

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

DECISION

IN THE CASE OF

CLAIM FOR

MARTIN B [REDACTED]
(Appellant)

Supplemental Medical Insurance Benefits
(Part B)

MARTIN B [REDACTED]
(Beneficiary)

203-24-7937A
(HICN)

Palmetto GBA, LLC
(Carrier/Intermediary/PRO)

999-07-9279
(Docket Number)

INTRODUCTION & PROCEDURAL HISTORY

This case is before the undersigned Administrative Law Judge on an appeal timely filed by the beneficiary on May 30, 2000. Because the evidence in this case supports a fully favorable decision on the record, no hearing was necessary. The beneficiary and Appellant, Martin Beckner, appeals the decision of the Medicare Hearing Officer (MHO) denying reimbursement for the purchase of an Augmentative and Alternative Communication Device for the period in question of July 24, 1998 to December 3, 1998. The MHO denied this case finding that the device in question did not meet the definition of durable medical equipment, the device did not qualify as a prosthetic device,¹ and it was not reasonable and necessary. The amount identified in controversy is \$1,234.64 (80% of \$1,418.30).

ISSUES

The issue to be determined is whether payment should be made under Part B of Title XVIII of the Social Security Act for the purchase of an Augmentative and Alternative Communication System ("AAC"), an E1399, to the beneficiary for the period in question.

¹ The issue regarding the equipment qualifying as a prosthetic device is not reached in this case as payment is warranted on the issues of durable medical equipment and medical necessity/reasonableness.

CONCLUSIONS

After having fully reviewed the evidence of record, the undersigned concludes that the AAC system purchased by the beneficiary is an item of durable medical equipment that is reasonable and necessary under Medicare law.

EVALUATION OF THE EVIDENCE & THE LAWS

The record contains documentation indicating that the beneficiary purchased a LINK AAC system with accessories totaling \$1,418.30 during the period in question, pursuant to a speech and language evaluation performed by Patricia Ourand, MS, CCC-SLP, and a subsequent prescription from Barbara McDonald, M.D. The beneficiary's speech evaluation demonstrates that he suffered from Primary Lateral Sclerosis (PLS) with a resultant severe expressive communication disorder that was degenerative in nature. The beneficiary reported to Ms. Ourand that he envisioned using the AAC system to address the following communication needs:

- in-person verbal communication with family and medical personnel to enable the proper care of his symptoms and condition, as well as general day-to-day communications; and
- independent, person-to-person verbal communication across phone lines, particularly in the case of a medical emergency.

The record also contains a September 29, 1999 appeal letter from the beneficiary to the Carrier indicating:

The equipment which I have purchased allows me to speak through the electronic voice of the device. It is a key board in which I am able to type the words I need to say and the device enunciates those words. I suffer from Primary Lateral Sclerosis which is a degenerative disease that attacks the nervous system and causes you to lose certain facilities. At my present stage of the disease, I am unable to walk or speak coherently. This device allows me to speak with my doctors, my family and everyday happenings where it is necessary for me to converse with others.

First, the undersigned Administrative Law Judge (ALJ) finds that he retains the jurisdiction to review the beneficiary's appeal on the merits, due to the fact that the National Coverage Decision 60-9 is not binding on the undersigned in this case. In determining whether an item or service is covered under Medicare Part B, an ALJ looks to three sources: Title XVIII of the Social Security Act; regulations promulgated pursuant to the Act; and National Coverage Decisions (NCDs) issued by the Health Care Financing Administration (HCFA)². Only NCDs based upon Section 1862(a)(1) of the Social Security Act³ are binding on ALJs.⁴ Although NCD 60-9 denied payment for AAC devices during the period in question due to the fact that AACs were considered to be "convenience items" and "not primarily medical in nature," it was based on

² HCFA is now known as the Centers for Medicare and Medicaid Services (CMS).

³ 42 U.S.C. Section 1395 x (n).

⁴ See 42 C.F.R. Section 405.860.

Section 1861(n) of the Act, not on Section 1862(a)(1) of the Act.⁵ As such, although NCD 60-9 was binding on the Medicare Carrier, warranting a denial at the lower level, the undersigned is not bound by this limitation and can, therefore, reach the merits of this case.⁶

Second, the AAC system in question constitutes durable medical equipment (DME). In order to constitute DME, an item must have the following characteristics: it is capable of repeated use; it is primarily and customarily used to serve a medical purpose; generally, it is not useful to an individual in the absence of an illness or an injury; and it is appropriate for use in the home.⁷ Here, the LINK system is a small, two-pound, battery-operated AAC device that allows the user to type messages on a keyboard. The messages are "spoken" by the machine using DECTalk speech, allowing the user to engage in a telephone conversation. The AAC device is capable of repeated use, due to the fact that it is rechargeable and is not disposable. The AAC device is primarily and customarily used to serve a medical purpose, as illustrated by the beneficiary's account that he uses it to speak with his doctors, family, and the outside world. Without the AAC system, the beneficiary would be unable to verbally communicate with other people; as such, the AAC device is the only effective treatment for the beneficiary's disease. The AAC system is not useful to someone who is able to speak, as it is a speaking machine. Finally, the AAC is appropriate for use in the beneficiary's home as it is small, battery-operated, and rechargeable. As such, the AAC device is durable medical equipment.

Third, the AAC device is reasonable and necessary for the treatment of the beneficiary's severe communicative impairment. The Medicare Act provides payment for covered "items or services" that are "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."⁸ The Medicare Carriers Manual references necessity as follows: "Equipment is necessary when it can be expected to make a meaningful contribution to the treatment of the patient's illness or injury or to the improvement of his malformed body member."⁹ The Medicare Carriers Manual further defines reasonableness in light of the following factors:

1. Would the expense of the item to the program be clearly disproportionate to the therapeutic benefits which could ordinarily be derived from the use of the equipment?
2. Is the item substantially more costly than a medically appropriate and realistically feasible alternative pattern of care?
3. Does the item serve essentially the same purpose as equipment already available to the beneficiary?¹⁰

Here, the beneficiary's use of the AAC device is necessary because it makes a meaningful contribution to the treatment of his speech language impairment by allowing him to

⁵ See Medicare Coverage Issues Manual (CIM) Section 60-9 (for the NDC regarding AAC devices).

⁶ It is also noted that since the period in question, HCFA issued a Decision Memorandum on April 26, 2000 withdrawing the AAC NCD in question, concluding that AAC devices meet the Medicare definition of durable medical equipment and leaving the issue of coverage up to the regional DMERCs. Moreover, on November 30, 2000, HCFA issued NCD 60-23 expressly indicating that AAC devices are covered as DME.

⁷ 42 CFR Section 414.202.

⁸ 42 U.S.C. Section 1395y(a)(1).

⁹ Medicare Carriers Manual, Section 2100.2.

¹⁰ *Id.*

communicate with others and by preventing a further decline that could result from his lack of communication. Similarly, the LINK device is reasonable under the circumstances because the cost, \$1,134.64, is not disproportionate to the therapeutic benefits the beneficiary receives from being able to communicate his daily needs, as well as his need to communicate during an emergency. Moreover, the LINK device is not more costly than an alternative speech device; in fact, it appears to be less expensive than similar communicative devices such as the Light Writer.¹¹ Finally, there is no evidence indicating that the AAS device in question serves the same purpose as any item already available to the beneficiary. As such, medical necessity and reasonableness have been established in this case.

Accordingly, the undersigned Administrative Law Judge finds that the LINK AAC system meets the requirements of for durable medical equipment and is reasonable and necessary for the treatment of the beneficiary's PLS disease. As a result, Medicare coverage is warranted, and payment should be made to the beneficiary.

FINDINGS OF FACT

1. The AAS device in question (E1399) constitutes durable medical equipment under 42 C.F.R. Section 404.202.
2. The use of the AAS device was reasonable and necessary for the treatment of the beneficiary's Primary Lateral Sclerosis during the period in question.
3. The AAS device in question is covered by Medicare.

DECISION

It is the decision of the undersigned Administrative Law Judge that reimbursement shall be made to the beneficiary for the purchase of an AAS device for the period in question to the extent now authorized for such devices.


PHILIP E. WRIGHT
Administrative Law Judge

November 29, 2001

Date

¹¹ See Appellant's brief at page 19 (indicating that the Light Writer costs \$6,000 more than the LINK).