

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,070

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying coverage for a semi-electric hospital bed under the Medicaid program. The issue is whether the petitioner, as an ambulatory person, is eligible for such equipment and whether it is in fact medically necessary to treat her condition.

FINDINGS OF FACT

1. The petitioner is a forty-year old Medicaid recipient who became disabled following a traumatic injury to her back in October of 1990. For the first two years or so after her injury, she pursued a claim through workers' compensation for benefits due to her injury which occurred on the job. Her back condition, diagnosed as bilateral spondylolysis, at present causes her difficulty bending, sitting, lifting or carrying objects or standing and walking for long periods of time. She is, however, ambulatory and has not been nor does she expect to be bedridden in the near future due to her back problems.

2. In addition to her back problems, the petitioner suffers from esophageal reflux which results in acid being sent back into her throat causing a burning and choking sensation. This sensation forces her to gasp for air. The reflux action is particularly exacerbated when she lies flat and for that reason she must sleep in a semi-sitting position. Sometimes she must get up rapidly when she has a reflux attack to catch her breath.

3. In mid-1992, the petitioner, expecting that her workers' compensation would provide payment, ordered a semi-electric hospital bed costing \$1,700.00 which was delivered to her home and which she has been using, without payment, since that time. She obtained the hospital bed because she could change positions more easily and raise herself up if her reflux action was activated without leaving her bed. Before she obtained the bed, she had to get out of bed when she had a reflux attack and reposition herself until it happened again. She positioned the bed using bricks or railroad ties which she found

unsatisfactory because they slipped out of the bed. She has never tried a "wedge" device to elevate her regular bed nor did she ever talk with her doctor about the possibility of using one before she ordered the electric bed. She feels that the electric bed makes it easier for her to find a good sleeping position and has helped her to sleep better during the last year.

4. Some time after the bed was delivered, the petitioner learned that it would not be paid for through a workers' compensation award. In March of 1993, she applied to Medicaid for coverage of the cost of the bed, described as "Semi-electric with rails." Her physician filled out an accompanying "necessity form" dated March 3, 1993, stating that the bed was expected to "allow her to position for back comfort but not exacerbate hiatal hernia symptoms." The physician signed a certification on the preprinted form stating "I certify that equipment prescribed is a necessary part of my course of treatment and is not for precautionary or standby purposes nor for convenience or comfort." Coverage for the bed was denied on April 13, 1993, because "coverage is limited to bed confined patients who require position changes." The petitioner appealed that decision on May 25, 1993.

5. Before a hearing could be held on her appeal, the patient applied again for coverage of the same bed on June 1. The same treating physician again provided a statement in support of her claim which read as follows:

[Petitioner] suffers from chronic musculoskeletal back pain, which makes it difficult for her to find a comfortable position to sleep. She suffers from significant reflux esophagitis, which makes it difficult to lay flat and sleep. She suffers from mild COPD, which also makes it difficult to sleep when flat. One of her problems tends to exacerbate the other. She would benefit from having a hospital bed to allow comfortable positions for sleep.

6. The Medicaid exception request was denied by the Department of Social Welfare on June 16, 1993, because her "condition does not meet criteria for coverage - a wedge

would allow for necessary positioning and would not require bending."

7. The petitioner's appeal was scheduled and reset several times at her request, most recently in order to obtain an attorney. Her attorney did appear with her at the hearing set for September 28, 1993 and provided two further medical documents at that time. The first was yet another letter from her treating physician which stated as follows:

[Petitioner] is a former patient of mine, who has received orthopedic care for a chronic back pain. She also has documented Gastroesophageal Disease with a stricture of the lower Esophagus, which has required dilatation and a history of Gastroesophageal Reflux, which is made worse when laying supine.

[Petitioner's] bind is that treatment of her back pain necessitates her attempting to lie flat. However, this makes her Gastroesophageal Disease worse. She can develop acid reflux, which can irritate and cause stricture again. The GE reflux, if severe enough, can cause gagging and choking and aspiration. This can indirectly cause difficulty with breathing. Treatment of this problem requires elevation of the head of the bed. A hospital bed may allow for more satisfactory treatment of both her problems.

The second letter from an orthopaedic surgeon currently

treating the petitioner stated as follows:

[Petitioner] explained her reason for requiring a hospital bed when she was here for her last visit last week. She has in addition to the problems with her back and knee a problem with esophageal reflux which required that the head of the bed be elevated. It is difficult to accomplish this with simple wedging as suggested. I feel, therefore, that it is appropriate that she have a hospital bed.

8. Following the hearing, the record was kept open in order for the petitioner, through her attorney, to provide further evidence of the necessity of the electric bed and to provide legal argument. The petitioner, thereafter, provided twenty-seven pages of medical records which confirmed her condition but did not contain any prescription for or mention of the need for an electric bed. One report did state that the petitioner's esophageal reflux "requires that she sleep in a semi-sitting position." Otherwise, the record is devoid of any mention of the medical necessity of the electric hospital bed.

9. Although the medical evidence indicates that the petitioner suffers from anxiety, particularly at night, no medical opinion was introduced that treatment of the petitioner's anxiety requires the purchase of an electric hospital bed.

10. Based on the medical evidence above, it is concluded that the petitioner is ambulatory, is not bedridden and has two medical conditions one of which necessitates elevating the head of her bed in order to prevent esophageal reflux. It can also be concluded that the petitioner has less pain when she sleeps flat on her back and that she frequently needs to change position at night to make her back more comfortable.

11. Based on the medical evidence above, it is also concluded that it is much easier for the petitioner to make her positional changes and to sleep when she uses an electric bed. However, it cannot be concluded that the use of an electric bed is a necessity to treat the petitioner's condition. Although apprised of the standard and invited to submit additional evidence, the petitioner's treating sources never confirmed that the use of the electric bed is a medical necessity for the treatment of the petitioner's conditions. The only requirement set out in the medical evidence is that the petitioner sleep with the head of her bed elevated. As there are other ways short of an electric bed, including a wedge, for elevating the head of a bed, the most that can be concluded from the above medical evidence is that the electric bed offers a convenient and effective way to make the petitioner more comfortable when she sleeps. The petitioner's treating physicians's signature on the preprinted form certifying that the bed was medically necessary (set out in paragraph four above) is given no weight since it is inconsistent with the actual statements he made in support of the bed and is inconsistent with the other medical evidence.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations adopted by the Department limit the coverage of durable medical equipment to specific instances. Hospital beds are listed as covered only in the following situation:

Hospital bed or mattress; when the patient is bed confined and his/her condition requires positioning the body in such a way that would not be feasible in an ordinary bed. Electric controls are covered when the patient requires a frequent or immediate change in body position (and the patient himself can operate the controls.)

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The petitioner agrees that she is not bed-confined and does not argue that she should be found eligible under the above regulation. Rather she argues that the above regulation for payment of durable equipment is invalid as it relates to her because she has shown medical necessity for the bed. She argues that once the state elects to provide coverage for durable equipment, as Vermont has done, the provision of that service cannot be restricted to one group of persons (those confined to bed) who have a medical need for the equipment but must be provided to all who can show medical necessity.

The factual findings in this matter make it unnecessary to reach the petitioner's argument invalidating the regulation because the facts do not show medical necessity in this case. The word "necessary" is defined in The Random House Dictionary of the English Language, 1966 edition, as "being essential, indispensable, or requisite." None of the petitioner's physicians used those terms or synonymous ones when describing reasons for the purchase of the bed. The petitioner was well-aware of the standard imposed in the regulations and was given every opportunity to submit additional evidence making it clear that the bed was essential to her treatment. However, she could not do so. Her physicians used the words, "would benefit from", "may allow for more satisfactory treatment" and "is appropriate" with regard to the purchase of the bed. None of that language can be fairly read as meaning that an electric bed is essential to her treatment.

The petitioner in this case, acting on her own initiative, ordered this bed believing it would be paid for through her workers' compensation. The bed has turned out to be convenient and comfortable for her and it would certainly be to her benefit if she could figure out some way to keep the bed. However, the Medicaid regulation on durable equipment does not allow payments for hospital beds for ambulatory persons. Even if that regulation is invalid (and no opinion is put forth here on that point), there has simply been no showing by the petitioner, in spite of all the support she has received as to its usefulness from her physicians, that this specialized and expensive bed is a necessary component of her treatment. The Board has held in the past that no matter how superior or convenient medical equipment might be for a claimant, it cannot be paid for unless the claimant can clearly demonstrate that it is a necessary part of treatment. See Fair Hearing No. 6043.⁽¹⁾ The Department's decision to deny payment for the electric hospital bed is affirmed.

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1. In Fair Hearing No. 6043, the Board affirmed the Department's denial of payment for a sterile catheterization kit which was not reusable over a less expensive reusable clean process kit which was more difficult to use. In its decision the Board said:

"Proving the superiority of one technique over another does not establish that the superior technique is per se medically necessary. To so hold would mean that Medicaid patients as a rule would be entitled, regardless of costs, to the most risk-free and effective methods of treatment that are available. While such a situation would be a desirable goal, the harsh realities of limited funding require that more conservative criteria be used in assessing medical necessity."