

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,853

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Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying him coverage under Medicaid for the purchase of a hearing aid. The issue is whether the Department's regulations limit Medicaid coverage for hearing aids to persons under age twenty-one.

FINDINGS OF FACT

1. The petitioner is a seventy-three-year-old dairy farmer who has experienced a severe hearing loss. His loss of hearing means that he cannot hear the sound of farm machinery on the road or on the farm, which has created a serious safety risk for him. He also has trouble communicating with family members.
2. On July 31, 1995, the petitioner applied for provision of a hearing aid through the Medicaid program. In support of his request he supplied an otolaryngologist's report which provided, in pertinent part, as follows:

This 73 year old man is seen for evaluation of hearing loss. He has problems with hearing in both of his ears and has noticed this gradually occurred over the last several years. He has difficulties hearing in groups or when there is significant background sound. He turns the tv and radio up and does use the telephone on the right side. There is no otalgia, otorrhea, tinnitus, head trauma, or vertigo. He does have a noise exposure history having worked around farm equipment and he was around artillery while in the Army.

...

IMPRESSION: 1. Bilateral sensorineural hearing loss

PLAN: I feel the patient can consider amplification, however, he does not have funds at this time and would like to have a letter sent to Medicaid requesting funding for hearing aid. However, he is aware that in the State of Vermont this is not a covered expense for Medicaid.

3. Accompanying this request was a medical supplies/equipment necessity form filled out by the otolaryngologist prescribing a "Starkey CE 9 hearing aid." His physician stated that he expected the aid to result in improved communication ability and that the equipment would be used indefinitely.
4. On August 25, 1995, the Department denied the petitioner's request because adult hearing aid services are not reimbursable under the Medicaid program. The petitioner appeals that decision.
5. The Department does not oppose the medical necessity claim made by the petitioner but rather maintains that hearing aids are not a covered item for adults.

### ORDER

The Department's decision is affirmed.

### REASONS

The Department's regulations specifically eliminate hearing aids as a service for adults which will be provided under the Medicaid program:

Hearing aids and examinations for prescribing or fitting them are covered for Medicaid recipients under age 21. Batteries and other maintenance items are not covered. Repairs required by normal use of the hearing aid are covered. Replacement is limited to one every three years. Prior authorization is required for each hearing aid or hearing aid service. The Medicaid Division in Waterbury receives requests for prior authorization.

M650

The petitioner argues that the Board overturned that provision on May 5, 1995, in Fair Hearing No. 13,174. That argument, however, misunderstands the holding of that decision. The Board decided in Fair Hearing No. 13,174 that the Vermont State plan and federal regulations<sup>(1)</sup> require that hearing aids be provided as "necessary supplies and equipment" only as a component of "rehabilitative therapy" provided by an audiologist working in and for a hospital outpatient facility.

The Board made it clear in that decision that the petitioner therein was eligible to receive the hearing aid because he met "all the criteria of § M520." Id. at pg. 8. That section states, in pertinent part, that:

"Outpatient hospital services" are defined as those covered items and services indicated below when furnished in an institution meeting the hospital services provider criteria (M500), by or under the direction of a physician, to an eligible recipient who is not expected to occupy a bed overnight in the institution furnishing the service.

Covered items and services include:

...

Rehabilitative therapies (physical, occupational, speech, inhalation) related directly and specifically to an active written treatment plan established and periodically reviewed by the physician. The plan must

be reasonable and necessary to the treatment of the individual's illness or injury, rehabilitative therapies will be routinely covered for the first four months on physician certification. A written request for prior authorization to extend the period of treatment by the physician must be submitted to the Medicaid Division with pertinent clinical data showing the need for continued treatment, projected goals and estimated length of time. Unless there is another episode of acute illness, or increased loss of function, authorization will not be granted for more than one year from the start of treatment.

...

M520

Unlike the petitioner in Fair Hearing No. 13,174, the petitioner in this case has not shown that provision of a hearing aid to him is part of a rehabilitative therapy program which is contained in an active written treatment plan and which is provided by a physician in an institution meeting the hospital services provider criteria in M500.<sup>(2)</sup> Instead, he has been prescribed a hearing aid by a private otolaryngologist subsequent to audiometric testing in his office. These facts do not meet the requirements of M520.<sup>(3)</sup> Unless and until the petitioner can meet those requirements, he is prohibited by the general provision in M650 from

payment for a hearing aid.

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1. 42 C.F.R. § 440.110(c)(1).
2. M500 generally defines such a facility inside the state of Vermont as a "general hospital approved for participation in Medicare" and lists the names of eleven hospitals in and close to Vermont.
3. The Department has indicated that it has proposed an amendment to the State Plan, retroactive to July 1, 1995, which would eliminate hearing aid coverage even for hospital outpatients.