

09/22/04

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John:

On July 22, three weeks after receiving the preliminary decision from the Federal Court, I appeared before an ALJ to argue our case on a K0011 that Region D had denied a year earlier. Before he opened the hearing, I asked the Judge to disregard everything that we had presented to the carrier., as a result of their demands, such as clinical records and PT evaluations, and only consider the medical justification based on the CMN. I then gave him a copy of Judge Karlton's decision.

Today we received a fully favorable decision from the ALJ based on the results of the Federal Court's decision.

I hope every dealer in the country will use this decision, in addition to the Federal Court decision, when they go before the ALJs to get their K0011s paid. We are mailing you a copy of the complete decision

Still nothing in regards to the final decision from the Federal Court. I'll let you know as soon as we hear something.
Tom

MAXIMUS COMFORT (999-28-7157)

wheelchair inside the home. The use of the power wheelchair would decrease the amount of falls, thereby reducing the amount of injuries caused to the beneficiary by falls.

After considering the relevant Medicare provisions and the evidence presented it is concluded that the appellant has provided sufficient evidence showing that the use of a power wheelchair is medically necessary and coverage should be provided by Medicare.

The DMERC Region D Supplier Manual, Chapter 9, WCB, provides that in order for coverage of a power wheelchair to be authorized, the patient must be bed or chair confined and unable to propel a manual wheelchair for ambulation (Exhibit 3/3).

The beneficiary's treating physician and a physical therapist have reported that the beneficiary requires the use of a power wheelchair to ambulate. While the beneficiary may have been able to ambulate for 75 feet on one occasion during physical therapy, this does not equate to a determination that the beneficiary is not bed or chair confined. A full review of the medical records shows that while performing the above the beneficiary experiences severe pain. Additionally, due to the progressive nature of the beneficiary's disease, the beneficiary is experiencing increased weakness and numbness with poor balance. He is experiencing falls on a regular basis. The above clearly shows an inability to ambulate. Therefore, the evidence shows that the beneficiary is basically bedridden or chair confined.

The undersigned finds that the intermediary's denial of the claim on the basis that there was insufficient documentation showing medical necessity is without merit. In Maximum Comfort v. Sec. of U.S. Dept. of Health No. S-03-1584 (F.D. Cal. filed June 30, 2004), the court found that a Certificate of Medical Necessity, standing alone, may be used by a provider to provide the necessary information in the determination of medical necessity and reasonableness in a reimbursement claim before Medicare. The court also found that Congress had established "that any and all information required from suppliers to make a medical necessity determination. must be contained in a Certificate of Medical Necessity" Id.

Thus, the undersigned concludes that the beneficiary has provided medical records, which verify that the beneficiary met the criteria required under Medicare in order to cover a power wheelchair, and the undersigned finds that the coverage for the cost of the power wheelchair is warranted.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the finding, above and as follows:

1. The beneficiary's medical records document that he meets the criteria for coverage of a power wheelchair.
2. coverage for the cost of a K0011, power wheelchair with accessories provided to the beneficiary on April 23, 2003 is warranted under The DMERC Region D Supplier Manual, Chapter 9, WCB.

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DECISION

it is the decision of the undersigned that the services, supplies and/or equipment at issue are covered under Medicare. Therefore, the contractor is directed to determine the allowable amount for services, supplies and/or equipment and to make appropriate payment under Part B of Title XVIII of the Social Security Act.



THEODORE T. N. SLOCUM
Administrative Law Judge

SEP 20 2004

Date