

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 8868  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying Medicaid coverage for a hearing aid. The issue is whether the department's regulations, which deny Medicaid coverage for hearing aids for individuals over the age of 21, conflict with the federal regulations and/or statutes.

FINDINGS OF FACT

In lieu of an oral hearing, the parties have submitted the following stipulation of facts:

1. Petitioner [name] is a resident of [town], Vermont. He is 52 years old.
2. Petitioner receives Vermont Medicaid based on being found disabled under the Department of Social Welfare's regulations.
3. Petitioner's treating physician, [name], M.D., has opined in a letter to petitioner's representative dated December 29, 1988 that petitioner suffers from "significant hearing loss." Dr. [name] also stated that he feels it is medically necessary for claimant to have a hearing aid.
4. Claimant was evaluated by [name], M.D., [name], Clinical Audiologist, and [name], Clinical Audiologist for the [Hospital] Medical Center.
5. They concluded that the petitioner suffers from bilateral sensori-neural hearing loss, more severe on the right side.

6. The [Hospital] Audiology Department applied for authorization from the Medicaid Division for a hearing aid for the petitioner. On July 11, 1988 the Medicaid Division issued a denial of this request, citing that "Medicaid policy does not provide audiological services for recipients over the age of 21."

ORDER

The department's decision is affirmed.

REASONS

Medicaid Manual § M650 provides as follows:

Hearing aids and examinations for prescribing or fitting them are covered for Medicaid recipients under age 21. Batteries and other maintenance items are not covered. Repairs required by normal use of the hearing aid are covered. Replacement is limited to one every three years. Prior authorization is required for each hearing aid or hearing aid service. The Medicaid Division in Waterbury receives requests for prior authorization.

The department interprets this regulation as barring Medicaid coverage for hearing aids for all recipients who are over 21. The petitioner argues that this prohibition is invalid under federal statute and regulations. The board concludes that the department's application of the regulation is consistent with federal law and regulation.

At the outset, it is important to note that hearing aids are not a "required service" that states must provide as a condition of federal participation in the Medicaid program. See 42 U.S.C. § 1396d(a). Moreover, it appears that the department provides hearing aids to children under § M650 not as an "optional service" pursuant to 42 U.S.C. § 1396d(a), but as part of a separate federal program--the

"Early and Periodic Screening, Diagnosis and Treatment of Individuals Under Age 21 Program" (E.P.S.D.T.). See Medicaid Manual § 770 et. seq. and 42 C.F.R. § 441.50.

Although the petitioner does not address this distinction, it appears crucial. It would be incongruous to hold that if states provide an E.P.S.D.T. service to children they are required to also provide the same service to adults.

The board knows of no case in which it has been held that a state is required to provide Medicaid for any "optional service" under 42 U.S.C. § 1396d(a)--even when it can be shown that the service constitutes a "medical necessity." Although limits to the department's discretion have been held to apply once the state elects to provide certain optional services (see e.g., Simpson v. Wilson, 480 F. Supp. 97 (D. Vt., 1979)), such is not the case herein. The E.P.S.D.T. provisions in the regulations are clearly designed to benefit children. The fact that the department, pursuant to the E.P.S.D.T. program, provides a certain medical service to children is no basis whatever to assert that the department is required to provide this same service, or any other, to adults.<sup>1</sup>

The department's decision is be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

<sup>1</sup>Because hearing aids appear to be provided to

Medicaid-eligible children as part of the E.P.S.D.T. program, it is unnecessary in this case to determine whether the department, as a general matter of "utilization control procedures" (see 42 C.F.R. § 404.230(c)(2)), can impose age-based limitations to "optional services" that it "elects" to provide pursuant to 42 U.S.C. § 1396d(a). See e.g., Fair Hearing No. 7589.

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