

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,237

)

Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her Medicaid coverage for a closed circuit television (CCTV), a magnifying device that has been prescribed for the petitioner to enable her to read. The issue is whether such a device is covered under the Department's regulations as a prosthesis or whether the regulations limit vision care items to "eyeglasses".

FINDINGS OF FACT

In lieu of an oral hearing the parties submitted the matter on the basis of written documents and legal memoranda.<sup>(1)</sup> The following facts, as submitted by both parties, are not in dispute:

1. The petitioner, [Name] (d.o.b. 3/14/27), is a 69 year old recipient of Medicaid.
2. [Petitioner] has severe visual loss due to myopic degeneration and advanced nonproliferative diabetic retinopathy. [Petitioner's] visual acuity is in the 20/400 range. This means her best vision is quite limited, and she is considered legally blind. In order for her to read written materials, the print needs to be eight (8) times bigger than normal.
3. [Petitioner] has numerous other medical complications. She suffers from multiple medical conditions including ischemic heart disease, diabetes, end stage renal disease, breast cancer, angina, anxiety, asthma and arthritis. [Petitioner] is on numerous medications because of her medical problems.
4. [Petitioner] lives independently in her own apartment. She receives homemaker services in her home from the Visiting Nurses Association (V.N.A.).
5. [Petitioner] has been prescribed a closed circuit television (CCTV) as medically necessary by her low vision doctors, [three names] and her general physician, [name].
6. [Petitioner] applied for prior approval of Medicaid funding for a CCTV on November 28, 1995. A CCTV was denied as not being primarily medical in nature, not considered a prosthetic device, and not included in the scope of vision care.

7. A closed circuit television (CCTV) is a low vision magnification device. It magnifies printed materials and projects them onto a vertical screen. The user can also use the device to write documents. The CCTV magnifies the writing onto the screen, allowing the user to check for accuracy and legibility.

In addition to the above, the petitioner submitted evidence that the Low Vision Rehabilitation Committee of the American Academy of Ophthalmology considers a CCTV to be a "prosthetic device" that replaces the function of the macula, the part of the eye that controls visual processing. The petitioner's eye doctors also characterize a CCTV as a prosthetic device.

Also, uncontroverted medical evidence submitted by the petitioner establishes that without a CCTV the petitioner would have to enter a nursing home or rely on the services of a home health aide to keep track of her medications, read her mail, pay her bills, and perform other tasks of independent living that require the visual ability to read.

### ORDER

The Department's decision is reversed.

### REASONS

CCTV devices are not specifically included (or excluded) under the medicaid regulation's "all-inclusive" list of "durable medical equipment" contained in Medicaid Manual (MM) § M841. However, § M844 of those regulations, under "Prosthetic Devices", provides as follows:

Prosthetic devices (other than dental) and repairs to these devices are covered when medically necessary and ordered by a physician.

Payment for prosthetic devices requires prior authorization be granted by the Medicaid Division. The prescribing physician must submit a written request with pertinent diagnostic and clinical data to justify the request.

Payment is made at the lower of charges or the Medicaid rate on file.

When a device is furnished to an inpatient or outpatient of a hospital, reimbursement will be made only to the hospital.

As noted above, the petitioner presented un rebutted evidence that CCTV devices like the one prescribed for her are looked upon and defined as "prostheses" by physicians and professionals in the field of ophthalmology. Nothing in § M844 indicates that "prosthetic devices" are limited to artificial limbs or other attached body parts. The Department's argument that the CCTV is not "corrective", as that term is used in the federal regulations defining prosthetic devices (see 42 C.F.R. § 440.120[c]), is simply contrary to the uncontroverted evidence in this matter. Absent a specific regulation to the contrary, it must be concluded that the CCTV device sought by the petitioner is a "prosthetic device" covered under § M844, supra.

The Department argues that its regulation covering "eyeglasses and vision care services" does not include--and, therefore, excludes--coverage for CCTV's. MM § M670 provides as follows:

### Eyeglasses And Vision Care Services

Payment will be made to a licensed physician, optometrist, or optician certified to participate in Medicaid for the following services rendered to an eligible Vermont Medicaid recipient. Payment will be at the lower of usual and customary charges or the Medicaid rate on file.

1. A visual analysis including refraction, consulting and prescription every two years.
2. An interim eye exam every two years.
3. Diagnostic visits
4. Dispensing fees
5. Contact lenses, when medically necessary, prior approval required.

Eyeglasses (frames and lenses) and repairs and replacements are covered under the terms of a sole source contract with the Department of Social Welfare. Coverage is limited to one pair of eyeglasses every two years per recipient.

Physicians, optometrists, and opticians who measure and dispense eyeglasses for eligible recipients must secure the frames and lenses from the designated contractor. In unusual circumstances the Medical Review Unit of Medicaid may grant an exception to this requirement.

By its express terms § M670 refers only to eyeglasses, contact lenses, and certain medical provider services relating to eyeglasses and contact lenses. It cannot be read as even contemplating--much less intending to specifically exclude--CCTV's and other vision aids and devices. This is unlike the cases involving hearing aids, in which the Board concluded that although hearing aids could generally be considered prosthetic devices, coverage had to be determined under specific sections in the regulations pertaining to "hearing aids" and "rehabilitation therapy". See Fair Hearing Nos. 13,995 et al. No such specific provisions exist in any regulation pertaining to vision.

The Department is correct that under the federal regulation (42 C.F.R. § 440.120[d]) "aids to vision" are included in the actual definition of "eyeglasses". Despite that inclusion, however, the Department, in responding to another argument raised by the petitioner, maintains that it is not required by federal regulation to include CCTV's and other "aids to vision" in the state regulations pertaining to "eyeglasses". Assuming the department is correct that the federal regulations do not require the coverage of a CCTV under "eyeglasses", it cannot consistently argue that the same federal regulation prevents states from considering such items to be "prosthetic devices". As noted above, unlike hearing aids, the state regulations regarding vision aids do not provide more specific guidance regarding a device (in this case a CCTV) that can otherwise be considered a prosthetic.

Moreover, it would appear to be a highly strained reading of the federal regulation to conclude that the reference to "other aids to vision" in the federal definition of "eyeglasses" was intended to include any and all conceivable forms of vision enhancement beyond magnifying glasses and contact lenses. Thus, the federal regulation cannot reasonably be considered a guide or indicia of the Department's "intent" in

enacting the state regulation regarding "eyeglasses". As noted above, § M670 contains no reference whatsoever to any vision aid or device except "eyeglasses" and "contact lenses"; and it appears to only contemplate the medical "services" that are routinely connected with the prescription and dispensing of those particular items. Nothing in § M670 or anywhere else in the regulations specifically excludes coverage for a CCTV or other "aids to vision". Likewise, nothing in § M670 can be read as expressly limiting medicaid coverage for any and all aids to vision beyond eyeglasses and contact lenses. Inasmuch as it must be concluded that a CCTV is covered as a "prosthetic device" under § M844 (supra), and not excluded under the regulation governing "eyeglasses" (§ M670, supra), the Department's decision should be reversed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17. <sup>(2)</sup>

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1. The Board has been provided with copies of the parties' memoranda.
2. This decision does not reach the issue of whether the Department could not exclude coverage for CCTV's and other aids to vision if it specifically chose to do so by regulation. The conclusion herein is only that under the regulations as written, CCTV's are not excluded.