

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 19,273  
 ) & 19,274  
Appeal of )

INTRODUCTION

The petitioners appeals a decision of the Department for Children and Families (DCF) denying them eligibility for disposable underwear under the Vermont Health Access Program (VHAP) pharmacy program. As these appeals involve the same facts and legal issues they are consolidated for decision.

FINDINGS OF FACT

1. The petitioners, Mr. and Mrs. G., are a couple in their nineties who are cared for at home by their son. They have monthly income from Social Security benefits of about \$1,250. They also have Medicare as their health insurance and VHAP Pharmacy to cover medications.

2. Mr. G. is in an advanced stage of dementia and is incontinent. His son buys disposable protective underwear to deal with the wetness and uses about four pairs per day.

3. Mrs. G. is in the last stages of Alzheimer's and has occasional bowel accidents during the day. She uses on average one pair of disposable underwear per day.

4. The petitioners' son has been picking up the disposable underwear at his local pharmacy for two to three years. He understood from his pharmacist that VHAP was covering the cost of the disposable underwear and he never had to pay for them. He estimates the cost of the disposable underwear at about \$100 per month.

5. Sometime in the last month, the petitioners' son went to pick up the disposable underwear and was told by the pharmacy that they were not covered by the VHAP program and that he would have to pay for them privately. The petitioner never received any notice from DCF that these items would not be covered and why that was so. He believes he should continue to have these items covered while he appeals the non-payment.

6. DCF says that it has never covered over-the-counter non-prescribed items under its pharmacy program and does not know why his local pharmacy was allowing him to receive these items as "VHAP-covered." It is not clear whether the error was on the part of the pharmacy or the VHAP payment division. Nevertheless, DCF has refused to start paying for items which it says it has never covered under the program for anyone.

ORDER

The decision of DCF is affirmed.

REASONS

Under regulations adopted by DCF in the VHAP-Pharmacy program, "payment is limited to covered items furnished on written prescription of a duly licensed physician . . . , dentist . . . , podiatrist, . . . nurse practitioner [or] physician assistant." VHAP 3304. Covered and non-covered items are specifically listed in the regulations as follows:

Benefit Coverage

Benefits are provided for:

- Prescription medicines;
- Contraceptive medications, drugs, devices, and supplies for the purpose of contraception;
- Insulin and other diabetic supplies, including:
  - Glucose strips and tablets, and
  - Needles and syringes
- One comprehensive visual analysis and one interim eye exam within a two-year period, and
- Diagnostic visits and tests.

Exclusions

No benefits are provided for:

- Refills beyond the original and five refills per script up to one year maximum;

- Multi-vitamins;
- Hair replacement therapies;
- Drugs, and contraceptive medications, devices or supplies for which there is no prescription;
- Drugs for the sole purpose of fertility; and
- Over the counter drugs and medicinals.

VHAP 3305

The regulation above sets up a two-prong test for coverage of a pharmacy item. The first is that it must be prescribed by a health care professional. The second is that it must be on the covered list. In this case, neither test was met because the disposable underwear was not prescribed by a physician and is not on the coverage list. In fact, as an over-the-counter item, it is specifically excluded from coverage. It must be concluded, that DCF's decision not to cover this item is in accordance with its regulation, and must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

With regard to the notification procedures in this matter, DCF is required to provide all recipients with notices "whenever the services they may receive under the VHAP-Pharmacy program are reduced or discontinued" and the notice must contain the reason for the action and the right to request a fair hearing. VHAP 3302.6. Furthermore, "coverage

in the VHAP-Pharmacy program benefits continue during the appeal period provided the beneficiary has requested a hearing before the effective date of the change". VHAP 3302.6. DCF takes the position in this matter that it never awarded these benefits to the petitioner and was not in a position, therefore, to reduce or discontinue them. In that case, it took no action requiring a notice or the award of continuing benefits. DCF describes the petitioners' free receipt of the disposable underwear during the last two years as some kind of mistake which was initiated and halted by the petitioners' pharmacy, not by their official action. Although it is difficult to determine where the error occurred, these items have never been covered by the program, even if prescribed, making it likely that the error was the pharmacy's, not DCF's. It cannot be found on these specific facts that DCF has violated its notice and continuing benefits regulations.

It was obvious during the course of the hearing that these elderly petitioners and their son (who has given up much of his work to care for them) are facing severe health care and financial challenges with little or no help. DCF has written to the petitioners' son suggesting that they apply for the Medicaid spend-down program and that he contact specified organizations to discuss his parents' needs and what services

might be available to them as they receive home-based care. It might also be worth talking to the local Council on Aging for assistance. Their son is encouraged to look into these resources to get help with the substantial burden he has taken on in caring for these two very ill people.

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