



treating therapist (a clinical social worker) has referred her to a plastic surgeon to repair her scar tissue. This request is supported by the petitioner's physician at the same health clinic.

3. In a letter accompanying the petitioner's request for Medicaid coverage, dated July 7, 2005, the therapist wrote:

I am currently the primary behavioral health therapist treating [petitioner] for Major Depressive Disorder, Generalized Anxiety Disorder, Post Traumatic Stress Disorder and Cocaine Dependence, in partial remission. I am aware that [petitioner] is seeking treatment for Micro Dermabrasion, which I believe will greatly benefit her symptomatology related to her depression, low self-esteem, poor self-worth and social isolation. I believe [petitioner's] facial scarring has contributed to her depression, social anxiety and other related mental health issues and inhibited her ability to move forward in her sober life. Any even minor alleviation of this scarring may, even solely psychologically, allow her the confidence and self-acceptance essential to the recovery process.

4. In a follow-up letter, dated September 20, 2005, the petitioner's treating physician wrote:

[Petitioner] has been a patient at CHCB for several years. She mainly sees [name], physician assistant. I am [name's] supervising physician.

I'm writing in support of [petitioner] receiving financial relief/support around treatment of significant facial scarring. She is hoping to have this service performed by Plastic Surgery. [Petitioner] is in treatment with us and [name], therapist, around diagnoses of Major Depression, Generalized Anxiety, Post

Traumatic Stress Disorder and cocaine dependence, the latter in remission.

I believe that [petitioner's] facial scarring is a factor in her ongoing symptoms related to the above diagnoses. Her depression is aggravated by her low self-esteem and social anxiety relating to her appearance. I think treatment with Micro Dermabrasion could greatly contribute to her making forward strides in recovery, and I medically recommend it.

5. In office notes that accompanied his request for prior approval the plastic surgeon noted the following regarding the procedure in question:

MEDICAL DECISION MAKING: By clinical history and physical examination, the patient has multiple self-inflicted scars on her face, as noted above. I told the patient that in my opinion, the only means of trying to reduce some of the acuity of these scars, although not completely removing them, would be to do a dermabrasion or laser resurfacing of the site. I told the patient that I thought that dermabrasion would perhaps be better than laser resurfacing. However, I told her that I did not really have a significant standard to measure this judgment by. I told her that I had done both dermabrasion and laser abrasion for people with acne scarring that appeared very similar to her scarring, but that overall, the number of cases that I had done totaled perhaps 6-7 cases over twenty years. I told her that my general opinion and impression was that most people felt that there was some improvement, but overall, not major improvement. I also told her that there were significant risks in terms of either one of these procedures, including the fact that there could be excessive scarring (i.e., hypertrophic or keloid scarring), hypopigmentation (i.e., making the skin darker than the surrounding skin). The patient asked me if there was any chance that her face could look worse than it does now, and I told her that indeed there was a possibility of this, although I thought it was relatively small in percentage terms. I could not give her an absolute percentage for this question. I also

discussed skin grafting and told her that although this technically could be done, I did not think that it would be a good idea to start treatment in this manner, since obtaining skin would require very likely going beneath her clavicles and that skin beneath her clavicles would have a tendency to be darker than the surrounding skin on her face. I told her that although this skin might be smoother, she would certainly have to use makeup the rest of her life if she had a significant color difference, in an effort to try to make it look more uniform. She indicated that she understood and appreciated the above discussion and at this point in time, wanted to proceed with the idea of dermabrasion. I told the patient that I would submit her case to her insurance carrier for prior approval and, should she be approved, a surgical date would be scheduled, and she would be seen preoperatively. I also told the patient that she might need several treatments to try to obtain an optimal result. She indicated that she understood and appreciated this.

ORDER

The Department's decision is affirmed.

REASONS

The regulation in question, W.A.M. § M615(1), provides as follows:

Cosmetic surgery and expenses incurred in connection with such surgery are not covered. Cosmetic surgery encompasses any surgical procedure directed at improving appearance (including removal of tattoos), except when required for the prompt repair of accidental injury or the improvement of the functioning of a malformed body member. For example, the exclusion does not apply (and payment would be made) for surgery in connection with treatment of severe burns or repair of the face following an auto accident or for surgery for therapeutic purposes that coincidentally serves some cosmetic purpose. In questionable cases, authorization

prior to performing surgery should be requested from OVHA.

There can be no dispute that the petitioner's circumstances are sympathetic. However, it must be concluded that the Department's position denying Medicaid coverage is based on an accurate evaluation of the above evidence and a reasonable reading of the above regulation.

The surgery is not required as a "prompt repair of an accidental injury". Although it is arguably "therapeutic", the regulation seems clear that this provision refers only to the need to "improve the functioning of a deformed body member". Inasmuch as it can be noted that an improved appearance would psychologically benefit almost anyone, to allow cosmetic surgery on this type of "therapeutic" basis could foreseeably lead to the above exception swallowing the entire rule.

The Department is also correct that the likelihood of success of such surgery in the petitioner's case is limited both in terms of physical and therapeutic effect. The surgeon states (*supra*) that physical improvement from such surgery is usually "not major". The petitioner's therapist (*supra*) states that the petitioner's chances for recovery "may" be enhanced with this surgery, and her doctor (*supra*)

says it "could" be of benefit. There is no evidence that the petitioner's psychological condition is likely to worsen without the surgery. Nor can it be found that her recovery is necessarily contingent upon it or that it is unlikely that she will continue to improve without it.<sup>1</sup>

In light of the above, the Department's decision that this case does not fall into one of the limited exceptions to the overall bar to Medicaid coverage for cosmetic surgery must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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<sup>1</sup> At one of the hearings in this matter (November 9, 2005), and in her discussions with the surgeon (see *supra*), the petitioner stated that her primary reason for having the surgery would be to gain enough confidence to obtain a job. As noted above, the petitioner stated she is a client of Vocational Rehabilitation. At the hearing she was advised she could also pursue payment for such surgery as a benefit under Vocational Rehabilitation. She was further advised of her right to a separate appeal of any adverse decision by that agency in this regard.