

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,835

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her request for coverage of a nicoderm patch.

FINDINGS OF FACT

1. The petitioner is a forty year old Medicaid recipient who applied in March of 1994, to the Department for Nicotine Transdermal Patches prescribed by her physician.

2. The letter accompanying her request stated as follows:

I have prescribed Nicotine Transdermal Patches for [petitioner] in the interest of smoking cessation. She is a 40-year-old patient with a history of cerebral aneurysms as well as an arterial venous malformation in her brain. Clearly with the vascular malformation she would benefit greatly from smoking cessation. She smokes one pack a day and has for many years. She has been unsuccessful with other anti-smoking techniques. I hope the Welfare will cover this medication for her. I think it is extremely important for her long-term health.

3. On March 29, 1994, the Department denied the request because it "is not a Medicaid covered item."

4. At the hearing, the petitioner asked for an exception for coverage or for a loan to buy the patches which she would repay. She stated that she feared for her health and that she had tried to quit smoking but had been unable to do so.

5. Subsequent to the hearing, the petitioner provided another letter from her physician which reads as follows:

[Petitioner] has several critical medical problems which are clearly worsened by her cigarette smoking.

First of all she has an arteria-venous malformation in her brain which is considered inoperable. In short, this is an abnormal blood vessel. It is subject to rupture if she becomes hypertensive. Obviously cigarette smoking has the effect of raising blood pressure and I consider it an extremely dangerous situation that she should continue to smoke with this AVM. In addition, she recently required hospitalization for pneumonia and reactive airways disease. Her prolonged course of pneumonia and wheezing is highly suggestive that she is starting to develop fibro-emphysema. Obviously cigarette smoking is the cause of this illness.

Please consider her for use of the Nicoderm patch. I truly feel that her life is at stake. Please contact me if you have any further questions.

6. The petitioner's condition is found to be as described by her physician in paragraph five.

#### ORDER

The decision of the Department is affirmed.

#### REASONS

The pertinent Medicaid regulations adopted by the Department of Social Welfare state as follows:

##### Non-Covered Items

Smoking cessation products, such as nicorette gum and nicotine transdermal systems, are not covered by Vermont Medicaid for recipients age 21 or older. Coverage of these products for recipients younger than 21 is limited to one treatment cycle per lifetime.

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The petitioner does not argue that the Department's regulation is illegal but rather asks that an exception be made in her case. However, the Board is bound to uphold decisions of the Department which are in accordance with law and cannot make exceptions to written regulations. 3 V.S.A. § 3091(d). The Department's decision to deny the nicotine patches is consistent with its regulation which prohibits coverage. Therefore, the decision is affirmed.

The petitioner's physician has described a medical condition which could well meet the definition of a medical emergency under the Department's General Assistance program. The petitioner is encouraged to apply for payment of this medication through that program immediately. If she is denied she may appeal that result.

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