

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,231
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying payment for her prescription lenses under the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a disabled woman who receives both Medicare and Medicaid benefits. At the end of June 2002, PATH mailed the petitioner and all Medicaid beneficiaries a notice saying that due to budget limitations, starting July 1, 2002, Medicaid would not pay for routine eye exams, eyeglass frames and lenses, contacts, or special lenses.

2. Because PATH felt the first notice did not give beneficiaries sufficient advance notice of the termination of benefits, a second notice was mailed to the petitioner and all beneficiaries on July 18, 2002 saying that the benefits would terminate on July 29, 2002. In addition to the services listed above, PATH also notified beneficiaries that repairs to

eyeglasses would be suspended and clarified that all other exams done by an optometrist except those to test eyes for refraction in order to prescribe eyeglasses would still be covered.¹

3. The petitioner agrees that she received these notices in a timely fashion. She did not appeal the original notice but appealed in December 20, 2002 after her request for payment of the lenses was denied. It was not until November 21, that she realized she would need new glasses during the year. She currently has prescriptions for three different kinds of lenses and has photophobia. She has paid for these glasses herself and is seeking reimbursement.

ORDER

The decision of PATH is affirmed

REASONS

The Board's fair hearing rules provide that "appeals from decisions by the Department of Social Welfare (now PATH) . . . shall not be considered by the board unless the appellant has

¹ On July 29, 2002 PATH issues a directive to its offices saying that it would cover refraction exams without prior authorization when provided by a participating Ophthalmologist or Optometrist. PP & D Memo/M670/7/29/02.

either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose. Fair Hearing Rule 1. PATH argues that this matter should be dismissed because the petitioner did not file her appeal until more than 90 days after she was notified that vision services would be suspended for the year.

While it is true that all persons who were in the Medicaid program were cut off from receiving vision benefits in July of 2002, the petitioner did not have a personal grievance until she learned that she needed glasses in December of 2002. For that reason, the hearing officer is disinclined to dismiss the appeal. Any recipient can make a request for any Medicaid services at any time, receive a denial and be properly before the Board regardless of when the regulation suspending, eliminating or excluding benefits was promulgated. This petitioner is no different.

The petitioner is properly before the Board but the validity of PATH's suspension of benefits in the Medicaid program has already been affirmed by the Board in a previous appeal by another recipient. Fair Hearing No. 17,888. In that decision the Board held that as part of its comprehensive Fiscal Year 2003 Appropriations Act (H. 766) passed in the

last session, the Vermont legislature required the Department to suspend all vision services under Medicaid and VHAP for one year, effective July 1, 2002.² PATH adopted the above suspension of vision care in its Medicaid regulation at M § 670.3 on July 1, 2002 which states, in pertinent part, that:

Eyeglasses and vision care services that have been pre-approved for coverage are limited to:

. . .

- A prescription for frames and lenses every two years (all frames and lenses for beneficiaries age 21 and older suspended from July 1, 2002 to June 30, 2003);

. . .

As the Department's action is clearly in accord with its regulation, and with federal and state law, the Board is bound to uphold the decision of PATH denying reimbursement of the cost of the lenses to the petitioner. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. The petitioner has been advised that she can apply to the Commissioner for an exception to this rule under the Medicaid provisions at M108.

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² Under Federal Medicaid law states have the "option" of providing vision services. See 42 U.S.C. § 1396d(a)(12).