

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL
Docket Number: M-11-2045

In the case of

National Seating & Mobility
(Appellant)

(Beneficiary)

DME MAC-Jur.D (Noridian)
(Contractor)

Claim for

Supplementary Medical
Insurance Benefits (Part B)

(HIC Number)

(ALJ Appeal Number)

The Medicare Appeals Council has decided, on its own motion, to review the Administrative Law Judge's (ALJ's) decision issued on May 17, 2011, because there is an error of law material to the outcome of the claim. See 42 C.F.R. § 405.1110. The Administrative Law Judge (ALJ) issued a favorable decision finding coverage for four specific power wheelchair accessories furnished to the beneficiary on January 6, 2010, as follows: a power seating elevation system (HCPCS code E2300),¹ electrical and other components to connect the wheelchair controller and power seating system motor (E2310), an expandable controller (E2377), and a power wheelchair harness (E2313).² In a memorandum dated July 14, 2011 and received by the Council July 15, 2011, CMS referred the case to the Council for possible own motion review.

The Council has considered the record that was before the ALJ, as well as the memorandum from the Centers for Medicare &

¹ The Centers for Medicare & Medicaid Services (CMS) have developed the Healthcare Common Procedure Coding System (HCPCS) to establish "uniform national definitions of services, codes to represent services, and payment modifiers to the codes." 42 C.F.R. § 414.40(a).

² The appellant also billed for a power wheelchair base (K0870) and lead acid battery (E2363) furnished on the same date of service. The power wheelchair base and lead acid battery were found covered by the contractor based on medical reasonableness and necessity, and have not been in dispute at any time in this appeals process.

Medicaid Services (CMS) dated July 14, 2011. 42 C.F.R. § 405.1110(c)(1),(2). In any agency referral action, the Council will limit its review of the ALJ's action to those exceptions raised by CMS in the agency referral memorandum. The CMS memorandum is hereby entered into the record as Exhibit (Exh.) MAC-1. CMS sent a copy of its memorandum to the appellant and to the beneficiary on July 14, 2011. The Council has not received a response from the appellant or beneficiary to the CMS memorandum.

For the reasons stated below, the Council hereby reverses the ALJ hearing decision with regard to the favorable coverage findings on the power seat elevation system (E2300) and electrical connecting components (E2310). The Council finds that they are presumptively non-medical under the policy of the Durable Medical Equipment Medicare Administrative Contractor (DME MAC) as expressed in policy article A19846. As such, they do not meet the definition of durable medical equipment (DME) and are not covered. Because CMS has raised no contentions with regard to the ALJ's favorable findings concerning the expandable controller (E2377) and power wheelchair harness (E2313) also furnished on the same date of service, the Council adopts the ALJ's favorable coverage findings on those two items without further discussion.

BACKGROUND AND PROCEDURAL HISTORY

The beneficiary is diagnosed with inclusion body myositis, an uncommon condition causing severe muscle weakness which the beneficiary experiences in his forearms and thighs. Exh. 11, pp. 14, 18, 43. The beneficiary purchased a power wheelchair with certain accessories on January 6, 2010, pursuant to a prescription and certificate of medical necessity issued by his physician. Exh. 11, pp. 23, 64-68. The beneficiary's claim for the power wheelchair base and lead acid battery were found medically reasonable and necessary and covered by the DME MAC. However, the DME MAC denied coverage for the remaining accessories listed on the claim form on both initial determination and redetermination. Exh. 2, p. 135. The contractor found that specifically with regard to the two items at issue, the power seat elevation feature (E2300) and the electrical connection components (E2310), the seat elevation feature was not primarily medical in nature and the sole function of the electrical connection components were to connect the seat elevation feature; thus, they were also non-covered. Exh. 5, p.118. On appeal, the Qualified Independent Contractor (QIC)

also denied coverage of the two accessories on similar grounds. Exh. 7, p. 112.

The ALJ held a hearing on April 26, 2011, by telephone, at which a representative of the appellant testified. The ALJ issued a fully favorable decision on May 17, 2011. In his decision, the ALJ described the beneficiary's physique, his mobility impairments, and his need for the accessories at issue. The ALJ stated that he was giving the applicable local coverage determination (LCD) of the DME MAC, L11462, and the DME MAC's applicable policy article, A19846, both relating to wheelchair options and accessories, substantial deference. The ALJ found the two accessories at issue were "reasonable and necessary and should be paid by Medicare or if recouped, refunded." ALJ Dec. at 7.

In the agency referral memorandum submitted to the Council, CMS argues that a power seat elevation system does not meet the definition of durable medical equipment (DME) because it is not primarily and customarily medical in nature and thus does not meet the definition of DME. Because it does not meet the definition of DME, it is not covered regardless of whether it is medically reasonable and necessary. Further, CMS argues, because the seat elevation system is not covered, the electrical components to connect the seat lift motor to the controller are likewise not covered. CMS cited to LCD L11462 and policy article A19846, both of which address coverage of power wheelchair accessories. CMS pointed out that policy article A19846 specifically provides that power seat elevation features (E2300) (as well as power standing features) are not covered because they are not primarily medical in nature.

DISCUSSION

For purposes of Medicare coverage, durable medical equipment is defined as equipment which:

1. Can withstand repeated use;
2. *Is primarily and customarily used to serve a medical purpose;*
3. Generally is not useful to an individual in the absence of an illness or injury; and
4. Is appropriate for use in the home.

42 C.F.R. § 414.202 (*italics added*). The Medicare Coverage Policy Manual (MCPM) (CMS Pub. 100-02), chapter 15, § 110.1

clarifies that equipment which is primarily and customarily used for a nonmedical purpose, even if it has some medical-related use, is not considered medical equipment and is not covered under the DME benefit. Under the manual, in order to be reimbursable, the equipment must meet all four criteria of the DME definition and be necessary and reasonable for the treatment of the patient's illness or injury or to improve the functioning of his/her malformed body member. *Id.*, section 110.

Medicare contractors, including the four regional DME MACs, issue LCDs and policy articles addressing whether a particular item or service is covered on a contractor-wide basis. These policies are published so that the medical community and public will have guidance as to whether specific items and services will be covered within that jurisdiction. These policies must be given substantial deference by ALJs and the Council, and an ALJ's or Council's decision not to follow the policy in a specific case must be explained in the decision and will be applied only to that case. 42 C.F.R. § 405.1062. The policies are adopted by contractor medical directors (physicians) only after considering medical literature, the advice of local medical societies and medical consultants, public comments, and comments from the provider community. *Medicare Program Integrity Manual (MPIM)* (CMS Pub. 100-08), section 13.1.3.

The DME MAC for Jurisdiction D (Noridian Administrative Services, LLC), which encompasses California, issued LCD L11462 and policy article A19846 addressing coverage of power wheelchair accessories. Both were in effect on the date of service at issue. Policy Article A19846 specifically states that, "a power seat elevation feature (E2300) and power standing feature (E2301) are noncovered because they are not primarily medical in nature. If a wheelchair has an electrical connection device described by code E2310 or E2311 and if the sole function of the connection is for a power seat elevation or power standing feature, it will be denied as noncovered."

While the ALJ stated that he was giving LCD L11462 and policy article A19846 substantial deference, he did not explain why he was departing from the provisions of these policies. He simply stated that the accessories were "reasonable and necessary." However, for the reasons stated above, reasonableness and necessity are not reached unless an item of equipment is first found to fall within the four-pronged definition of DME promulgated in the regulations (or within another coverage category). Otherwise, the item is not covered by definition, as

Medicare does not cover many reasonable and necessary items on the grounds that they do not fall within a defined benefit category.

The DME MAC has determined, following consultation with the medical community, that seat elevation features and their related connecting components are not covered Medicare DME items because they are not presumptively medical in nature. The Council must give substantial deference to that policy and finds no unusual or extenuating circumstances to depart from that policy in this case.

Because the item at issue is found not to meet the regulatory definition of durable medical equipment, section 1879 of the Social Security Act (limitation on liability) is not applicable. However, the Council notes that the claim file contains an advance beneficiary notice (ABN), signed by the beneficiary prior to the date of service at issue, which states that the power elevating seat and connecting components will not be covered by Medicare. The beneficiary has checked Option 1, which indicates that he is nonetheless electing to receive the items at issue, would like a bill sent to Medicare, and is assuming financial responsibility for payment if Medicare does not cover the items. Exh. 10, pp. 125.

DECISION

The Council finds that the power seat elevation feature (E2300) and electronic connection components (E2310) are not covered by Medicare. We further find that the beneficiary is responsible for the non-covered costs of these two items pursuant to section 1879 of the Act. Because CMS has raised no contentions with regard to the two other accessories which were billed (E2377 and E2313), the Council adopts the ALJ's favorable

coverage findings on these two items without further discussion. Accordingly, the Council partially reverses the ALJ's decision.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

/s/Constance B. Tobias, Chair
Departmental Appeals Board

Date: September 20, 2011