <input type="checkbox"/> In the Matter of) <input type="checkbox"/>) vs.))) Defendant or Minor.) _____)	CASE NO. _____ FINANCIAL STATEMENT <input type="checkbox"/> For Appointment of Counsel <input type="checkbox"/> For Restitution
--	---

Full Name _____ Date of Birth _____
 Residence Address _____
 Mailing Address _____
 Email Address _____ Soc. Sec. No.¹ _____
 Home Phone _____ Work Phone _____ Cell Phone _____

Are you under the age of 18? No Yes. If yes, one of your parents must appear and provide financial information regarding the income of both parents.

Have you filled out a financial statement to apply for a court-appointed attorney within the past 12 months? Yes No Was an attorney appointed for you? Yes No

Are you receiving public assistance? No Yes. If yes, check those you receive:
 SSI Food Stamps Adult Public Assistance
 ATAP General Relief Medicaid

Are you working now? Yes No If no, date last worked _____
 Present employer _____
 (If not now employed, state last employer and length of job.)

Employer's address _____
 Other employers in past year _____
 Are you a seasonal worker? Yes No If yes, describe: _____
 Are you self-employed? Yes No If yes, describe: _____

- 1. DEFENDANT'S INCOME INFORMATION** (after taxes, but before other deductions)
 Do not include income of spouse. If under age 18, list income of defendant and parents.
- | | |
|--|-----------------|
| a. Current Monthly Income | |
| Wages | \$ _____ |
| Social Security | \$ _____ |
| Public Assistance | \$ _____ |
| Unemployment | \$ _____ |
| Self-Employment Income (attach proof ²) | \$ _____ |
| Other (specify) _____ | \$ _____ |
| Total Monthly Income | \$ _____ |
| b. Permanent Fund Dividends received in last 12 months | \$ _____ |
| c. ANCSA or other corporate dividends received in last 12 months | \$ _____ |
| d. Value of gifts received in last 12 months | \$ _____ |
| e. Total Income during last 12 months | \$ _____ |

¹ Social Security number is not mandatory. It may be used to identify your assets.
² Examples include sales tax reports, bank statements, tax returns, cannery settlement statements.

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 CR-206 (10/16)(cs) AS 18.85
 FINANCIAL STATEMENT Crim. R. 39 and 39.1

f. Do you expect to receive other income in the next 6 months (for example, settlements, dividends, gifts, inheritances)? Yes No
 If yes, please specify _____

2. HOUSEHOLD MEMBERS (People who live with you)

<u>Name</u>	<u>Age</u>	<u>Relationship</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. MONTHLY HOUSEHOLD EXPENSES

<u>Expense</u>	<u>Amount</u>	<u>Balance Owed</u>	<u>Past Due</u>
Housing (rent or mortgage)	\$ _____	\$ _____	\$ _____
Food	\$ _____	\$ _____	\$ _____
Utilities:			
Electricity	\$ _____	\$ _____	\$ _____
Gas	\$ _____	\$ _____	\$ _____
Water and Sewer	\$ _____	\$ _____	\$ _____
Garbage	\$ _____	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	\$ _____
Transportation (gas/bus)	\$ _____	\$ _____	\$ _____
Car or truck payment	\$ _____	\$ _____	\$ _____
Insurance	\$ _____	\$ _____	\$ _____
Child support and alimony	\$ _____	\$ _____	\$ _____
List Loans & Credit Card Debts:			
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Medical (not covered by insurance)	\$ _____	\$ _____	\$ _____
Childcare: _____	\$ _____	\$ _____	\$ _____
IRS Back Taxes Due	\$ _____	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____	\$ _____

ADJUSTMENTS TO EXPENSES:

a. Are you married? Yes No
 If yes, list spouse's total income **after taxes** for the past 12 months (include gifts, settlements, inheritances, wages, dividends, etc.): \$ _____
Note: For purposes of deciding appointment of counsel, expenses will be divided between the spouses proportionate to each spouse's income.

b. Are any household expenses paid by someone other than **you** or **your spouse** (such as by a roommate, parent, grandparent or child)? No Yes. If yes, list:

_____	_____	\$ _____
Name	Relationship	Amount
_____	_____	\$ _____
Name	Relationship	Amount
_____	_____	\$ _____
Name	Relationship	Amount

4. CASH AND ASSETS (things you own or are buying) Include all things you own by yourself and all things you own jointly with someone else.

	<u>Value</u>	<u>Amount Still Owed</u>
Cash	\$ _____	
Bank Acct./Checking	\$ _____	
Bank Acct./Savings	\$ _____	
Stocks, Bonds, CD's	\$ _____	
Mutual Funds	\$ _____	
Retirement Plans	\$ _____	
Life Insurance (cash value)	\$ _____	
Land, Homes, Trailers	\$ _____	\$ _____
Motor Vehicles (describe):	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TV, Stereo, VCR	\$ _____	\$ _____
Computer Equipment	\$ _____	\$ _____
Snow Machines, ATVs, Sport		
Boats, Airplanes, Motorcycles	\$ _____	\$ _____
Jewelry, Precious Metals or		
Precious Stones	\$ _____	\$ _____
Furs.....	\$ _____	\$ _____
Collections (Coins, Ivory, etc.)	\$ _____	\$ _____
Tools	\$ _____	\$ _____
Guns	\$ _____	\$ _____
Sports Equipment (Kayaks,		
Skis, Scuba Gear, etc.)	\$ _____	\$ _____
Fishing Gear, Nets, etc.....	\$ _____	\$ _____
IFQ's, Quota Shares, etc.	\$ _____	\$ _____
Commercial Fishing Permits....	\$ _____	\$ _____
Commercial Fishing Boats.....	\$ _____	\$ _____
Businesses:_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Other:_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTALS	\$ _____ (-)	\$ _____ = \$ _____

Do you need any of the above items to earn your living? Yes No
 If yes, list the item and describe why you need it:

5. CREDIT CARDS. List all your credit cards.

<u>Name of Card (Visa, MC, AMEX)</u>	<u>Credit Limit</u>	<u>Balance Owed</u>	<u>Min. Monthly Payment</u>
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

6. OTHER EXPENSES

<u>Expense</u>	<u>Monthly Amount</u>
Cable TV	\$ _____
Club Membership Fees	\$ _____
Internet Fees	\$ _____
Subscriptions (magazines, newspapers, etc.)	\$ _____
Entertainment (dining out, sporting events, etc.)	\$ _____
Alcohol and Tobacco	\$ _____
TOTAL	\$ _____

OATH

WARNING: Making false statements under oath is a crime.

I declare, under oath, that the above Financial Statement is true.

_____ Date

_____ Signature of Defendant or Parent

Subscribed and sworn to or affirmed before me in _____, Alaska
on _____ (date).

(SEAL)

Clerk of Court, Notary Public or other person
authorized to administer oaths.
My commission expires: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)	
)	
Appellant (person bringing appeal))	
)	
vs.)	
)	
STATE OF ALASKA, DEPARTMENT OF)	
ADMINISTRATION, DIVISION OF)	CASE NO. _____
RETIREMENT AND BENEFITS,)	CI
Appellee)	
_____)	

MOTION TO SEAL OR MAINTAIN MEDICAL RECORDS CONFIDENTIAL
 (Alaska Const. Article 1, § 22; Alaska R. App. P. 512.5(b); Alaska R. Adm. P. 37.6)

[Notice to Appellee: Enclosed with this motion are my medical records in a sealed envelope for the Court only. These records will be provided to the Appellee after the Court rules, and then they must be kept confidential (if so ordered).]

I am the Appellant who brought this appeal. I ask the court to let me file the enclosed medical records under seal, to keep the medical records confidential, and not let them be disclosed to the public. I ask that the records only be viewed by the court, the parties in this case, and their attorneys. In making this request, I am not waiving my right to keep this medical information confidential and private.

Medical records include private information and are not open to public inspection under the Alaska Public Records Act.¹ Also, the Alaska Constitution says that "[t]he right of the people to privacy is recognized and shall not be infringed."² Medical records are also considered confidential information under federal privacy rules set by HIPAA.³

I am filing medical records for the court to review in this case because they are relevant to the question whether the Appellee Division of Retirement and Benefits (DRB) properly reviewed and considered them when DRB made its decision about [check all that apply]:

- the medical necessity of the procedures or medication at issue.
- calculation of the "recognized charge" and/or "derived charge."
- other:

¹ Alaska Stat. § 40.25.120(a)(3).
² Alaska Const. Art.1, § 22 (Right of Privacy).
³ Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996; 45 C.F.R. 164.508.

DRB failed to include the medical records in the agency record despite the fact that DRB based the denial of medical benefits on those medical records. In order for the Court to decide whether DRB properly evaluated those factors, it is necessary to have the records before the court. Nevertheless, I believe that the specific medical information in the records should remain confidential to protect my privacy.

When the Office of Administrative Hearings (OAH) decides similar appeals of DRB decisions about retiree benefits, OAH maintains the privacy of the medical records and of the names of the individuals whose medical claims are being decided.⁴ While my name is not confidential in this case, I am entitled to this same degree of confidentiality and privacy regarding my medical records.

I respectfully ask the Court to maintain confidentiality of these medical records and keep them under seal for the duration of this appeal.

Dated: _____ Appellant's Signature: _____

Daytime Phone: _____ Email: _____

CERTIFICATE OF SERVICE

I certify that on this date: _____, I gave a true and correct copy of this *Motion to Seal or Make Medical Records Confidential*, the draft *Order*, and this *Certificate of Service* to the party of record listed below, by first class mail, postage pre-paid. (I am withholding the medical records until the Court rules on the *Motion*.)

Assistant Attorney General

Attorney's Name: _____

State of Alaska, Labor & State Affairs Section

Street Address: _____

City, State, Zip: _____

Dated: _____ Signature of Person Serving Copies: _____

⁴ See: *In the matter of W-S-B*, (OAH) No. 15-1143-PER, Agency No. 2015-0604 (Office of Admin. H'rgs 2016), available at <http://aws.state.ak.us/officeofadminhearings/Documents/PER/PER151143.pdf>.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)	
)	
Appellant (person bringing appeal))	
)	
vs.)	
)	
STATE OF ALASKA, DEPARTMENT OF)	
ADMINISTRATION, DIVISION OF)	CASE NO. _____
RETIREMENT AND BENEFITS,)	CI
Appellee)	
_____)	

**ORDER ON MOTION TO SEAL OR MAINTAIN
MEDICAL RECORDS CONFIDENTIAL**

Appellant moved the Court to seal or maintain medical records confidential for the duration of this case.

- The motion is **GRANTED**. The medical records shall be confidential and kept under seal for the duration of this appeal. The records may be viewed only by the Court, and by the parties to this case and their attorneys.
- The motion is DENIED.

Date

Judicial Officer Signature

Print or Type Name

TO ATTORNEY FOR AGENCY DRB:

Attorney _____

State of Alaska Attorney General

Attorney's Address: _____

MY CONTACT INFORMATION:

My Name: _____

My Phone Number: _____

My Email Address: _____

My Mailing Address: _____

CASE INFORMATION:

Appeal Case Number: _____

Today's Date: _____

- I sent this by: email to _____
 mail to _____
 hand delivery to the attorney's address
 fax to _____

SUBJECT: LETTER TO AGENCY ATTORNEY ABOUT ERRORS IN THE AGENCY RECORD

Dear agency attorney,

The purpose of this letter is to ask you to fix some problems with the agency record in this case. The specific problems are described below. If our differences about the agency record are not resolved within 10 business days after the date of this letter, I will ask the court to supplement the record or I will ask the court for a partial new review. Any response from you about this letter should be sent to me by regular First Class US Mail, or by email to my email address at the top of this page.

Problems with the agency record are as follows (check all that apply):

- Health Plan. The agency used the wrong health plan in the agency record. Please correct the record with the correct plan.
- Recognized Charge Data. The agency says my health claim was denied at least in part because my provider's charges were above the "recognized charge." In my appeal, I asked for data in the agency's possession or control about actual prevailing charge rates for the same or similar procedure in the geographic area where my procedure was done. The agency did not provide the information, or other requested information, and did not include it in the agency record. The agency says that the information I asked for was not part of, or relevant to, its decision whether to reimburse for my provider's actual charges. I disagree and ask that the data I requested below be included in the agency record.

[continued on next page]

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)	
)	
Appellant (person bringing appeal))	
)	
vs.)	
)	
STATE OF ALASKA, DEPARTMENT OF)	
ADMINISTRATION, DIVISION OF)	CASE NO. _____ CI
RETIREMENT AND BENEFITS,)	
Appellee)	
_____)	

MOTION TO SUPPLEMENT THE RECORD
or alternatively
MOTION FOR PARTIAL NEW (*DE NOVO*) REVIEW

I. Motion to Supplement the Record

I am the Appellant who brought this appeal. I ask the Court to supplement the record. Efforts between me and the attorney for the other side¹ to agree on the accurate and complete record were not fully successful. DRB failed to include or provide accurate and complete records of its underlying administrative decisions then and still today. The result is a denial of due process. For example [*check all that apply*]:

- Health Plan. DRB used the wrong health plan in the agency record.
- Recognized Charge Data. DRB says that my health claims were partially denied because my provider’s charges were above the “recognized charge.” In my appeal, I asked for data in DRB’s possession or control about actual prevailing charge rates for the same or similar procedure in the geographic area where my procedure was done, but the agency refused to provide it and refused to include it in the agency record. DRB also failed to provide other data about the recognized charge that I requested. DRB says that the information I requested was not part of, or relevant to, its decision whether to reimburse for my provider’s actual charges.
- Medical Records. DRB failed to include medical records about the denied claims in the agency record. DRB says the medical records were not part of, or relevant to, its decision whether to reimburse for the claims.

¹ The Appellee, Division of Retirement and Benefits (DRB). Under DRB’s contract with Aetna Life Insurance Company (Aetna), Aetna administers health care claims and conducts administrative appeals on DRB’s behalf. Reference to actions by DRB in this case include actions by Aetna in its role as claims administrator and fiduciary. See State of Alaska AlaskaCare Employee Health Plan at §7.9, §7.14, & §7.15.3 at <http://doa.alaska.gov/drb/pdf/ghlb/akcare/SelectBenefitsEmployeeBooklet2017.pdf>.

Proprietary Documents. DRB says that my claims were denied because of information in proprietary documents, guidelines, or bulletins. I asked for a copy of the documents, guidelines, and bulletins in my appeal, but DRB refused to release them to me and refused to include them in the agency record. There are procedures (protocols) for releasing these materials to patients who are adversely affected by them, but DRB refuses to follow those procedures.

Other Problems with the DRB Record.

[Use extra pages if necessary.]

Supplementing the record with the requested information and other relevant material described in this motion is proper under the Rules of Appellate Procedure (RAP) 604 which allows supplementation of the record for material omissions on appeal.

II. Motion for Partial New (*De Novo*) Review

If my motion to supplement the record is denied, I ask for a partial new review of this matter because the records missing from the agency record are crucial to this Court's review of the DRB decision. A review of the DRB decision, supplemented by the relevant and essential documents and information is necessary to give me due process in this appeal. The court has the discretion to grant a trial *de novo* in whole or in part per RAP 609(b)(1). This motion is supported by my affidavit, exhibits, and the discussion below.

III. Discussion on the Motion to Supplement or for Partial *De Novo* (New) Review

A. THE INFORMATION DESCRIBED BELOW SHOULD BE PART OF THE AGENCY RECORD ON APPEAL OR I WILL BE DENIED DUE PROCESS IN THIS APPEAL.

[Continued on next page]

In light of the information in this *Motion* and related *Affidavit*, I respectfully ask this Court to require supplementation of the record or, in the alternative, order a new (*de novo*) review that includes the essential information.

Dated: _____ Appellant's Signature: _____

Daytime Phone: _____ Email: _____

CERTIFICATE OF SERVICE

I certify that on this date: _____, a true and correct copy of the following was served on the party of record listed below by first class mail, postage pre-paid [*check all that apply*]:

- Motion to Supplement Record or alternatively, for Partial New (De Novo) Review*
- draft Order on Motion to Supplement*
- Affidavit about the Motion to Supplement*
- Exhibits related to the *Motion to Supplement* and a list of exhibits if needed

Party of record:

Assistant Attorney General

Attorney's Name: _____

State of Alaska, Labor & State Affairs Section

Street Address: _____

City, State, Zip: _____

Dated: _____ Signature of Person Serving Copies: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)	
Appellant (person bringing appeal))	
)	
vs.)	
)	
STATE OF ALASKA, DEPARTMENT OF)	
ADMINISTRATION, DIVISION OF)	CASE NO. _____
RETIREMENT AND BENEFITS,)	CI
Appellee)	
_____)	

**AFFIDAVIT IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD
or alternatively MOTION FOR PARTIAL NEW (DE NOVO) REVIEW**

- I state the following upon oath or affirmation and under penalty of perjury.
- I am the appellant (person bringing the appeal) in this case.
 I am the attorney for the appellant in this case.
- I made a good faith effort to reach agreement with the Appellee (DRB) about the administrative appeal record. That effort is accurately described in the *Motion to Supplement the Record or alternatively Motion for Partial New (De Novo) Review*.
- The issues raised by me about the agency appeal record were not fully resolved.

Signature of Appellant (*sign in front of a notary*): _____

Daytime Phone: _____ Email: _____

Subscribed and sworn to or affirmed before me at _____, Alaska

on _____
(date)

(SEAL)

Clerk of Court, Notary Public, or other
person authorized to administer oaths.
My commission expires _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)	
Appellant (person bringing appeal))	
)	
vs.)	
)	
STATE OF ALASKA, DEPARTMENT OF)	
ADMINISTRATION, DIVISION OF)	CASE NO. _____
RETIREMENT AND BENEFITS,)	CI
Appellee)	
_____)	

**ORDER ON MOTION TO SUPPLEMENT RECORD
OR FOR PARTIAL *DE NOVO* REVIEW**

Appellant filed a motion asking the Court to supplement the agency record or, alternatively, for a partial *de novo* review.

- The motion is **GRANTED.**
- The motion is **DENIED.**
- The following is also ORDERED:

Date

Judicial Officer Signature

Print or Type Name