

providing any vision correction services to individuals over age 21.

3. Following a fair hearing held on April 13, 2005, the Department reviewed its decision based on the petitioner's assertion that such contact lenses are medically necessary as treatment for his condition. In a decision dated April 20, 2005 the Department determined that such lenses were not medically necessary as treatment for the petitioner's "underlying disease process".

4. To date the only additional evidence the petitioner has submitted from his physician or other treatment provider reiterates that such lenses are medically necessary to "allow adequate vision", and that his condition may soon require surgery. However, there is no evidence contradicting the underlying factual basis of the Department's decision—i.e., that the lenses in question are not considered "treatment" for the petitioner's eye disease.

ORDER

The Department's decision is affirmed.

REASONS

Current Medicaid and VHAP regulations preclude coverage for individuals over age 21 for any eyeglasses, contact

lenses, or other vision correction services. W.A.M. §§ M670.3 and P-4005B(3)(e).¹ There is no dispute in this matter that according to his doctor the prescribed contact lenses are medically necessary to improve the petitioner's vision, and that using glasses would be of no use due to the nature of his underlying condition. Unfortunately however, short of "legal blindness" that impairs an individual's ability to "live independently" (see § M670.3), there is no provision or exception in the regulations for any vision correction device based solely on the severity of an individual's vision problems.

The Department concedes that if the petitioner could show that such lenses are necessary for the *treatment of his condition*, i.e. that such lenses would arrest or diminish the progression of his illness, it would consider an exception.² It is also possible that the Department might be bound to provide coverage if the petitioner could show that his vision is, or foreseeably will be, impaired to the extent that his

¹ The Board has specifically upheld the validity of this blanket exclusion as being consistent with federal and state statutes. Fair Hearing No. 17,888.

² See W.A.M. § M108.

ability to live independently is threatened (see *supra*).³ To date, however, the petitioner has not provided such evidence.

The petitioner's primary argument in this matter, that the lenses he is seeking should be considered a "prosthesis", is contrary to the specific provisions in the above regulations that clearly distinguish "vision care services", including "contact lenses", from "prosthetic eyes" under "medical equipment and supplies". (See §§ M840 and P-4005B[5]). For all the above reasons, the Department's decision is affirmed.

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³ In the brief statements furnished to the Department the petitioner's doctors did not elaborate on what they mean by "useful" or "adequate" vision. There is also no indication that providing the lenses in question would preclude, or even postpone, the need for surgery (which, presumably, would be covered under VHAP). In addition, there is no evidence that the petitioner's condition precludes or threatens his ability to live independently, and nothing in the petitioner's appearance and demeanor at his hearings suggested as much.