

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,999
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her Medicaid coverage for the drug Valium. The issue is whether the petitioner can demand Valium instead of the generic substitute that has been prescribed by her doctor and which is covered under Medicaid.

FINDINGS OF FACT

The petitioner maintains that the generic substitute for Valium that has been prescribed by her doctor is not as effective as name-brand Valium. However, her doctor has informed the Department that he sees no medical reason why this should be the case. There is no indication that the generic substitute in question is at all pharmaceutically different from Valium.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual 9 M810 includes the following provision:

Physicians and pharmacists are required to conform to Act 127 (18-VSA-Chapter 91), otherwise known as the Generic Drug Bill. In those cases where the Generic Drug Bill permits substitution, only the lowest priced equivalent

in stock at the pharmacy shall be considered medically necessary. If, in accordance with ACT 127, the patient does not wish to accept substitution, Medicaid will not pay for the prescription.

18 V.S.A. § 4606 provides:

Brand certification

If the prescriber does not wish substitution to take place, he or she shall write "brand necessary" or "no substitution" in his or her own handwriting on the prescription blank. In the case of an unwritten prescription, there shall be no substitution if the prescriber expressly indicates to the pharmacist that the brand name drug is necessary and substitution is not allowed.

In this case the petitioner's physician has prescribed for her the generic substitute for Valium and has not issued a "brand necessary" or "no substitution" prescription for Valium. The petitioner apparently perceives some difference in effectiveness, but there is no medical evidence that this is indeed the case.

Inasmuch as the Department's decision is in accord with its regulations and with state and federal law, it must be affirmed.¹ 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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¹If the petitioner's doctor were to issue the petitioner a "brand necessary" or "no substitution" prescription for Valium, and the Department were then to deny Medicaid coverage for it, the petitioner has the right of further appeal.