

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,724

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her Medicaid coverage for the purchase of custom-made rigid foot orthotics. The issue is whether this item is covered under the regulations as an "orthotic device" or whether it is excluded as an "arch support".

FINDINGS OF FACT

1. The petitioner is a woman who has major foot disorders in both feet--severe valgo planus (both feet turn out and are flatfooted), degenerative joint disease, bunions and hammertoes. She has been treated surgically, but her orthopaedist feels there is no more he can do for her and that her painful condition is best treated through the use of prescription orthotic devices.
2. The petitioner applied for and was denied Medicaid payment for those orthotic devices by the Department about three years ago. The Human Services Board reversed that decision on May 3, 1991 and Medicaid paid for the orthotics. On March 14, 1994, the petitioner applied for a replacement of those same devices which have worn out and which she can no longer use.
3. The necessity form filed by the petitioner states again that the petitioner has "Pes valgus planus" acquired and "Hallux Valgus, Acqui". Custom made rigid foot orthotics were prescribed in order to "improve gait, relieve pain and stress, and to assist with ambulation." On March 22, 1994, payment was denied based on regulation M845 which the Department interprets as not allowing it to pay for custom made rigid foot orthotics.
4. In support of her claim, the petitioner submitted the following office note from her orthopaedist:

S. Severe pain both feet on the medial aspect of the foot in the arch and rear foot as well as the medial ankle and as the day goes on it radiates up her shins also severe pain bilateral plantar metatarsi where she had very bad corns. Patient has had a right chevron bunionectomy about 4 years ago. Has foot

problems for many many years. About 3 years ago got some orthotics prescribed by Dr. McGuire in Rutland for control of severe pes valgus planus as well as accommodations for the calluses. Found that they work quite well. Patient no longer has them however. Her pain has progressively gotten worse over the past couple of years. Generally wears sneakers. She works as a secretary about three afternoon (sic) a week but this is only 1/3 of the time sitting the rest is running up and down steps getting files. Remainder of the times she is home with a five year old.

O. Severe pes valgo planus bilaterally. Patient is maximally pronated in stance and gait. There is absolutely no supination and pronation occurs shortly after heel contact. Patient has some moderately-severe hallus valgus on the left, moderate hallux valgus on the right, despite previous surgical correction.

Extremely large submet 2 and 4 IPK's bilaterally. Also plantar IPJ calluses bilateral great toes. Patient does have the ability to supinate/invert in weight bearing. There is pain on palpitation along the course of the tibialis posterior tendons bilaterally about equal.

A. Severe pes valgus planus with suspected TP tendon degeneration/dysfunction. Hallus valgus bilaterally. Multiple hyper keratosis bilateral.

P. Debridement of keratosis. I strongly recommend patient to get new orthotics. These should be rigid to semi-rigid variety to control the pronation as much as possible but should also have forefoot extensions with accommodations for the keratotic lesions. Patient was given a prescription for just such devices which she should take to Yankee Medical. We will do our best to get Medicaid approval for these as I feel that they are a medical necessity not strictly for convenience or comfort, rather to increase patient's functional ability. Follow up here prn.

ORDER

The Department's decision is reversed.

REASONS

The Board heard the petitioner's appeal regarding these identical facts and the identical issues three years ago. See Fair Hearing No. 10,279, attached. At that time the Board interpreted regulation M845 upon which the Department relies to deny the petitioner's claim. That regulation has not been changed in the last three years and reads as follows:

M 845 Orthotics

Braces, trusses and other devices used for the purpose of supporting a weak or deformed body member are covered. Garter belts and arch supports do not come within the definition of a brace and are not covered.

Shoes which are affixed to and are an integral part of a leg brace are covered. . .

In its prior decision, the Board, relying on Fair Hearing No 6278, stated that before the orthotic device could be classified under the above regulations, it was necessary to determine its use by the petitioner. The Board concluded from the evidence at that time, which was essentially the same as this time, that the orthotics would "act as a brace and support to control the turning outward of the petitioner's foot--not as a mere "arch support", as that term is commonly understood." (p. 2 - 3). It was therefore concluded that the orthotic devices met the definition of brace in this case.

The evidence clearly shows again that the orthotic devices are prescribed in order to assist with the support and function (ambulation) of the petitioner's deformed feet and not merely to make her more comfortable. The Department, while refusing to follow the Board's prior decision in this matter, has raised no argument against it. Therefore, it should be concluded again that the petitioner's prescription for custom foot orthotics is one which is covered under the definition in M845.

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