

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,474
)
Appeal of)

INTRODUCTION

The petitioner, a seven-year-old girl, appeals the decision by the Department of Social Welfare denying her coverage under Medicaid for chiropractic treatments for chronic ear infections. The issue is whether the petitioner has demonstrated a medical need for such treatments. In lieu of an oral hearing the parties have submitted a stipulation of facts, which is set forth below.

FINDINGS OF FACT

1. The state regulation governing Medicaid coverage of chiropractic care is WAM § 640.
2. [Petitioner], born May 18, 1992, is the daughter of [Father] and [Mother]. She was eligible for Medicaid at all relevant times.
3. During [petitioner's] first six years she had serous otitis media (chronic ear infections). Typically these illnesses began with a high fever. [Petitioner's] parents would take her to their pediatrician, who would recommend a ten day

course of antibiotics. Sometimes the parents followed this recommendation, and sometimes they did not because they did not like putting [petitioner] on antibiotics frequently. In any event, with or without the antibiotics the ear pain eventually would subside and there would be a period of relative health for up to about two weeks, before the cycle would begin over again.

4. [Petitioner] had a series of pediatricians. Her first doctor was at University Pediatrics at Fletcher Allen Health Care (FAHC) until she was a toddler. Then Elizabeth Clark, M.D. of Burlington became her doctor for about three years until Dr. Clark retired in November 1997. After that Catherine Rude, M.D. at University Pediatrics was her doctor, and finally she switched to the other doctors at University Pediatrics after Dr. Rude left.

5. At Dr. Clark's suggestion, [petitioner's] parents also took her to ear nose and throat specialist, Richard Hubbell, M.D., of FAHC, who suggested the family consider having tubes surgically placed in [petitioner's] ears.

6. [Petitioner's] parents were not ready for [petitioner] to undergo an operation under general anesthetic to have tubes implanted. They considered this a drastic and invasive step. They also did not like the idea of keeping [petitioner] on a low dose of antibiotics all the time prophylactically, which both

Dr. Clark and Dr. Hubbell had suggested as a possible course of action.

7. On February 11, 1998, [mother] took [petitioner] to FAHC pediatrician Pamela Jackson, M.D. for another ear infection and got a prescription for an antibiotic. Exhibit 1.

8. Later that same day she also took her to a chiropractor, Dr. Palmer Peet, who performed an initial exam and recommended a course of chiropractic treatment. Exhibit 3.

[Petitioner's] parents decided to give this a try.

9. On March 1, 1998, a new Medicaid procedure for the prior authorization of medical care for children took effect. Exhibit 4.

10. The IPRO Precertification Review of Chiropractic Care for Children Under the Age of 12 states that "the request for child chiropractic services must be received by IPRO within 30 days of the initial visit and "[t]here must be documentation that a primary care provider (PCP) has been consulted.

Acceptable documentation may either be in writing from the PCP. . .or addressed on the request form from the provider."

Exhibit 4.

11. On March 9, 1998, Dr. Peet requested prior authorization for [petitioner's] chiropractic treatment. In answer to the question "Has a physician/or clinic familiar with

the child's care been consulted for this condition," Dr. Peet checked the yes box. He did not, however, write the "Name of physician/clinic providing consultation," or the date of the consultation, but instead wrote, "pediatric treatments w/antibiotic therapy unsuccessful." Exhibit 3.

12. Dr. Peet found that [petitioner] had subluxations at C-1, C-5, T-3, and T-4. Exhibit 3.

13. On March 24, 1998, a Vermont Medicaid chiropractic consultant recommended that the Office of Health Access (OVHA) approve eight chiropractic visits over a two or three month period. Exhibit 5.

14. A second consultant stated that s/he could not approve payment because there was "no evidence that proposed treatment is effective." Exhibit 6.

15. On April 6, 1998, the medical director of OVHA concurred with the denial. Exhibit 6.

16. On April 23, 1998, in a Notice of Decision, Brenda Metivier of the Medicaid Division denied the request for chiropractic benefits, stating that there was "no evidence that proposed treatment is effective. . .per consultant WAM 640". Exhibit 8.

17. [Petitioner's] mother then wrote a letter contesting the denial.

18. On April 25, 1998, John B. Dick, Policy and Planning Chief at OVHA, responded. He stated that the new prior authorization process had two steps: "[f]irst, a Vermont chiropractor reviews the request and makes a judgement as to whether it is necessary, and if so, the request is sent for a second medical review. The second medical review assures that there are no medical contra-indications for the service and assures that the child has had a recent pediatric assessment to make sure, among other things, that immunizations and screenings have been done on time." Exhibit 9.

19. [Petitioner] saw the chiropractor for treatment numerous times from February to May 1998: first three times a week, then two times, then once a week, and finally once every ten days. [Petitioner] had one ear infection during this period, with a fever that lasted only two or three days, versus her usually pattern of fevers for five days at that start of an ear infection.

20. After the chiropractic treatment ended, [petitioner] seemed to do better. Over the next year, she had one ear infection at the beginning of the summer of 1998 and one around Thanksgiving of 1998. This was an improvement over the previous years of nearly continuous infections and the repeated cycling on and off of antibiotics.

21. [Petitioner's] parents would like to take her back to Dr. Peet for further treatment for occasional ear infections.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations, at § M640, include the following provisions:

Services furnished by a licensed chiropractor certified to meet the standards for participation in Medicare are covered.

Coverage is limited to treatment by means of manipulation of the spine to correct a subluxation of the spine.

* * *

Chiropractic services for recipients under the age of 12 require prior authorization from the Medical Review Unit, Medicaid Division, Waterbury. Clinical review data pertinent to the need for treatment must be submitted in writing.

In this case, other than the chiropractor's request for coverage, the only evidence submitted by the petitioner regarding the efficacy of chiropractic treatments for her ear infections is her parents' report that she "seemed to do better" once she had these treatments (see Proposed Findings of Fact Nos. 19 and 20, supra). It cannot be concluded that this rises

to the level of "clinical review data pertinent to the need for treatment" as set forth in the above regulation.

The petitioner appears to argue that once her chiropractor finds a subluxation of her spine and provides treatment for this condition, the Department is bound by the regulations to approve Medicaid coverage. This begs the question, however, of whether the treatment is necessary to correct any medical problem. In this case there has been no credible showing that the subluxation of the petitioner's spine caused her ear infections, or any other diagnosed medical problem. Therefore, it cannot be concluded that the petitioner had a medical need for chiropractic treatment.

Under the above regulation, the mere presence of a subluxation, in and of itself, does not establish a need for treatment. Absent a credible showing that the petitioner's subluxation was (or is) causing a medical problem that can be alleviated through chiropractic treatment, the Department's decision denying approval of Medicaid payment for that treatment must be upheld.

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