

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-01/10-36  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under W.A.M. § 7104 for coverage of surgical white cotton gloves under the Medicaid program. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive the white cotton gloves.

The decision is based on the testimony of the petitioner and Dr. M.F., OVHA's medical director, exhibits admitted at hearing and a subsequent statement from Dr. J.H., petitioner's primary care physician, dated February 6, 2010.

FINDINGS OF FACT

1. The petitioner is a sixty-two-year-old woman who receives Supplemental Security Income (SSI) disability benefits. Petitioner has both physical and mental problems. Petitioner is diagnosed with schizophrenia although petitioner disagrees with this diagnosis.

2. Petitioner applied for an exception under W.A.M. § 7104 on or about November 24, 2009 seeking payment for white cotton gloves. In her application, petitioner noted that her hands had been cannibalized when she was an infant and that she needs the gloves to keep her hands at a reasonable temperature when she sleeps. Petitioner applied for a number of gloves sufficient for a two-week laundry cycle. Petitioner wrote that Dr. J.H. recommended the white cotton gloves because most nights her hands were too cold for petitioner to fall asleep without the gloves.

3. On or about December 1, 2009, OVHA sent a letter to Dr. J.H. seeking information. Dr. J.H. is petitioner's primary care physician.

4. Dr. M.F. is the medical director of OVHA.

5. On or about December 17, 2009, Dr. M.F. telephoned Dr. J.H. for information because D. J.H. had not returned the medical information form. Dr. M.F. sought information whether petitioner had any medical condition affecting the circulation in her hands. Dr. M.F. testified that Dr. J.H. did not identify any medical problem such as abnormal circulation in petitioner's hands that would necessitate gloves and did not identify any serious detrimental health

consequences if petitioner did not receive funding for white cotton gloves.

6. On or about January 6, 2010, OVHA sent petitioner a Notice of Decision denying her request for a Medicaid exception.

7. A request for fair hearing was filed on January 27, 2010 and a hearing was held on February 11, 2010. The record was kept open for petitioner to submit additional documentation from Dr. J.H.

8. Petitioner submitted a statement from Dr. J.H. signed on February 6, 2010 that petitioner has eczema and dry skin. He wrote "[petitioner's] somewhat obsessed about using white gloves at night to protect her hands. I think that's appropriate for her."

9. Petitioner has not supplied sufficient medical evidence to show that her condition meets the uniqueness test for a Medicaid exception or that serious detrimental harm will occur without the gloves.

ORDER

OVHA's decision to deny petitioner a Medicaid exception to purchase white cotton gloves is affirmed.

REASONS

Petitioner requests a service that is not included under the Medicaid regulations. However, OVHA has a procedure for individuals to request exceptions provided the individuals submit information and documentation that meet the criteria in W.A.M. § 7104. OVHA has an obligation to make an individualized assessment of each request.

OVHA must review petitioner's information and documentation in relation to the following criteria:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about the efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?

8. Are there less expensive, medically appropriate alternatives not covered or not generally available?

9. Is FDA approval required, and if so, has the service or item been approved?

10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that these decisions are within OVHA's discretion and will not be overturned unless OVHA has abused its discretion by either failing to consider and address all the pertinent medical evidence under each criterion set forth above or by reaching a decision that cannot be reasonably supported by the evidence. Fair Hearing Nos. 20,275; 21,166.

OVHA not only considered all the evidence petitioner provided but affirmatively sought information from petitioner's primary care physician to see if there were extenuating circumstances in petitioner's case. One can appreciate that petitioner derives comfort when wearing white cotton gloves while sleeping, but the evidence does not rise to the level necessary in Medicaid exception cases that there be "extenuating circumstances that are unique to the beneficiary such that serious detrimental health consequences" arise if the item is not covered.

OVHA has not abused its discretion. OVHA's decision is affirmed. 3 V.S.A. § 3091(d).

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