

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of

Claim for

A.F.

Supplementary Medical
Insurance Benefits (Part B)

(Appellant)

(Beneficiary)

(HIC Number)

NHIC

(Contractor)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated July 23, 2009, which concerned an oral appliance (HCPCS code E0486) furnished on February 18, 2008.¹ The ALJ determined that no payment may be made for the device to the supplier because the supplier was not enrolled in the Medicare program. The appellant has asked the Medicare Appeals Council to review this action.

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). As set forth below, the Council modifies the ALJ's decision.

The Council has carefully considered the record before the ALJ and the appellant's request for review with attachments, which has been entered into the record as Exhibit (Exh.) MAC-1. The Council concludes that no payment may be made for the oral appliance, but modifies the reason for denial.

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).

DISCUSSION

The beneficiary has obstructive sleep apnea. He is unable to tolerate a CPAP machine. The oral appliance is furnished by a prosthodontist and custom molded to maintain an open airway. Medicare previously paid for an oral appliance in April 2007. Exh. MAC-1.

Medicare is a defined benefits program. As pertinent herein, no payment may be made for an item or service under Part B Supplementary Medical Insurance unless the item or service is included within the definition of "medical or other health service" in section 1861(s) of the Social Security Act (Act). The oral appliance at issue has been classified by Medicare in the HCPCS as an item of inexpensive or routinely purchased durable medical equipment, which is a covered "medical or other health service". MLN Matters Number: MM4194, effective January 3, 2006. The oral appliance also appears to meet the definition of a prosthetic device in 42 C.F.R. § 414.202. The Council does not doubt that the oral appliance is medically necessary for the beneficiary.

The ALJ found that no payment may be made for the device to the supplier because the supplier was not enrolled in the Medicare program, apparently based on guidance contained in the Medicare Program Integrity Manual, Pub. 100-08, chapter 10, section 1. That manual section does not apply to this case. The supplier did not accept assignment, and the beneficiary paid out-of-pocket and then submitted a claim for direct payment. Exh. 1. Any Medicare payment would therefore be made to the beneficiary and not to the supplier.

However, Medicare also has a policy that all items of durable medical equipment or prosthetics are presumed to have a reasonable useful lifetime of at least five years, unless program instructions specify another reasonable useful lifetime. 42 C.F.R. § 414.210(f); Medicare Benefit Policy Manual, Pub 100-02, chapter 15, section 110.2.C. Payment may be made for replacement equipment after the reasonable useful lifetime. If the item wears out before that time, no payment may be made for replacement durable medical equipment or prosthetic devices (other than artificial limbs as provided in section 1834(h)(1)(G) of the Act). There is no program instruction that specifies the reasonable useful lifetime of the oral appliance. Therefore, no Medicare payment may be made for a replacement

furnished within five years of the previous covered oral appliance.

DECISION

It is the decision of the Medicare Appeals Council that no Medicare payment may be made for a replacement oral appliance furnished within five years of the previous covered oral appliance. The ALJ's decision is modified accordingly.

MEDICARE APPEALS COUNCIL

/s/ Clausen J. Krzywicki
Administrative Appeals Judge

/s/ M. Susan Wiley
Administrative Appeals Judge

Date: November 12, 2009