

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,298

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying his request for a manual wheelchair based on his prior receipt of an electrically powered wheelchair from Medicaid in 1992.

FINDINGS OF FACT

1. The petitioner is a twenty-one-year-old man who has had cerebral palsy since birth and has quadriplegia as a result. He cannot move without the assistance of a wheelchair. He has been a Medicaid recipient for some years.
2. In 1992, the petitioner requested an electric wheelchair which request was supported by his medical team because his manual wheelchair had worn out and because it was felt that a powered wheelchair would greatly assist the petitioner's mobility because of weakness in his extremities. The petitioner at the time of the request was living in his parent's rural home but was planning to attend college in Burlington soon. He felt the electric chair would assist him in getting around on city streets and inside the school although he did not put forth those reasons in his request.
3. The electric wheelchair request was granted and Medicaid purchased one with a customized seat which cost over \$9,000. The petitioner had some repairs done on his manual wheelchair and continued to use it for getting around inside his home and when he needed to travel in a car. The manual's lighter weight (thirty pounds as against the two hundred and fifty pounds of the electric one) made it easier to lift for transport and to maneuver through the narrow passageways of his home.
4. The petitioner did attend college in Burlington for a time where he sought a degree in computer sciences. Last year, he returned to his parent's rural home where he attends a local community college. He does not use the electric wheelchair in his parent's home because he cannot maneuver it as easily as the manual and cannot get it into the bathroom at all. With the manual chair he is able to use the bathroom by himself, otherwise he has to have someone assist him. He also is unable to use the electric

wheelchair outside because there are no paved roads or sidewalks. The heavy electric machine becomes bogged down in mud or snow and the battery pack is easily damaged when dragged over rocks. The petitioner plans to return to Burlington in the fall and expects that the electric chair will again be useful to him.

5. The petitioner is supported in his request for a manual wheelchair by both his physical therapist and his physician. They both agree that the manual wheelchair he now uses is in poor condition. It has no footrests, no brakes, is held together by bungi cords and duct tape, has tires substituted from a children's wagon which are too small, and has ripped upholstery. The chair is too small, is inappropriate in terms of positioning the petitioner and is unsafe. They also agree that a new manual wheelchair is "medically necessary" because it would give him independence in his home and in the community and improve his ability to function and cope with normal domestic, vocational and social activities. Finally, they both agree that the electric wheelchair is cumbersome in his current home setting for the reasons given by the petitioner.

6. The Department denied the petitioner's request for a new manual wheelchair based on its provision of the new electric chair in 1992 which met his "basic" mobility requirement.

### ORDER

The decision of the Department is affirmed.

### REASONS

The regulations adopted by the Department governing the state Medicaid program provide for durable medical equipment as follows:

Payment may be made for durable medical equipment ordered by a physician for use in the recipient's residence other than a health care institution; i.e., other than in a mental hospital, general hospital, skilled nursing home, intermediate care facility or intermediate care facility for the mentally retarded (ICF-MR). A medical necessity form completed by the physician must accompany the claim submitted by the provider.

Durable medical equipment is defined as equipment which:

Can withstand repeated use; and

Is primarily and customarily used to serve a medical purpose; and

Is generally not useful to a person in the absence of illness of injury; and

Is appropriate for use in the home.

M840

The regulations go on to provide that:

Covered items include:

Wheelchair; when the patient's condition is such that the alternative would be chair or bed confinement. Special feature and/or power operation must be referred to the Medicaid Division for special approval since coverage extends only to modifications which are medically required because of the patient's condition.

M841

In 1992, the petitioner was provided an electric wheelchair by the Department because he was able to document that the weakness in his limbs required a powered chair for mobility in his own home. Now he seeks a manual wheelchair because the electric one has proved to be cumbersome in his own home, has not completely eliminated his need for assistance and has limited his ability to move from place to place in a car.

The Department argues that the petitioner has been served within the limits on assistance set by the state Medicaid program through the provision of the electric wheelchair. The electric wheelchair does prevent him from being bed or chair ridden in his own home. Once this goal is accomplished, the Department argues that it need not provide further services to him.

The evidence supports the Department's contention that the petitioner has been provided equipment to meet the goals of its wheelchair provision program, to prevent confinement to a bed or chair. The petitioner is not entitled to a second wheelchair under the Department's regulations. If the petitioner is to succeed in his quest, he must demonstrate that the Department's program is in conflict with the federal laws and regulations governing the state Medicaid program.

There is no question that once a state decides to participate in the Medicaid program, it is bound by the rules of that program. Coe v. Hooker, et al. 406 F.Supp. 1072, 1079. Under the Medicaid program, funds are provided to states in order to enable them, "as far as practicable under the conditions in such state, to furnish . . . (2)rehabilitation and other services to help such families and individual attain or retain capability for independence or self-care . . ." 42 U.S.C. § 1396 (emphasis supplied). The Medicaid program gives states "considerable freedom in designing their own plans", Coe, at 1079, but requires that those plans include reasonable standards . . . for determining . . . the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter . . ." 42 U.S.C. § 1396a(a)(17); and provide such safeguards as may be necessary to assure that . . . such care and services will be provided, in . . . the best interests of the recipients;" 42 U.S.C. § 1396(a)(19).

The federal regulations include "payment of part or all of the cost of . . . home health care services" in the list of "medical assistance" for which federal assistance can be granted. 42 U.S.C. § 1396d(a)(7). No specific services are required under this provision. However, states are subjected to some limitations by the federal regulation at 42 C.F.R. § 249.10(a)(5)(i). First, states are required to insure that medical items they provide are "sufficient in amount, duration and scope to reasonably achieve their purpose." 42 C.F.R. § 249.10(a)(5)(i). Secondly, states are not allowed to arbitrarily deny or reduce the amount, scope or duration of a service solely because of the diagnosis, type of illness and condition. That same regulation specifically authorizes states to place appropriate limits on "services based on such criteria as medical necessity or those contained in utilization or medical review procedures."

The petitioner argues that the above regulations require the Department to provide him with

rehabilitation services which will allow him complete independence and self-care. He further argues that to do anything else is against his best interests and violative of the statute. In support of his contention, he relies upon a state district court case in which a Medicaid recipient was allowed both a manual-electric wheelchair based upon the Court's reversal of the state agency's finding that the second wheelchair was not "medically necessary". Lauderbaugh v. Commissioner, Hubbard County, Minnesota, Sept. 15, 1994.

There is no doubt that the petitioner would benefit from the manual wheelchair in terms of an improvement of his self-care and independence. However, it cannot be found that the Department is mandated by the federal statute to provide that level of service to the petitioner. The state has clearly determined in its regulation at M840 that the level of care to be provided is ambulation within the home in order to avoid confinement to bed or a chair. States are allowed under the statute at 42 U.S.C. § 1396 to place practical limits on the level of rehabilitative care to be provided based upon the level of care which the state wishes to finance. The "medically necessary" standard is not one adopted by this state for durable equipment and is neither a required nor defined standard under the federal statute.

The only analysis left is a determination as to whether the services to be provided are sufficient to meet that goal and whether that service is available to those who need it in spite of the diagnosis, type of illness or condition. The state has clearly shown that it does provide services necessary to carrying out its stated goal of providing ambulation in the home. Although a manual wheelchair is the cheapest and easiest way to meet this goal, the evidence shows that the petitioner was provided with an electric wheelchair when it was necessary to meet that same goal, even though the cost was considerably more. The regulation promulgated by the state also makes a wheelchair available to any person who is unable to move out of a bed or chair regardless of the recipient's diagnosis, type of illness or condition. It cannot be concluded that the regulation at issue impermissibly restricts durable equipment to Medicaid recipients.

The petitioner may disagree with the goal chosen by the Department in terms of its Medicaid funding but there is nothing he can point to in the regulation which mandates a different goal nor has he shown that the Department has acted unreasonably. The Department in adopting its goal of providing some mobility in the home is acting in the best interests of its recipients because it is moving in the direction of providing self-care and independence for Vermont Medicaid recipients which is the ultimate goal of the program, even though it has chosen at present not to fund or take further steps towards that ultimate goal.

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