

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

**DECISION**

**IN THE CASE OF**

**CLAIM FOR**

Estate of Karma B [REDACTED]  
(Appellant)

Supplemental Medical Insurance Benefits  
(Part B)

Karma B [REDACTED] (Deceased)  
(Beneficiary)

519-26-9305 A  
(HICN)

CIGNA HealthCare  
(Carrier/Intermediary/PRO)

999-07-9042  
(Docket Number)

**INTRODUCTION**

This case is before the Administrative Law Judge upon a request for hearing. The appellant in this matter is the beneficiary, Karma B [REDACTED] (deceased) pursuant to 42 CFR 405.720. Inasmuch as a fully favorable decision can be rendered without holding an oral hearing, this decision is based upon the written record alone. The undersigned has carefully considered all of the documents identified in the record.

**ISSUES**

The specific issue is whether the equipment at issue is covered under sections 1861(n) and (s)(6) of the Act and Health Care Financing Administration (HCFA) regulations 42 CFR sections 410.38 and 414.202.

**LAW AND REGULATIONS**

Section 1832 of the Act establishes the scope of the benefits provided under the Medicare Part B supplementary medical insurance (SMI) program. Section 1861 of the Act and HCFA regulation 42 CFR section 410.3 define many of the kinds of medical and other health services which are covered under Medicare, subject to various conditions, limitations, and exclusions.

Pursuant to section 1869(b)(3) of the Act, an Administrative Law Judge may not review certain national coverage determinations made under section 1862(a)(1) with respect to whether a particular type or class of items or services is covered under the Medicare statute. As a result of section 1869(b)(3), HCFA's determinations in the Medicare Coverage Issues Manual concerning the reasonableness and necessity of services under section 1862(a)(1) are not reviewable by an Administrative Law Judge, except to the extent that the specific requirements in the national coverage determination have or have not been met.

Section 1862(a) of the Act states, in pertinent part:

Notwithstanding any other provision of this title, no payment may be made under Part A or Part B for any expenses incurred for items or services--

(1)(A) which . . . are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member . .

Section 1832 of the Act states, in pertinent part:

(a) The benefits provided to an individual by the insurance program established by this part shall consist of--

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical or other health services . . .

Section 1861 of the Act states, in pertinent part:

...  
(s) The term "medical and other health services" means any of the following items or services:

(6) durable medical equipment:

...  
(n) The term "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1819(a)(1)), whether furnished on a rental basis or purchased; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an



individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.

HCFA Regulation 42 CFR section 410.38 provides, in pertinent part:

- (a) Medicare Part B pays for the rental or purchase of durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs, if the equipment is used in the patient's home or in an institution that is used as a home.
- (b) An institution that is used as a home may not be a hospital or a SNF as defined in sections 1861(e)(1) and 1861(j)(1) of the Act, respectively.
- (c) Wheelchairs may include a power-operated vehicle that may be appropriately used as a wheelchair, but only if the vehicle--
  - (1) Is determined to be necessary on the basis of the individual's medical and physical condition; and
  - (2) Meets any safety requirements specified by HCFA; and
- (3) Except as provided in paragraph (c)(2) of this section is ordered in writing by a specialist in physical medicine, orthopedic surgery, neurology, or rheumatology, the written order is furnished to the supplier before the delivery of the vehicle to the beneficiary and the beneficiary requires the vehicle and is capable of using it. [This provision is effective for items furnished beginning 01/06/93.]
- (4) A written prescription from the beneficiary's physician is acceptable for ordering a power-operated vehicle if a specialist in physical medicine, orthopedic surgery, neurology or rheumatology is not reasonably accessible. For example, if travel to the specialist would be more than one day's trip from the beneficiary's home or if the beneficiary's medical condition precluded travel to the nearest available specialist, these circumstances would satisfy the "not reasonably accessible" requirement.

HCFA regulation 42 CFR section 414.202 provides, in pertinent part:

Durable Medical Equipment means equipment, furnished by a supplier or a home health agency that--

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to an individual in the absence of an illness or injury;  
and

(4) Is appropriate for use in the home.

Section 2100 of the Carriers Manual further provides that expenses for the rental or purchase of durable medical equipment are reimbursable if three requirements are met. These requirements are: (1) the equipment meets the definition of durable medical equipment; (2) the equipment is necessary and reasonable for the treatment of the beneficiary's illness or injury or to improve the functioning of a malformed body member; and (3) the equipment is suitable for use in the beneficiary's home.

### DISCUSSION

A claim in the amount of \$4505.00 was submitted to the Medicare contractor by Karma Belnap for Medicare Part B services provided to the beneficiary. After an initial determination, a review by the contractor, and a hearing by a contractor hearing officer, it was determined that no allowance was appropriate.

As a result, the amount still in controversy for this beneficiary is \$3,604.00 ([amount claimed - amount allowed] - unmet deductible) x 80 percent).

### EVALUATION

The evidence establishes that the beneficiary suffered from a progressive neurological condition known as amyotrophic lateral sclerosis (ALS). As a result of this condition, her speech deteriorated to the point that it profoundly limited her ability to communicate even basic needs of daily living to others. Due to her significant loss of speech, her speech pathologist recommended and her doctor ordered a LightWriter augmentative/alternative communication (AAC) device to allow the beneficiary to regain her ability to communicate with caregivers, medical providers, family and friends.

The file describes the LightWriter AAC as a small portable text-to-speech communication aid specially designed to meet the particular needs of people with speech loss and for progressive conditions. Any word typed will be spoken aloud to give a natural form of communication, and allows conversation over the telephone. It is therefore, specifically designed to aid individuals who have a severe speech impairment with the ability to meet their daily functional speaking needs.

The beneficiary's request for reimbursement of for the LightWriter AAC was denied by the carrier on the grounds that the device did not meet the Medicare definition of durable medical equipment in Section 1861(n) of the Social Security Act. However, after careful consideration of the facts in this case it is the opinion of this Administrative Law Judge that the Light Writer AAC device serves a medical purpose and meets the definition of durable medical equipment as outlined in Section 1861(n) of the Social Security Act. The rationale for this decision is based on



Careful review of the regulations with regard to durable medical equipment, review of other similar case determinations by several Administrative Law Judges and a recent National Coverage Determination clarifying and reversing previously established guidelines addressing AACs as "convenience" items found in section 60-9 of the Coverage Issues Manual.

Specifically, the file contains an affidavit from the beneficiary's speech pathologist supporting the position that the AAC serves a reasonable and necessary medical purpose. The affidavit establishes that without the assistance of this device Karma Belnap "has no means of producing intelligible speech and neither sight language nor written language is an effective means of communication for her.... Her lack of speech profoundly affects her daily functioning, limits social contacts and limits her ability to communicate basic needs and wants". In addition to this affidavit, the file contains an August 12, 1999 prescription for the LightWriter AAC device ordered by Karma Belnap's neurologist. Since the beneficiary was unable to communicate effectively without the assistance of a communicative device, her medical condition warrants the use of the AAC and meets the standard of a reasonable and necessary.

In addition to establishing that the AAC is reasonable and necessary the AAC must also meet the definition of durable medical equipment as outlined in CFR 414.202. The written record in this case contains several other fully favorable hearings decisions regarding AAC devices and their clear ability to meet the definition of durable medical equipment. Furthermore, Exhibit P, HCFA Coverage Issuance 69-23, revises the Coverage Issues Manual to include coverage of Augmentative and Alternative Devices as meeting the definition of durable medical equipment effective January 1, 2001. Although this manual issuance does not provide guidance on denials issued prior to this effective date, the fact that HCFA now considers speech generating devices "to fall within the DME benefit category established by Section 1861(n) of the Social Security Act" further supports the decision to overturn the previously denied claim for durable medical equipment.

Accordingly, the undersigned finds that the LightWriter AAC device is reasonable and necessary and meets the definition of durable medical equipment for purposes of payment under the Medicare program.

### FINDINGS

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

1. The amount in controversy is \$3604.00.
2. The following equipment was provided by Augmentative Equipment Systems on August 15, 1999, to the beneficiary: Karma Belnap.
3. The LightWriter - an augmentative communication device meets the definition of durable medical equipment (§ 1861(n) of the Act; 42 CFR § 414.202).

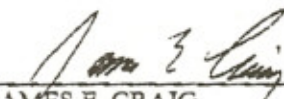
4. The equipment was made to withstand repeated use, was primarily and customarily used to serve a medical purpose, was used in the beneficiary's home, and was generally not useful absent a relevant medical condition (§ 1861(n) of the Act; 42 CFR § 414.202).

5. The equipment was reasonable and necessary for the treatment of an illness or injury or to improve the functioning of a malformed body member (§ 1862(a)(1)(A) of the Act; 42 CFR § 411.15(k)).

6. The equipment at issue is covered under the provisions of section 1861(n) of the Act and HCFA regulations 42 CFR section 414.202.

#### DECISION

It is the decision of the undersigned that the following services, supplies and/or equipment at issue are covered under the provisions of section 1861. Therefore, the contractor is directed to determine the allowable amount for services, supplies and/or equipment and to make appropriate payment under Part B of Title XVIII of the Social Security Act.

  
JAMES E. CRAIG  
Administrative Law Judge

MAR 29 2001

Date