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## DECISION

IN THE CASE OFCLAIM FOREmlyn Jones  
(Claimant)Health Insurance Benefits  
(Medicare Part B)(Wage Earner)360-09-1983  
(Social Security Number)

This matter is before the undersigned pursuant to a timely Request for Hearing filed by the claimant on August 13, 1992, after an initial denial and denial at a carrier hearing. Following due notice, a hearing was held on June 10, 1993, in Sacramento, California. The claimant appeared but was unable to testify. However, his representative, Mr. Gary Smith, attorney at law, did testify on his behalf.

ISSUES

The issue is whether payment should be made under Part B of Title XVIII of the Social Security Act for the computer and supplies that the beneficiary purchased on December 27, 1990 and January 12, 1991.

The undersigned has determined after carefully considering the documentary evidence of record and the testimony received at the hearing from the claimant's representative, that the claimant's computer and supplies are deemed to be a prosthetic device, but not durable medical equipment. Thus, Medicare is obligated to reimburse the claimant for his computer and supplies.

RATIONALE FOR DECISION

The claimant was in good health until May 5, 1988, when he suffered a severe cerebrovascular accident (stroke) which caused



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considerable damage to his brain. He became paralyzed on the right side of his body and resultant damage to his brain caused him to become mute, severely affecting his ability to verbally communicate. While the claimant's ability to think remains unaffected, he is incapable of transmitting his thoughts into long hand or to speak. This condition left the claimant essentially nonfunctional. However, in September 1990, the claimant, with help from a friend, enrolled in a computer class designed for disabled individuals. By learning to use the computer, the claimant has become more functional. As a result, his treating physician, Dr. Stephen H. Foster, wrote a prescription for a computer and computer programs to allow the claimant to communicate (Exhibit 1, p. 7). The claimant ordered his computer and supplies in December 1990, and January 1991 (Exhibit 1, pp. 6, 8). The claimant then requested Medicare reimbursement for his computer and supplies in August 1991 (Exhibit 1, pp. 1-4).

By notice of September 6, 1991, the claimant's request for reimbursement from Medicare was denied (Exhibit 2). An appeal of the denial was filed on his behalf by Ms. Lupita Ochoa, Staff Assistant to Congressman Vic Fazio (Exhibit 3). By notice from Blue Shield of California of October 23, 1991, the claimant was informed that a computer was not a benefit of Medicare and payment was disallowed (Exhibit 4). A request for a carrier hearing was subsequently submitted on the claimant's behalf by Ms. Ochoa on January 14, 1992 (Exhibit 5). By decision of June 19, 1991, the claimant's request for reimbursement of the computer/supplies was denied because it did not meet the Medicare criteria for durable medical equipment. The decision specifically indicated that "durable medical equipment as defined by Medicare is equipment which (1) can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; (3) is generally not useful in the absence of illness or injury; and (4) is appropriate for use in the home." The decision further indicated that the equipment must be reasonable and necessary for the diagnosis or treatment of an illness or injury (Exhibit 6). As a result of the carrier denial, a request for hearing was filed on the claimant's behalf by Ms. Ochoa on August 12, 1992, contending that his computer assists the claimant in communicating much more easily and clearly (Exhibit 7).

Dr. Foster, by letter of June 3, 1993, indicated the claimant had a marked disability with essentially no use of the right side of his body and had a severe speech problem. The doctor explained that the computer was aiding the claimant in independent living and was of major benefit (Exhibit 11). In a declaration by the claimant of June 10, 1993, he outlined the difficulties that he was encountering in attempting to communicate and conduct his life prior to his acquisition of the computer. He explained how



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the computer had opened up his life to express himself and that he had regained up to 95 percent of his pre-stroke vocabulary. He specifically stated, "My computer has opened up my life again by allowing me to express my thoughts coherently to myself and others. Through the computer, my doctors and I estimate that 95 percent of my pre-stroke vocabulary has returned. Although the typing process is slow and laborious for me, the joy of expression and communication is unsurpassed... My computer functions for me like an electronic speech device, or like a Braille keyboard for a blind person. It is prosthetic which replaces the injured part of my body (my brain speech transmission/communication centers)." (Exhibit 12).

His attorney testified at the hearing that the computer is a prosthetic device and that the computer quickly facilitated communication with the claimant as opposed to handwritten notes from the claimant.

In a brief submitted subsequent to the hearing by the claimant's attorney, he argued that the claimant's computer should be considered a prosthetic device. Specifically, he indicated "Part B of Title VIII of the Social Security Act, 42 U.S.C., Section 1395(y)(a)(1)(A), indicates that Medicare reimbursement should be allowed for 'items and services which are reasonable and necessary for the diagnosis or treatment or illness or injury, or to improve the functioning of a malformed body member.' 42 U.S.C. Section 1395x(s)(A) specifically provides coverage for 'prosthetic devices... which replace all or part of an internal body organ.' The Medicare Carriers Manual, at Section 2130, explains that 'prosthetic devices ... which replace all or part of the function of the permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order,' as are 'accessories and/or supplies which are used directly' with such a device to 'achieve the therapeutic benefit of the prosthetic or to assure the proper functioning of the device.'" Claimant's counsel went on to indicate that computerized assistive devices are not expressly referenced in the list of examples for prosthetic devices in the Medicare coverage issues manual appendix, but did list "electronic speech aids" as an example of a prosthetic device for a person with an inoperative larynx. He further argued that the computer and supplies which were prescribed for the claimant by his treating physician are intended to replace that malfunctioning internal body organ of the claimant which is the "damaged communications-related portion of Mr. Jones' brain." He then indicated "This 'device' is directly analogous to an electronic speech device, which is eligible for prosthetic coverage because it replaces the functioning of a damaged larynx... Mr. Jones' 'device' helps replace the functioning of his damaged cerebral speech/communication center. Indeed, the assessment from the Assistive Device Center and the Wall Street Journal article in



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evidence clearly demonstrate that 'computers help repair damaged brains;' significantly, the Wall Street Journal refers to the Institute for Cognitive Prosthetics, which customizes 'computer-based aids' for brain-injured patients." It was his contention that the Medicare statute itself recognizes coverage provided for items which are designed "to improve the functioning of a malformed body member" which counsel argued was the case with regards to the claimant's computer and computer supplies (Exhibit 13).

Section 1834(h)(4)(B) and (C) regarding payment for prosthetic devices and orthotics and prosthetics indicates:

"(B) The term 'prosthetic devices' has the meaning given such term in Section 1861(s)(8), except that such term does not include parenteral and internal nutrition, nutrients, supplies and equipment; and

(C) the term 'orthotics and prosthetics' has the meaning given such term in Section 1861(s)(9), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by home health agency under Section 1861(a)(5)."

Section 1861(s)(8) and (9) indicates:

"(8) prosthetic devices, other than dental (which replace all or part of an internal body organ) including colostomy bags and supplies directly related to colostomy care, including replacement of such devices, and including one pair of conventional eye glasses or contact lenses are furnished subsequent to each cataract surgery with insertion of an intraocular lenses;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;"

The undersigned determines that the arguments by claimant's counsel that the computer/supplies constitutes a prosthetic device are persuasive and credible. The evidence clearly demonstrates that the claimant, now age 70, suffered a severe stroke rendering the right side of his body nonfunctional and significantly damaged the communication/transmission part of his brain to the extent that he is mute. His introduction to the computer and subsequent learning of the device has resurrected to a great measure his ability to communicate and become much more functional to the extent he can maintain greater independent living. It has essentially replaced, as argued by counsel, the malfunctioning part of his body (brain) that caused significant



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communication limitations. There is no question, given the evidence, that the computer has restored and improved his life. The claimant's computer and its supplies certainly does meet the criteria that Medicare recognizes to improve the functioning of a malformed body member. The Act does not preclude a computer from being a prosthetic device. In fact, due to the peculiar facts of this case as well as the unusual medical and related facts involved, it clearly satisfies the statutory definition of a prosthetic device as it replaces part of the function of an impaired body organ, Mr. Jones' brain. Without this device, as the evidence points out, the claimant's life would continue to be severely restricted and his ability to enjoy the fruits of life would not be available. In today's changing and evolving world with regards to computers and how they are applied with regards to disabled people means that the way in which prosthetic devices are viewed and defined is ever evolving. This case is a clear indication of how a computer can replace a damaged brain as a result of a stroke in a way that was not anticipated in the past. As a result, the undersigned determines that reimbursement for the claimant's computer/supplies is warranted.

However, the undersigned affirms the prior determination from Medicare that the computer/supplies does not qualify as durable medical equipment. While the equipment does meet the requirements to withstand repeated use and is appropriate for use in the home and would be useful from a medical standpoint, it cannot be covered because it is also generally useful to individuals in the absence of illness or injury and use of computers in the national economy is for purposes other than medical. Given these facts, it is determined that the assets are not allowable as durable medical equipment.

#### FINDINGS

After careful consideration of the entire record, the undersigned makes the following findings:


1. The claimant's computer/supplies is deemed to be a prosthetic device.
2. Reimbursement for the computer/equipment that the claimant purchased in December 1990 and January 1991, is warranted.
3. The computer/supplies are not found to be durable medical equipment.

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**DECISION**

It is the decision of the undersigned that Medicare must reimburse the claimant for the purchase of his computer/supplies as a covered prosthetic device. However, it is determined that the computer/supplies are not durable medical equipment.

  
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Nicholas G. Stucky  
Administrative Law Judge

August 18, 1993  
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Date