

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,887  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying him Medicaid coverage for the purchase of the "chair portion" of a seat lift mechanism. The issue is whether this item is covered under the pertinent regulations.

FINDINGS OF FACT

The Department does not dispute any of the facts alleged by the petitioner. The petitioner is a severely disabled sixty-seven-year-old man who is totally non-ambulatory. His physician has prescribed a seat lift for the petitioner, and his attending R.N. has certified that a seat lift is medically necessary for the petitioner to independently transfer himself from a chair to his wheelchair.

The Department has apparently agreed to furnish the petitioner with the "lift mechanism" part of a "seat lift" but has denied coverage for the "chair" part. As the hearing officer understands the Department's position, this is because Medicare, as of January, 1991, no longer covers the entire seat lift apparatus, only the lift mechanism (see infra). Notwithstanding this, however, the petitioner has submitted an uncontroverted statement from his provider that states, inter

alia, that "the lift mechanism is designed as an integral part of (a) seat lift chair" and "is not designed to be installed in a regular chair or recliner."

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual (MM) § M 841 under "durable medical equipment" specifically provides for Medicaid coverage for "patient lifts". This section also provides:

The above list is intended to be all-inclusive.

When a recipient is concurrently covered by Medicare, as well as being Medicaid eligible, determinations made under the former program for durable medical equipment will be accepted for Medicaid purposes.

It appears that the Department reads the above provision as automatically precluding Medicaid payment for any item of durable medical equipment--even one otherwise clearly defined as "covered"--that is not covered by Medicare. Putting aside the question of whether, as a practical matter, it is even possible with a seat lift device to separate the chair from the lift mechanism, it must be concluded that the Department has ascribed a meaning to the above regulation that is simply not present in its plain language.

The above regulation states that Medicaid will "accept" determinations by Medicare "for durable medical equipment" (emphasis added). It simply does not say that Medicaid will

be bound by all decisions by Medicare regarding durable medical equipment. While the Department may have the authority under the Medicaid statutes to limit by regulation coverage for certain items and services, nothing gives the Department the discretion to ignore or modify its own regulations and, as a matter of "policy", deny payment for an item that is otherwise clearly covered. See Slocum v. DSW, 154 Vt. 474 (1990).

As it is written, Section M841 clearly covers "patient lifts" as part of its "all-inclusive" list, and it makes no distinction whatsoever between the "chair" part and the "lift mechanism" part of this particular piece of equipment. Moreover, uncontroverted evidence establishes that as a practical matter both parts are "integral" to such a device. Inasmuch as the law clearly requires an agency to "abide its regulations as written until it rescinds or amends them" (In re Peel Gallery, 149 Vt. 348 [1988]) the Department's decision in this case is reversed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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