

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL
Docket Number: M-11-1779

In the case of

Claim for

B.M., POA for S.M.
(Appellant)

Supplementary Medical
Insurance Benefits (Part B)

(Beneficiary)

(HIC Number)

National Government Services
(Contractor)

(ALJ Appeal Number)

INTRODUCTION

The Administrative Law Judge (ALJ) issued a decision dated April 4, 2011, which concerned Medicare coverage of a diabetic alert dog (HCPCS code E1399) provided to the beneficiary on April 14, 2009. The ALJ determined that the diabetic alert dog did not fall within a Medicare benefit category and was not covered by Medicare. The ALJ also found the appellant responsible for payment. The appellant has asked the Medicare Appeals Council (Council) to review this action. The Council admits the appellant's request for review and enclosures into the administrative record as Exhibit (Exh.) MAC-1 and interim correspondence into the record as Exh. MAC-2.

The Council reviews the ALJ's decision *de novo*. 42 C.F.R. § 405.1108(a). The Council will limit its review of the ALJ's action to the exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c). As set forth below, the Council adopts the ALJ's decision.

DISCUSSION

The Council adopts and incorporates the ALJ's statement of the procedural history of this case and the ALJ's findings of fact herein. Dec. at 1-2. The appellant submitted a non-assigned "Patient's Request for Medical Payment," dated August 7, 2009, on behalf of the beneficiary for a diabetic alert dog provided on April 14, 2009. Dec. at 1; see Exh. 2, at 6.¹ The contractor denied the claim initially and on redetermination, and, on reconsideration, the QIC affirmed the denial on grounds that a diabetic alert dog is not durable medical equipment (DME). *Id.* at 1, 5.

The ALJ conducted a telephone hearing on March 23, 2011, and subsequently issued an unfavorable decision on April 4, 2011. Dec. at 1, 7. In pertinent part, the ALJ recounted statutory and administrative authority defining DME as equipment that:

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

Dec. at 5-6, *citing* section 1861(s)(6) of the Social Security Act (Act); Medicare Claims Processing Manual (MCPM)(Pub. 100-04) Ch. 20, § 10.1; Medicare Benefit Policy Manual (MBPM) (Pub. 100-02), Ch. 15, § 110.1.²

The ALJ reasoned that, although the diabetic alert dog may have been beneficial for the beneficiary, in light of the Medicare authority, the diabetic alert dog did not fall within the definition of DME and was thus not covered by Medicare. Dec. at 7. The ALJ stated that the "therapy dog is not 'primarily and customarily used to serve a medical purpose.'" *Id.*, *citing* 42 C.F.R. § 414.202. The ALJ also stated concerns with the lack of a standardized certification process and physician supervision and noted that the diabetic alert dog did not qualify as a "special exception item" under Medicare authority. *Id.* The ALJ thus found that the diabetic alert dog was not covered by

¹ The diabetic alert dog was billed under HCPCS code E1399, which the 2009 HCPCS codebook describes as "durable medical equipment, miscellaneous."

² Manuals issued by the Centers for Medicare & Medicaid Services (CMS) can be found at <http://www.cms.hhs.gov/manuals>.

Medicare and concluded that the appellant was responsible for payment. *Id.* at 7.

The appellant argues that the beneficiary's diabetic alert dog falls within the definition of DME. Exh. 1, at 1. Drawing an analogy to Medicare coverage of "artificial arms, legs and eyes," the appellant contends that the diabetic alert dog serves as an extension of the beneficiary's endocrine system. *Id.* The appellant also maintains that a diabetic alert dog is not useful to someone who is not diabetic, given the dog's special training for the beneficiary's scent; the appellant generally references enclosed articles. *Id.* The appellant further maintains that the diabetic alert dog is primarily medical in nature, in that the animal serves as a constant warning device to the beneficiary. *Id.* The appellant summarizes that --

- The beneficiary has a better quality of life with the service of the diabetic alert dog.
- The dog is "nationally certified on the service dog registry of the United States" and is "trained and certified for public accesses."
- The beneficiary is under a physician's care for diabetes and the physician thinks the diabetic alert dog "is in [the beneficiary's] best interest."
- The diabetic alert dog is not a "therapy dog," but is a "medical necessity and should be covered as a medical expense by Medicare."

Id. at 2.

The Council first notes that the Medicare program is a defined benefit program. An item or service may be beneficial to a patient, but if that item or service does not fall within the definition of a Medicare benefit, that item or service cannot be covered by Medicare. The Council agrees with the ALJ that, while the purpose of the diabetic alert dog in this case may be to assist the beneficiary in managing his medical condition, and the animal may have provided a benefit to the beneficiary, that purpose and benefit does not bring a diabetic alert dog within the ambit of Medicare Part B coverage as an item of DME. The Council also agrees that an animal specially trained to note changes in a beneficiary's diabetic condition does not, by virtue of constant companionship, primarily and customarily serve a medical purpose. The Council further agrees that the diabetic alert dog may also, as a general matter, be useful to a person in the absence of illness or injury. The Council thus

agrees with the ALJ that the diabetic alert dog does not fall within the DME benefit under Medicare Part B.³ Medicare coverage is therefore unavailable.

The Council does not dispute that the diabetic alert dog is useful or beneficial to this beneficiary. Under Medicare law, an item or service that falls within a defined Medicare benefit may be excluded from Medicare coverage when it is not "reasonable and necessary" under section 1862(a)(1)(A) of the Act. However, the fact that an item or service may be beneficial or useful, or "reasonable and necessary," in a given case is an insufficient legal basis to establish Medicare coverage if that item or services does not first fall within a defined Medicare benefit. The Council, like the ALJ, concludes that the diabetic alert dog does not fall within the definition of the DME benefit and is therefore not covered by Medicare. The Council also notes that a treating physician's endorsement of an item of service is insufficient, standing alone, to make that item or service covered by the Medicare program. Similarly, improved quality of life, while desirable, is also an insufficient legal basis to support Medicare coverage. The Council finds nothing in the appellant's exceptions to warrant reversing the ALJ's decision.

Because the Council agrees with the ALJ that the diabetic alert dog does not fall within the definition of DME under Medicare Part B, the Council does not address whether the diabetic alert dog is "reasonable and necessary" under section 1862 of the Act or liability under section 1879 of the Act. The Council agrees with the ALJ's conclusion that the beneficiary is financially responsible for payment of the non-covered charges. Dec. at 7.

³ The Council notes that CMS has issued a DME Reference List in National Coverage Determination (NCD) 280.1, which lists multiple inanimate items as DME and provides coverage status, including air cleaners, bed side rails, bathtub seats and lifts, blood glucose monitors, and power operated wheelchairs. The Council finds nothing on this list or in the DME definition which would suggest that a dog trained to detect decreases in a human's blood glucose levels falls within the DME benefit.

CONCLUSION

The Council has considered the record and exceptions presented. The Council finds no basis for disturbing the ALJ's conclusion that the diabetic alert dog is not covered by Medicare and that the beneficiary is responsible for payment. The Council therefore adopts the ALJ's decision.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

Date: December 17, 2012