

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,745

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her medicaid coverage for the purchase of sport frame eyeglasses for her son. The issue is whether the regulations limit medicaid coverage for glasses to one pair every two years.

FINDINGS OF FACT

The evidence in this matter is not in dispute. The petitioner has a thirteen-year-old son who needs glasses to see well enough to function at school. At school he also participates in team basketball and baseball; and he needs glasses to play these sports safely and effectively. He has broken his glasses playing sports five times in the last few years, the most recently being in February, 1994, while playing basketball. In the summer of 1993, he broke his glasses and suffered an eye injury when he was hit in the face while playing baseball.

Whenever the petitioner's son breaks his glasses, medicaid covers the cost of repair; and, in the case of injury caused by his glasses breaking, medicaid covers his medical bills as well. However, when his glasses are being repaired, he can go without any glasses for periods of days, and even weeks. This causes a particular problem for him at school, because he has been diagnosed as having perceptual difficulties, the effects of which are exacerbated when he cannot see well. The petitioner maintains that her son's learning disabilities have also caused him emotional difficulties, and that participation in team sports is particularly important to him developmentally.

In a letter dated February 7, 1994, to the Department's medicaid division the petitioner's son's ophthalmologist stated as follows:

[J. B.] is a thirteen year old boy who was last seen in my office on August 26, 1993 and found to have a mild to moderate degree of nearsightedness, requiring correction with glasses in order to see well enough to see the blackboard at school. Apparently [J. B.] while attempting to participate in athletic activities at school, intermittently breaks the frames of his glasses and it was recommended by the optician to have new lenses place in a sports frame that might last longer and also better protect his eyes

should he again be hit in the eye with a baseball as was the case last year. If this might be possible, please inform his mother or my office and I would be happy to fill out any papers that might be required. Thank you ahead of time for your assistance.

In denying the petitioner's request for coverage for the purchase of sports glasses for her son the Department relies on its regulation that allows medicaid coverage for only one pair of glasses every two years. The petitioner's son had his last pair of regular glasses purchased through medicaid in the summer of 1993. The Department does not dispute, however, the petitioner's assertion that the purchase of sports glasses may well be cheaper than the open-ended coverage available to her son for the frequent repair of his regular glasses, and the medical bills he can incur (and has incurred) as a result of those glasses breaking.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual § M670 includes the following provisions:

Eyeglasses (frames and lenses) and repairs and replacements are covered under the terms of a sole source contract with the Department of Social Welfare. Coverage is limited to one pair of eyeglasses every two years per recipient.

In this case, the petitioner (at least in the hearing officer's view) presented a compelling argument that the regulations should allow for exceptions to the one-pair-every-two-years policy for medicaid coverage of eyeglasses. Unfortunately, however, the regulations, as written, do not allow for such an exception. At the hearing in this matter (held on May 9, 1994) the hearing officer explained to the petitioner that the board is not empowered by law to create one. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. Thus, inasmuch as the Department's decision is in accord with the pertinent regulations, it must be affirmed. Id.