STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,998

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Appeal of)

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INTRODUCTION

The petitioner appeals the Decision by the Department of Social Welfare denying medicaid coverage for a plastic- sealed mattress, a room air conditioner, a water purifier, and an air purifier for his daughter, who has asthma. The issue is whether any of these items are covered as "durable medical equipment" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is the father of a ten-year-old girl who suffers from asthma. The girl's condition, and a description of items in dispute, are contained in the following letter from the girl's treating physician:

I am writing in regards to a patient of mine, [name], who has moderate to severe asthma. The family is on Medicaid and receiving AFNC (sic). There are several pieces of equipment which would be extremely useful for [name] in controlling her asthma. She has allergy to dust mite, cat dander, dog dander, feathers, horse dander, cattle, tree pollens, grass pollens, ragweed, and mold. The family has made all the changes that they can within the household and she is already on maximal medical therapy for her asthma. Despite this, she has had two hospitalizations in the past six months for exacerbation of her asthma. In addition, her asthma is chronic enough that it has caused poor growth over the past several years. She has missed a lot of school this winter and spring due to her asthma. I am writing to request some equipment that is not usually supplied by Medicaid but which is medically necessary to continue to control [name's] asthma. #1-She needs a new mattress sealed in plastic. This is necessary because of her allergy to dust and mold and she's currently sleeping on a rather old mattress. #2-An air conditioner for the home would be extremely helpful since [name] is allergic to almost all grass pollens, tree pollens, and ragweed, it is very difficult for her to avoid these things in the summer months when windows are open. It is impossible to keep windows closed at all times because it gets too stuffy and uncomfortable for the rest of the family. #3-A water purifier would be helpful as the family has well water and microscopic particles in the water although not detrimental to other members of the family can be making [name's] asthma worse. #4-An air purifier which would further remove dust and other particles from the air so as to make it more breathable for [name].

I have listed these articles in order of importance for management of [name's] asthma. It would be greatly appreciated if you could consider providing at least some if not all of these articles. Without any of these articles, I am afraid that despite optimal medical management [name] will continue to have significant problems with her asthma which will result in time missed from school and further hospitalizations. Please let me know if you have any other questions regarding this.

Following the Department's rejection of medicaid coverage for the above items, the petitioner, who is on ANFC, purchased them himself. He now seeks reimbursement from medicaid. The petitioner stated that his daughter has required frequent hospitalizations due to flare ups of her asthma, and that because these items should prevent or diminish the frequency of such hospitalizations, their purchase should prove to be cost effective.

ORDER

The Department's decision is affirmed.

REASONS

The medicaid regulations regarding "durable medical equipment" are reproduced below.

None of the items requested by the petitioner appears on the "all-inclusive" list of covered items in § M841, supra, and three of them (the mattress, the air conditioner, and the air purifier) are given as specific "examples" in that regulation of items that are "never covered". It must be concluded that a water purifier, though not specifically identified as a never-covered item, closely resembles several of the examples of such items on that list, and does not remotely resemble any item on the "all-inclusive" list of covered items.

The petitioner's point about the probable cost effectiveness of covering these items is certainly well taken; and the Department might well be advised to reconsider its regulations to take evidence of cost effectiveness into account in determining whether certain items should be covered under medicaid. As written, however, the regulations are clear--these items are not covered. Inasmuch as the board does not have the legal authority to law reverse decisions of the Department that are in accord with the applicable law, the Department's decision in this matter must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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