

**SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals**

DECISION

IN THE CASE OF**CLAIM FOR**

Mark G. [REDACTED] for Estate of
Rhoda E. G. [REDACTED] (Dec'd)
(Appellant)

Supplemental Medical Insurance Benefits
(Part B)

Rhoda E. G. [REDACTED] (Dec'd)
(Beneficiary)

485-44-3806D
(HICN)

American Home Medical
(Carrier/Intermediary/PRO)

000-79-6650
(Docket Number)

PROCEDURAL HISTORY

This case is before the undersigned upon a timely request for hearing filed by Mark G. [REDACTED], on behalf of the estate of Rhoda G. [REDACTED], on June 17, 1999 (Exhibit 13). A claim for payment was filed for the beneficiary for an augmentative communication device (ACD) which was valued at \$4,800.00. The Medicare hearing officer, in a decision dated April 21, 1999, found that reimbursement for the ACD was not reimbursable because "until health care financing administration provides its ruling on the subject, Medicare benefits cannot lawfully be paid for the Lightwriter augmentative communication device... This is true irrespective of what evidence might be presented to the hearing officer concerning this device, because the hearing officer does not have the authority to substitute his or her judgment for that of the health care financing administration." (Exhibit 12)

The appellant filed a timely request for hearing before an Administrative Law Judge on June 17, 1999 (Exhibit 13). A hearing was held on April 6, 2000 via the Iowa Fiberoptic Network with the appellant in Ames and the Administrative Law Judge in West Des Moines, Iowa. Erica Clinton, a student legal intern, appeared for the appellant. The undersigned has carefully considered the evidence, which includes Exhibits 1 through 19.

EXHIBIT

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STATEMENT OF THE ISSUES

The issue in this case is whether payment can be made on behalf of the beneficiary under Part B of Title XVIII of the Social Security Act, as amended, for purchase for a Lightwriter Augmentative Communication Device. The specific issue to be determined is whether this item is excluded from payment under a national coverage decision. The undersigned finds that augmentative communication devices are covered under the Medicare Act and an allowance can be made as a result.

RATIONALE

The amount in controversy is in excess of jurisdictional requirements.

The record indicates that the beneficiary experienced a progression of dysarthria and dysphasia beginning in late 1996. She was diagnosed in April 1997 with progressive bulbar palsy. Her condition resulted in significant decline in speaking intelligibility. The beneficiary's doctor, John McKee, M.D., indicated in a letter dated August 8, 1998, that the beneficiary had amyotrophic lateral sclerosis, a disease which "is progressive and involves the deterioration of the nerves to the voluntary muscles of the body." He noted that she could use her fingers well enough to use an assistive communication device and indicated that such a device would lessen her isolation from friends, family and care givers. Without the device, isolation would worsen her depression. (Exhibit 6)

The Medicare hearing officer, Cynthia Nelms, indicated in her decision that a national coverage decision had been made concerning assisted communication devices, and coverage had been denied as it was determined they were "a convenience item; not primarily medical in nature (section 1861(n) of the Social Security Act." The Health Care Financing Administration has reversed its national coverage decision relied upon by the Medicare hearing officer, and now classifies augmentative communication devices as durable medical equipment (Exhibit 19). Under the facts of this case, it appears that the device in question has a dual purpose, both as medical equipment and as a prosthesis. Its functional use is equivalent to an electronic speaking aid. These devices have long been recognized as prosthetic devices in that they meet the definition of improving the use or functionality of a diseased or malformed body organ and are prescribed by a physician. In the present case, the undersigned finds that the communicative device in question was indeed medically necessary and was used primarily for a medical purpose, rather than for mere comfort or convenience. As such it meets the requirements for coverage as durable medical equipment.

As stated by the beneficiary's treating physician, Dr. McKee, the device was necessary for the beneficiary to communicate with friends, family and caregivers. It was an integral part of her treatment. It also prevented the beneficiary from being extremely isolated, preventing a deepening of her already significant depression. She had lost the ability to orally communicate effectively, but she did retain the cognitive ability to learn and use the device, and used it effectively. It was for use in the beneficiary's home, and allowed her to continue to be treated in that environment.

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The undersigned finds that the purchase of an augmentative communication device for the beneficiary was appropriate, reasonable and medically necessary for her treatment, and was not merely a matter of comfort and convenience. Therefore, the item provided is covered, and the payment requested is allowable under the provisions of Title XVIII of the Social Security Act.

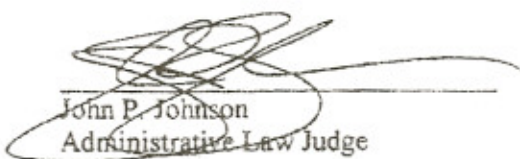
FINDINGS

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

1. The amount in controversy exceeds the jurisdictional requirements of the Act.
2. The augmentative communication device was purchased for the beneficiary, as she had lost the ability to communicate effectively with friends, family and treating sources. The device aided in her treatment and was also helpful in preventing a deepening of her depression.
3. The device provided for the beneficiary was reasonable and necessary for treatment of her illness, and it meets the requirements for coverage as durable medical equipment.
4. Reimbursement for the augmentative communication device purchased for the beneficiary is covered under the Act.

DECISION

It is the decision of the Administrative Law Judge that the augmentative communication device purchased for the beneficiary is covered under the provision of Title XVIII of the Social Security Act.



John P. Johnson
Administrative Law Judge

AUG 24 2000

Date