

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearings No. 17,859
) & 17,883
Appeal of)
)

INTRODUCTION

The petitioner appeals separate decisions by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying Medicaid coverage for each of her two children for chiropractic visits to treat chronic ear infections. The issue is whether such treatment is covered under the pertinent regulations.

FINDINGS OF FACT

1. The petitioner has two daughters, one age three, the other age twenty months. Prior to last summer both children had recurrent ear infections.

2. Based on her own alleged experiences as a child, the petitioner sought chiropractic care for both children to treat their ear infections. The petitioner first applied for Medicaid coverage for these services in or around June 2002. The Department denied coverage at that time because there was no referral from the children's primary care physician. The

petitioner filed separate appeals of the decisions for each child in early July 2002.

3. A hearing was first held on September 9, 2002. At that time the petitioner admitted that the children's primary care physician would not refer the children to a chiropractor for their ear infections, but that she was taking them anyway because of positive results she had received from such treatments when she was a child. At that time the Department advised the petitioner that it would reconsider its decision if the petitioner obtained a referral from a primary care physician. The petitioner was also advised that she could get a new primary care physician for the children if she could find one who would make such a referral.

4. At a hearing on January 27, 2003 the parties informed the hearing officer that a new primary care physician had submitted a form request for prior approval to the Department for 3 to 4 chiropractic treatments for both children for "chronic ear infections". However, the Department indicated it had denied coverage because of the lack of any medical support regarding the necessity and efficacy of such treatment. At that time the petitioner was advised to try to obtain more detailed statements from the children's primary

care physician as to the reasons for his referral to chiropractic care.

5. At a hearing on March 10, 2003 the petitioner informed the hearing officer and the Department that she was taking the children to a chiropractor once a month at her own expense. The parties agreed that the children's primary care physician had submitted the following letter, dated January 28, 2003, on behalf of both children:

I am the pediatrician for [petitioner's children]. I have been concerned about their chronic ear infections and fluid in their ears. Their mother, [petitioner], began taking them to see a Chiropractor, [name], several months ago and they have seemed to benefit from this modality of therapy. Both of their ears are now clear of fluid and they have not had any more ear infections over the last few months. She is hoping that Primary Care Plus will cover their Chiropractic care, and I hope you can facilitate this.

6. In addition, an ear, nose, and throat specialist who was treating one of the children had submitted the following letter, also dated January 28, 2003:

[Child] has been under my care since this summer for recurrent otitis media. Since I have cared for her, her ears have looked healthy, tympanometry has revealed relatively healthy-appearing middle ear spaces and her hearing has been intact. From this, I conclude that her current therapy appears to be working and should be continued. I will continue to follow her along, and should her condition change, other steps may need to be taken; however, at this time it appears she is having a positive effect from her current therapy.

7. At this hearing the hearing officer informed the parties that he would issue a preliminary ruling as to the applicable law on chiropractic care for children and would advise the parties if he felt the above physicians' statements were sufficient to resolve any factual issue.

8. On March 12, 2003 the hearing officer sent the parties the following memorandum:

I am providing the petitioner with copies of Regulations M640 and M106.3. My reading of these regulations is that chiropractic for young children is covered, but only when a convincing showing is made as to the need for and efficacy of the treatment. This would require, at a minimum, detailed statements from the children's doctors supporting their need for chiropractic care.

I will reset the matter for further hearing next month to allow the petitioner time to try to obtain this documentation from the children's doctors.

(Emphasis in original.)

9. At a hearing on May 5, 2003 the hearing officer reiterated to the petitioner the type of medical evidence she would need and he allowed the petitioner until May 31, 2003 to submit more specific statements from the children's physicians as to the need and efficacy of chiropractic care. To date, the Board has received no additional medical evidence.

10. Based on the only medical evidence submitted in this matter (see supra) it is found that the petitioner's children

have not had recurrent ear infections since last summer and that this has coincided with them receiving chiropractic treatments once a month. However, on the basis of the brief statements from the children's doctors (supra), it cannot be found that there is a convincing medical basis to conclude that their lack of symptoms is a result of the chiropractic care they have received.

ORDER

The Department's decisions is affirmed.

REASONS

Under Medicaid Manual § M640 chiropractic services are covered only for recipients under age 21, provided that certain conditions are met. These include the following:

. . .

Coverage is limited to treatment by means of manipulation of the spine and then only if such treatment is 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.

. . .

The regulations governing prior approval include the types of supporting information that may be required at the Department's discretion. These include:

. . .

- * the patient's plan of care;
- * a statement of long-term and short-term treatment goals;

. . .

- * the practitioner's detailed and reasoned opinion in support of medical necessity;
- * a statement of the alternatives considered and the provider's reasons for rejecting them;

. . .

§ M106.3.

Although the petitioner is undoubtedly sincere in her belief that the chiropractic care her children have received is an effective treatment for their ear infections, it must be concluded that the medical evidence submitted in this matter, cited above in its entirety, falls far short of the above regulations. There is nothing in the record to establish that either child has a "subluxation of the spine", or that their chiropractic treatments actually consist of "manipulation of the spine". Thus, it cannot even be concluded that these threshold criteria for coverage under § M640 (supra), regardless of prior approval, have been met.

However, even if it could be assumed that the children's chiropractic treatment is based on spinal subluxations, it must also be concluded that the above requirements for prior approval have not been met. At best, the brief statements from the children's doctors, cited above, establish only the doctors' opinions that the treatment "appears to be working". For whatever reason, however, these doctors have not been willing or able to provide a medical rationale that explains the treatment in detail and demonstrates why it is effective and necessary for these children.

To be sure, a reasonable policy argument can be made that Medicaid should cover any service that a recipient's doctor feels seems to work. Unfortunately for the petitioner in this matter, however, the above regulations clearly require significantly more in the way of medical justification before Medicaid coverage must be approved. On the basis of the record as it now stands the Board simply cannot conclude that the Department has abused its discretion in denying prior approval for chiropractic care for the treatment of these children's ear infections.

If and when the petitioner is able to obtain such evidence from her children's doctors she is free to reapply

for Medicaid coverage of these services. At this time, however, the Department's decisions must be affirmed.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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