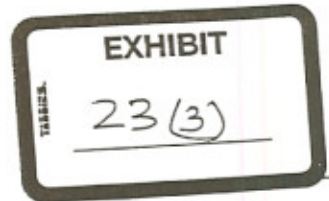


SOCIAL SECURITY ADMINISTRATION  
Office of Hearings and Appeals

DECISION



IN THE CASE OF

BERNADINE A. [REDACTED]  
(Appellant)

BERNADINE A. [REDACTED]  
(Beneficiary)

(Carrier/Intermediary/PRO)

CLAIM FOR

Supplementary Medical  
Insurance Benefits

[REDACTED]  
(HICN)

000-86-0336

(Docket Number)

PROCEDURAL HISTORY

This claim is before the undersigned Administrative Law Judge pursuant to a timely request for a hearing filed by the appellant (beneficiary) on November 22, 1996 (Exhibit 5). After proper notice, a hearing was held on January 27, 1999, in Casper, Wyoming. The beneficiary is represented in this matter by Sheldon Skelcher, Attorney at Law, who appeared at the hearing on her behalf.

In order to be entitled to a hearing before an Administrative Law Judge on a Medicare Part B claim, the amount in controversy must be \$500.00 or more (42 CFR 405.815). The amount in controversy in the instant case is \$1,172.00 (Exhibit 4, page 1). Therefore, the jurisdictional requirement is met.

Following the hearing, the record was left open until March 4, 1999, to allow the beneficiary's attorney an opportunity to submit further documentary evidence. The documentary evidence submitted by the beneficiary's attorney subsequent to the hearing is marked as Exhibits 11-14.

ISSUES

The issue to be determined is whether or not the augmentative communication device purchased by the beneficiary in 1995 is a Medicare covered item.

### CONCLUSIONS

After careful consideration of the entire record, and for the reasons cited below, the undersigned concludes that the augmentative communication device purchased by the beneficiary in 1995 is a Medicare covered item as both durable medical equipment and a prosthetic device.

### EVALUATION OF THE EVIDENCE

The documentary evidence of record reflects that the beneficiary became nonverbal subsequent to a 1991 cerebrovascular accident. In 1995 her treating physician prescribed a augmentative communication device (hereinafter, "ACD") to assist her in communicating (Exhibit 9, page 23). The beneficiary purchased the device and billed Medicare for reimbursement (Exhibit 1). Medicare coverage was denied initially by the Medicare carrier and then subsequently by a Medicare Hearing Officer. The Medicare Hearing Officer concluded that the device at issue should be evaluated for coverage as durable medical equipment, and not as a prosthetic device, but that coverage should be denied as durable medical equipment because the device is "a convenience item and not primarily medical in nature." (Exhibit 11, page 3)

The undersigned agrees with the Medicare Hearing Officer's assessment of the ACD as durable medical equipment. In satisfaction of the requirements for durable medical equipment under the Regulations, the ACD is equipment furnished by a supplier or a home health agency that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to an individual in the absence of an illness or injury, and is appropriate for use in the home (42 CFR 414.202). However, the undersigned disagrees with the determination of the Medicare Hearing Officer that the ACD is merely a convenience item and is, therefore, not covered by Medicare.

The record reflects that the beneficiary has a history of mental impairments that includes depression and anxiety and which has been largely related to her speech problems (Exhibit 7, page 1). One treatment note reveals that the beneficiary has experienced severe crying episodes from the frustration of not being able to communicate with staff at her facility (Exhibit 7, page 12). However, once the beneficiary began using the ACD, the claimant's frustration factor was noted to be reduced 100% and this reduction was credited to the use of the ACD (Exhibit 7, page 3).



Besides benefitting the beneficiary psychologically, treatment notes reveal that the use of the ACD allows the beneficiary to more effectively communicate her medical needs, feelings, and desires to her health care providers, the staff in her facility, other residents in her facility, and to her family (Exhibit 7, pages 4-6, 11-12, 14, 16, and 18-19). As a result, treatment notes reveal that she is better adjusted to her therapy plan and goals (Exhibit 7, page 19). For these reasons, the undersigned concludes that the ACD does not merely serve as a convenience item to the beneficiary, but is medically reasonable and necessary in order to alleviate the severity of her mental impairments and enable her to more effectively participate in her overall care.

In addition to finding that the ACD at issue is a Medicare covered item as durable medical equipment and contrary to the determination of the Medicare Hearing Officer, the undersigned alternatively finds that the ACD is also a Medicare covered item as a prosthesis. Section 1862(a)(1) of the Social Security Act provides for payment of items that are "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." The Health Care Financing Administration (HCFA) Regulations specifically provide coverage for "prosthetic devices . . . which replace all or part of an internal body organ." The Medicare Carriers Manual at Section 2130 provides that "prosthetic devices which replace all or part of an internal organ (including contiguous tissue), or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order." In the instant case, the undersigned is persuaded that the "permanently inoperative body organ" is the beneficiary's larynx, the specific function at issue is communication, and the prosthetic device is the augmentative communication device. Furthermore, the ACD was prescribed by the beneficiary's treating physician (Exhibit 9, page 23). Therefore, the undersigned finds that the device at issue is also a prosthetic device and, for the reasons cited above, is medically reasonable and necessary.

The undersigned notes that another basis upon which the Medicare Hearing Officer denied Medicare coverage for the ACD is because there was insufficient evidence in the record to conclude whether the ACD has been approved by the Food and Drug Administration (FDA), a requirement for coverage cited by the Medicare Hearing Officer (Exhibit 4, pages 2-3). Subsequently, however, the beneficiary's attorney has submitted documentation which satisfies the undersigned that the ACD at issue is in fact an FDA approved device and that coverage for it should not be denied on this basis (See Exhibits 12 and 14).

By way of summary, the undersigned finds that the ACD purchased by the beneficiary in 1995 satisfies the requirements for both durable medical equipment and a prosthetic device and is a medically reasonable and necessary item. Accordingly, the ACD is a Medicare covered item and payment will be made for this device.


#### FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The amount in controversy exceeds \$500.00, which satisfies the jurisdictional requirement.
2. The beneficiary purchased an augmentative communication device in 1995, upon the prescription of her treating physician.
3. The augmentative communication device is an FDA approved item and satisfies the definition of durable medical equipment and a prosthetic device.
4. The augmentative communication device is not merely a convenience item, but is medically necessary and reasonable for the treatment of the beneficiary.
5. The augmentative communication device is a Medicare covered item for which payment shall be made.

#### DECISION

It is the decision of the Administrative Law Judge that the augmentative communication device purchased by the beneficiary in 1995 is a Medicare covered item. Medicare is directed to make reimbursement accordingly.

  
GAIL E. SKAGGS  
Administrative Law Judge

APR 27 1999

Date