

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,740  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying payment for medications prescribed for her by her physician.

FINDINGS OF FACT

1. The petitioner is a woman who has suffered from severe migraine headaches since adolescence. She is now fifty-six years old and receives disability benefits based on the headaches. She has tried many medications over the years as well as hypnosis, biofeedback, medication, vasal dilation (putting her head in an ice bucket), and tourniquets which have caused her to lose her hair. She has suffered greatly from depression due to the long-term chronic pain.

2. The only relief that she has ever received is from a drug called Imitrex which has been prescribed for her for the past ten years. The relief from this drug is almost instantaneous limiting her inability to function to a one to

two hour ordeal if she takes the medication when it starts. She has migraine attacks up to four times per week. If she does not take the medication she must go to bed because she is off balance, has pain in her jaw, hair and ear and her right arm becomes numb from the pain. She has also been temporarily blinded due to pressure on the optic nerve. The intense pain causes her to vomit and she must then take Phenegren to control that situation. The Imitrex keeps the migraines from reaching this point and obviates the need to take other medications.

3. The petitioner is able to function fairly well with this medication and as a result she has been able to care for infants in her home and to teach a catechism class outside of her home.

4. The petitioner's physician had been prescribing 81 tablets per month for her. She sees him once per month for monitoring. The petitioner reports that during a visit in March, her physician told her that he had been contacted by the Medicaid division and that they thought he was prescribing too much Imitrex (an expensive medication which costs \$25 per pill). The petitioner understood from her physician that Medicaid would only pay for nine pills per month because the Department felt that it was an appropriate amount. The

petitioner and her physician agreed that she could probably get by with forty per month and he wrote her a prescription for that amount.

5. During the month before her hearing, the petitioner attempted to limit her intake of Imitrex because she knew Medicaid would not pay for more than nine pills. She uses about three pills per episode and attempted to make the nine last the month but was unable to do so. When she did not take the pills her episodes became unbearable. She ended up purchasing another thirty pills with her own money at a cost of some \$750 to her. She did not pay the rent to purchase the medication.

6. PATH took the position at the hearing that it limited the number of pills solely upon the agreement of her physician that nine was the appropriate amount. However, the Department presented no evidence that this was so. At the insistence of the hearing officer, the petitioner and PATH obtained a letter from her physician confirming the amount of his prescription. The letter dated June 3, 2002 reads as follows:

[Petitioner] has been a patient of mine since December 19, 1997.

[Petitioner] suffers from a long-standing history of migraines. This has been controlled well with Imitrex 50

mg - 40 tablets per month. I would appreciate your consideration in this matter.

7. PATH takes the position that it will pay for this amount in the future but refuses to reimburse the petitioner for the cost of the medication she paid for out of pocket based on its contention—not backed by any evidence—that the physician had only prescribed nine pills per month.

ORDER

The decision of the Department is reversed.

REASONS

The Medicaid regulations provide that drugs prescribed by a physician which are approved by the FDA through inclusion in official drug compendia are covered by the Medicaid program.<sup>1</sup> M810. There is no dispute that the drug prescribed by the petitioner's physician is on this list. There is no evidence in this case that the petitioner's physician only prescribed nine tablets per month for her. On the contrary, the evidence showed that he prescribed and the petitioner obtained at least thirty-nine pills in the month of May. The letter he provided

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<sup>1</sup> The regulations state that the only exceptions to payment are for certain kinds of drugs including smoking cessation products, non-drug items,

to the Department dated June 3, 2002 clearly indicates that he feels she needs forty pills per month.

It is unclear what went on between the physician and the Medicaid unit. If the petitioner's view of what happened is correct and PATH in fact dictated the number of pills which would be covered against her doctor's recommendation, there is surely cause for alarm. However, lacking any actual evidence as to what occurred, it is best to assume that there was a miscommunication of some sort between the physician and the Medicaid unit about her actual need for this medication. As it appears that the doctor did prescribe forty tablets per month for her, payment for that prescription should have been covered by Medicaid and the petitioner should be reimbursed for her out of pocket expenses.

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