

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

DECISION

IN THE CASE OF

CO-AD Inc. o/b/o
(Appellant)

Donald S
(Beneficiary)

(Carrier/Intermediary/PRO)

CLAIM FOR

Supplementary Medical
Insurance Benefits

541-42-4286
(HICN)

000-89-3072
(Docket Number)

This case is before the undersigned Administrative Law Judge on a timely request for hearing. A hearing was held on September 14, 1999 in Boise, Idaho. The beneficiary did not appear. He is severely disabled as noted below. The beneficiary is represented by Mary Jo Butler, Attorney at Law.

ISSUES

The general issue before the Administrative Law Judge is whether full payment may be made on the beneficiary's behalf under Medicare Part B for an Augmentative Communication Device (A.C.D.). The beneficiary requested that this device be paid for by Medicare on the basis that it is medically necessary and reasonable.

RATIONALE FOR DECISION

The Medicare Hearing Officer found that coverage for the A.C.D. under Medicare could not be allowed. The A.C.D. was not considered to be durable medical equipment because it was not being used to reduce or eliminate the beneficiary's illness, but rather to reduce or eliminate the effects of his illness. The A.C.D. was not necessary and reasonable for the treatment of the beneficiary's illness. It fits the description of a prosthetic device in that it replaces all or part of the function of a malfunctioning internal body organ (see MCM Sec. 2130).

In her brief, Ms. Butler noted that the beneficiary was a 25 year old individual with cerebral palsy and spastic quadriplegia with severe dysarthria or speech production difficulty. His

verbalizations were understood on a very limited basis and only by care providers familiar with his vocalizations. Others must rely on gestures, yes/no questions and his limited typing skills. While his speech output is compromised, his receptive communication abilities are not compromised. A qualified speech pathologist found the beneficiary to be a suitable candidate for a communication device. This device was considered to be the most efficient way in which the beneficiary could use expressive language. The A.C.D. (also referred to as the Deltatalker) was considered to meet the requirements of durable medical equipment in that it could withstand repeated use, it is primarily and customarily used to serve a medical purpose, it is not useful to people in the absence of an illness or injury, and it is appropriate for use in the home. Several Medicare cases were cited to show that A.C.D.'s met the definition of durable medical equipment. These devices address deteriorating functional abilities caused by disease or disability and enable their users to continue to perform routine daily activities.

It was further contended that A.C.D., is not specifically excluded from coverage and should not be excluded from coverage as a convenience device. The Deltatalker is a medical device meant to replace the beneficiary's speech functioning which has been lost as a result of disability. The ability to speak is not a convenience. Medicare funds speech therapy and other devices, such as artificial larynxes and electronic speech aids, which indicates that Medicare does not consider speech a mere convenience. The device is really a new or different form of speech therapy. This does not make it a convenience. A communication device has no other purpose than to enable an individual to speak, which is clearly a medical purpose.

The representative concluded that the A.C.D. met the criteria for covered services as a prosthetic device, durable medical equipment and/or speech therapy. It is also medical in nature and necessary for the treatment of the beneficiary's disability. It serves a medical purpose and is not a convenience item. The Deltatalker enables the beneficiary to meet his treatment goals of saying words, phrases and entire messages in an intelligible synthesized voice.

Several Medicare cases were cited by the representative in support of the conclusion that A.C.D.'s are covered under Medicare. In re: Blanche B., #000-24-0399, May 8, 1995, (Social Security Admin., Office of Hearing and Appeals), an Administrative Law Judge for Medicare concluded that a "Real Voice" laptop talking computer met the definition of durable medical equipment under the Medicare Act and regulations. Also,

In re: Celia C. HICN# 196-14-0195, December 2, 1998, an Administrative Law Judge found that an augmentative communication device met the definition of durable medical equipment. The judge noted that the device served a medical purpose, is designed for use in the home, and it would not be useful for an individual without the beneficiary's medical condition. Another ALJ found an augmentative communicative device to be durable medical equipment (see In re:Bernadine, A., Docket # 000-86-0336, April 27, 1999).

The record contains an affidavit of Jean Gerth, a speech pathologist, who evaluated the beneficiary to determine whether his medical condition required the use of an alternative augmentative communication device. Ms. Gerth recommended the A.C.D. to treat the beneficiary's dysarthria and his speech production could thereby be improved. Improved communication would likely result in enhanced daily activities and social functioning. Such a device would be the only form of treatment for his disability and would enable the beneficiary to achieve his functional communication goals. The A.C.D. is a recognized form of treatment for the beneficiary's disorder. This device is not useful to the beneficiary in the absence of his disability, is useful to him in his home, can withstand repeated use, and serves a medical purpose. The device's purpose is to improve the beneficiary's speech disorder caused by a malfunctioning body part. The device is not considered a convenience item and is considered a prosthetic device. The cost of the device is reasonable when compared to the therapeutic benefit.

After considering the documentary evidence of record, I find that the A.C.D. recommended for the beneficiary by the speech pathologist is medically reasonable and necessary. The arguments set forth by the beneficiary's representative are persuasive and well-documented and substantiated by the opinions of Administrative Law Judges and the opinion of a speech pathologist. The Deltatalker meets all the criteria of durable medical equipment. It can withstand repeated use, is primarily and customarily used to serve a medical purpose, is appropriate for use in the home, and it is not useful to the beneficiary in the absence of his severe medical condition. The Medicare Hearing Officer noted that the A.C.D. did not primarily and customarily serve a medical purpose and she drew a distinction between items used to reduce or eliminate an illness or reduce or eliminate the effects of an illness. The opinion of the speech pathologist, the precedent of Administrative Law Judge decisions, and common sense leads to a different conclusion. With regard to common sense, many commonly recognized items that Medicare approves as durable medical equipment do not cure an illness but

rather treats the effects of an illness. A wheelchair is an obvious example. It is the means to treat the effects of an illness and provides a substitute for the body part that is not functioning. In her affidavit, Ms. Gerth indicated that A.C.D.'s are considered treatment according to the standards of her profession and the requested Deltatalker is necessary and reasonable to treat the beneficiary's severe dysarthria. Also, as indicated above, hearing decisions by Administrative Law Judges have found that A.C.D.'s are medically reasonable and necessary and not merely a convenience item. The Medicare hearing officer agreed that the A.C.D. is a prosthetic device because it replaces all or part of the function of a malfunctioning internal body organ.

In view of the foregoing, I find that the augmentative communicative device prescribed for the beneficiary by his treating physician meets the definition of durable medical equipment and is medically reasonable and necessary for the beneficiary.

FINDINGS

The undersigned administrative Law Judge makes the following findings:


1. The augmentative communication device requested by the beneficiary from his Medicare Carrier and prescribed for him by his treating physician satisfies the definition of durable medical equipment and is a prosthetic device.
2. The augmentative communication device is not merely a convenience item, but is medically necessary and reasonable for the treatment of the beneficiary.
3. The augmentative communication device is a Medicare covered item for which payment shall be made.

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DECISION

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



L. KALEI FONG
Administrative Law Judge

OCT 14 1999

Date