

also submitted office notes from his doctor describing his problems and recommending a hospital bed and a motorized scooter, but not chiropractic treatment.

Following a hearing in this matter held on June 15, 2005, the Department informed the hearing officer that it had contacted the petitioner's doctor and had been advised that the doctor would prescribe physical therapy services (which are covered by Medicaid) in lieu of chiropractic treatment. The Department also advised that the petitioner's doctor can also prescribe specific mobility aids and a hospital bed, which Medicaid will consider.¹

In its decision the Department determined that the petitioner has not shown that other forms of treatment, in particular physical therapy, would not be just as efficacious in the treatment of arthritis, and that the petitioner has not exhausted alternative therapies such as this that are covered by Medicaid. The petitioner has not shown that his doctor in any way disagrees with the Department's assessment.

¹ The Department represents that the petitioner's doctor did subsequently submit a request for a hospital bed, which the petitioner states was granted.

ORDER

The decision of the Department is affirmed.

REASONS

The Medicaid regulations specifically exclude coverage of chiropractic treatment for adults for treatment of any condition. Medicaid Manual § M640. The petitioner does not challenge the overall validity of the above regulation. Rather he has asked for an evaluation of his situation pursuant to M108, a regulation adopted on April 1, 1999 which allows the Department to review individual situations pursuant to a set of criteria. M108 is reproduced in its entirety as follows.

In a decision that was affirmed by the Vermont Supreme Court, the Board extensively examined the criteria of M108 and held that this regulation gives the Commissioner of DCF the authority to make exceptions for Medicaid coverage in cases that he or she deems meet certain criteria, and that the Board may only overturn an M108 decision if it is shown to be arbitrary, unreasonable, or otherwise an abuse of discretion. See Cameron v. D.S.W., Vermont Supreme Court Docket No. 2000-339 (8/23/01).

In this case the petitioner has not shown that he has exhausted other traditionally effective forms of treatment, such as physical therapy. Moreover, it appears his doctor is willing to prescribe such treatment. The Department has made clear that it stands willing to provide coverage for the petitioner to undergo an evaluation to develop a comprehensive and coordinated medical approach to the treatment of his condition. If the petitioner were to avail himself of this, and it proved to be ineffective, the petitioner would be free to reapply for coverage for chiropractic treatment. Until that time, however, in light of the foregoing the Department's decision in this matter

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

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