

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL
Docket Number: M-12-1359

In the case of

Claim for

ATG Connecticut d/b/a
ATG Rehab

(Appellant)

Supplementary Medical
Insurance Benefits (Part B)

(Beneficiary)

(HIC Number)

NHIC, Corp.

(Contractor)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated January 23, 2012, which concerned Medicare coverage and reimbursement for a power articulating foot platform furnished to the beneficiary as part of a power wheelchair on May 28, 2010, and billed under a HCPCS code¹ for miscellaneous wheelchair accessories, namely HCPCS code K0108.² The ALJ determined that Medicare had correctly paid for the item according to the fee schedule for HCPCS code E1010 ("power leg elevation system, including leg rest, pair), and was not required to make any additional payment for the item. The appellant supplier has asked the Medicare Appeals Council to review this action.

¹ The Centers for Medicare & Medicaid Services (CMS) has developed the Healthcare Common Procedure Coding System (HCPCS) to establish "uniform national definitions of services, codes to represent services, and payment modifiers to the codes." 42 C.F.R. § 414.40(a). In order to receive Medicare reimbursement, suppliers utilize the HCPCS in filing claims for services.

² Descriptions of HCPCS codes can be found at <http://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html>. HCPCS code K0108 identifies a "wheelchair component or accessory, not otherwise specified."

The Council reviews the ALJ's decision *de novo*. 42 C.F.R. § 405.1108(a). The Council will limit its review of the ALJ's action to the exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c). The Council has entered the appellant's request for review into the record as Exhibit (Exh.) MAC-1.

For the reasons set forth below, the Council adopts the ALJ's decision.

BACKGROUND

The beneficiary, forty-seven years old at the time, had been diagnosed with amyotrophic lateral sclerosis (ALS). Exh. 1 at 14-16. He had a detailed face-to-face examination for purposes of obtaining a power wheelchair. *Id.* He also had a functional mobility evaluation by a physical therapist (*id.* at 9-12) and a home accessibility evaluation (*id.* at 13). The appellant supplier requested and received an Advance Determination of Medicare Coverage (ADMC) from the DME MAC for the wheelchair and several of its accessories, including a power articulating foot platform. Exh. 3 at 6-7. The appellant supplied the wheelchair and accessories on May 28, 2010. Exh. 2.

Medicare paid the appellant for the wheelchair on February 9, 2011. Exh. 2. That payment included only \$828.10 for the power articulating foot platform. *Id.* The appellant filed a request for redetermination, contending that the power articulating foot platform had been paid incorrectly, as comparable to articulating leg rests coded E1010, when the two types of items were not comparable. Exh. 3 at 5. On redetermination, the contractor upheld its initial determination, on the ground that the power articulating foot platform (code E0108) and the articulating leg rests (E1010) were in fact similar. *See id.* at 1-2, *also citing* LCD L11473.

On reconsideration, the Qualified Independent Contractor (QIC) declined the appellant's request for an increase in reimbursement for the power articulating foot platform, on the ground that the records received did not indicate why the power articulating foot platform (K0108) was required, and why a power leg elevation system (E1010) would not have met the beneficiary's needs. Exh. 4 at 1-4. The QIC also stated that the appellant is responsible for the non-covered costs. *Id.*

After a hearing on January 10, 2012, the ALJ decided that the power articulating foot platform (K0108) item had been correctly paid as HCPCS code E1010, and further payment would not be made. Dec. at 3-5. The ALJ pointed out that CMS manuals provide that HCPCS code K0108 is "carrier priced (e.g., not otherwise classified, individual determination, carrier discretion, gap-filled amounts)." HCPCS and CPT CodeBook (2011). CMS' Medicare Claims Processing Manual (MCPM) states that CMS identifies which codes require gap-filling by the Medicare contractor or DME MAC. Pub. 100-04, MCPM, Chapter 23, § 60. Then Medicare contractors and DME MACs must gap-fill the DMEPOS fee schedule for those items and services for which charge data were unavailable during the previous database period, by using the fee schedule amounts for comparable equipment, using properly calculated fee schedule amounts from a neighboring carrier, or using supplier price lists with prices in effect during the data base year. *Id.*, § 60.3.

In explaining how those policies and procedures were followed in this case, the ALJ stated:

Documentation in this case indicates that the "Power Articulating Foot Platform" was properly coded as HCPCS code K0108, and that HCPCS code K0108, "wheelchair component or accessory, not otherwise specified," does not have a specific fee schedule. A detailed search of neighboring carriers and DME MAC fee schedules does not indicate that a fee schedule has been established for power articulating foot platforms; nor did the appellant present evidence supporting why a power articulating foot platform wheelchair accessory should be paid off fee schedule at the rate of 80% MSRP [manufacturer suggested retail price]. No supplier price lists with prices in effect during the data base year, or adjusted by the appropriate deflationary factors, were submitted to corroborate appellant's arguments.

Dec. at 4. Therefore, as the ALJ explained, an existing fee schedule for comparable equipment (E1010) was used. The ALJ explained the determination that the equipment was comparable as follows:

Article A19829 . . . provides that "[a] power leg elevation feature (E1010) involves a dedicated motor and related electronics with or without variable speed programmability which allows the leg rest to be raised and lowered

independently of the recline and/or tilt of the seating system. It includes a switch control which may or may not be integrated with the power tilt and/or recline control(s). It includes either articulating or non-articulating leg rests." NHIC, Corp. Article A19829: Wheelchair Options/Accessories (Article A19829). The record and testimony here do not sufficiently support why the "Power Articulating Foot Platform" here, which also contains dedicated motor and related electronics allowing the legs to be raised and lowered independently of the recline and/or tilt of the seating system, would not be considered a type of power leg elevation feature functionally comparable to the power leg elevation feature described for HCPCS code E1010.

Dec. at 4. Based on this detailed explanation of how the fee was set for the power articulating foot platform (K0108), the ALJ declined to alter the amount of Medicare reimbursement already paid. *Id.* at 3-5.

Now, in its request for Council review, the appellant contends that the amount of payment for the power articulating foot platform is not appropriate in light of the fact that the carrier issued an Advance Determination of Medicare Coverage (ADMC) for the wheelchair, which included the power articulating foot platform among the accessories documented as medically necessary. The appellant also contends that the E1010 code is not comparable to the power articulating foot platform, for three reasons. First, the power articulating foot platform has the ability to maintain the relationship of the patient to the wheelchair while raising the patient's legs, an ability lacking on power elevating leg rests. Second, the power articulating foot platform is center mounted, maintaining the wheelchair's turning radius. Third, the Pricing, Data Analysis and Coding contractor (PDAC) decided that these two items were not the same when they assigned the K0108 code despite the fact that the E1010 code existed. Lastly, the appellant asserts that the only appropriate approach to use here would be to use a percentage of MSRP. Exh. MAC-1.

DISCUSSION

As noted above, the ALJ provided a detailed explanation for why the power articulating foot platform had been appropriately paid as comparable to code E1010 (power elevating leg rests). That detailed explanation will not be repeated here. However, in

response to the contentions in the appellant's request for review, the Council notes as follows. The fact that the carrier issued an Advance Determination of Medicare Coverage (ADMC) for the power wheelchair and a number of its accessories means that the items met medical necessity requirements. Exh. 3 at 6. The issuance of an ADMC does not commit the carrier, or Medicare, to a particular amount of payment for each of those items. In fact, as the ADMC itself states, "An affirmative ADMC decision *does not extend to the price that Medicare will pay for the item.*" *Id.* (emphasis added). See also Pub. 100-08, Medicare Program Integrity Manual (MPIM), Chapter 5, § 5.16.4.

The appellant's contention that the power articulating foot platform is different in some respects (albeit similar in other respects) from the power elevation leg feature (i.e., it has a smaller turning radius, and it "maintains the patient's relationship to the wheelchair") does not mean that the DME MAC or Medicare contractor cannot, within its discretion, treat the two as comparable for purposes of gap-filling the DMEPOS fee schedule. See Pub. 100-04, MCPM, Chapter 23, § 60.3. It is the contractor's responsibility to determine whether an item is comparable to another item, and it is within the contractor's discretion to do so. *Id.*, § 80.7.

The appellant has included a document from the Medicare Pricing, Data Analysis and Coding (PDAC) contractor in the record. Exh. 5 at 10-11. This document lists the HCPCS code of K0108 for the "Tru-Balance 2 Power Articulating Foot Platform." *Id.* However, the document also states that the approval of a HCPCS code should in no way be construed as an approval or endorsement by Medicare, *nor does it imply or guarantee reimbursement.* Therefore, the Council concludes that the assignment of the HCPCS code K0108 to this item cannot be cited as a basis for overriding the contractor's authority to determine its pricing in accordance with the established Medicare policies and procedures explained above.

Nevertheless, the appellant also contends that the only appropriate way to set a Medicare reimbursement amount for the power articulating foot platform would be to reimburse it as a percentage (75% or 80%) of the manufacturer's suggested retail price (MSRP). Exh. MAC-1. However, there are at least two problems with this approach. First, it ignores the authority of the DME MACs and Medicare contractors to choose among the methodologies for gap-filling the fee schedule for those items without charge data. See Pub. 100-04, MCPM, Chapter 23, § 60.3.

Second, as the ALJ explained, the appellant supplier here did not present and the record does not contain any supplier price lists with prices in effect during the data base year, or adjusted by the appropriate deflationary factors, to corroborate or provide evidentiary support for this contention. Dec. at 4.

The Medicare Appeals Council adopts the ALJ's decision, denying further reimbursement for the power articulating foot platform (K0108) furnished to the beneficiary as part of a power wheelchair on May 28, 2010.

MEDICARE APPEALS COUNCIL

/s/ Stanley I. Osborne, Jr.
Administrative Appeals Judge

Date: December 12, 2012