

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,608

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his request for medicaid coverage for a vertical platform lift to allow him independent access in and out of his home. The issue is whether this item is covered under the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is a thirty-four-year-old man who is mentally retarded and suffers from spastic familial disease, which mostly affects his lower extremities. The petitioner's doctor and physical therapist, in consultation with a "residential development specialist" from the Department of Mental Health, have recommended that the petitioner have installed outside his house an electric powered lift to enable him to continue to safely and independently get into and out of his home. It appears that the contours of the outside of the petitioner's home render the construction of a ramp infeasible.

The petitioner's condition and his need for the device in question are described in the following letter from his physical therapist:

Please consider this a recommendation that [petitioner] receive a platform lift to be installed at his home to enable him to have safe and reasonable access to his front door.

[Petitioner] has familial spastic paraparesis, a progressively debilitating neuro muscular disease, effecting primarily his lower extremities. I have worked with him for 6+ years as his physical therapist, and have witnessed the gradual progression of this disease, to the point that stair climbing is precarious and presents significant risk to his safety. A boney injury would be devastating to [petitioner] at this time, as inactivity results in significant loss of strength and endurance.

[Petitioner] uses a rolling walker and has a wheelchair for his use when necessary, as, in addition to the

above loss of strength and ambulation ability, there is fluctuation in function from day to day, as temperature, fatigue and stress affect his performance.

The device sought by the petitioner is known as a "lift-ette", and would be installed outside the petitioner's home to allow him access from his driveway area to his front door. Presently, the petitioner must negotiate several stairs to get between his house and driveway/street level. Given the progressive nature of his illness, this is becoming an increasingly difficult and dangerous task. Once on level ground, however, either inside or outside his home, the petitioner can still move about independently.

### 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 or injury; and

Is appropriate for use in the home.

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The regulations go on to provide that:

Covered items include:

...

Patient Lifts; if patient's condition is such that periodic movement is necessary to effect improvement or to arrest or retard deterioration in his condition. Prior authorization is required.

...

The above list is intended to be all-inclusive.

When a recipient is concurrently covered by Medicare, as well as being Medicaid eligible, determinations made under the former program for durable medical equipment will be accepted for Medicaid purposes.

Payment for certain items will be made when prior authorization has been granted by the Medicaid Division. The prescribing physician must submit a written request with pertinent diagnostic and clinical data to justify the request.

Examples of items which are covered only in special circumstances are raised toilet seats, bathtub lifts, blood pressure cuffs and bath chairs.

Examples of items which are not considered primarily medical in nature and are never covered are ordinary bed mattresses and mattress coverings, air conditions and air cleaners, heating plants, dehumidifiers and house size humidifiers, elevators, exercise equipment, sauna, massage devices, speech teaching machines.

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In this case, even if the device in question could be characterized as a "patient lift" rather than an "elevator", there is no evidence or allegation that the device in question is designed to enable the petitioner to engage in periodic movement necessary to prevent further deterioration in the petitioner's medical condition. The petitioner faces a substantial obstacle to fully independent living, but he is not bed or chair bound. The clear intent of the above regulations is to limit Medicaid coverage to devices that enable severely restricted patients to independently get in and out of beds and chairs. The device sought by the petitioner is not for this purpose, and appears to more closely resemble an "elevator". Unfortunately, there does not appear to be any basis in the regulations to make an exception to the Department's blanket policy of excluding "elevators" from coverage.

This is another difficult and sympathetic case in which there is no question that the petitioner would derive substantial benefit from the item in question in terms of his mobility and independence, but where the regulations clearly deny Medicaid coverage for that item. As the Board recently held in Fair Hearing No. 13,298, the Department is not bound by any federal statute or regulation to provide coverage for durable medical equipment beyond that defined in the above state regulation--even when it can be found that the equipment sought is "medically necessary".

Inasmuch as the Board is prohibited under its statute and regulations from reversing decisions by the Department that are in accord with the applicable law, the Department's decision in this case must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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