

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL
Docket Number: M-10-1008

In the case of

Affordable Home Health Care
(Appellant)

(Beneficiary)

CIGNA Government Services -
Jurisdiction C DME MAC
(Contractor)

Claim for

Supplementary Medical
Insurance Benefits (Part B)

(HIC Number)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated June 9, 2009, which concerned a replacement power wheelchair and battery furnished to the beneficiary on October 7, 2008. The ALJ determined the items were not covered by Medicare on the grounds that there was insufficient documentation to establish that the beneficiary needed a replacement wheelchair. The appellant has asked the Medicare Appeals Council (Council) to review this action.

The appellant supplier of durable medical equipment (DME) filed its request for review with the Council on August 12, 2009. The Council subsequently sent interim correspondence, dated October 30, 2009, to the appellant concerning notice of the appeal to parties and the submission of new evidence. The appellant responded via facsimile and regular mail received by the Council on November 5, 2009, and November 13, 2009, respectively. The Council then remanded the case to the ALJ on March 31, 2010, due to the Council having received an incomplete administrative record. The ALJ responded to the Council's remand order in a "Response to Notice of Remand," dated April 7, 2010. The case is now properly before the Council for adjudication.

In his response to the Council's interim correspondence, the appellant clarified that none of the documentation submitted with his request for review constituted new evidence, and that all of the documents had already been submitted to previous adjudicators. For these reasons, the Council excludes the documentation from the record as duplicative.¹

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 reverses the ALJ's decision and finds that the replacement power wheelchair and battery at issue are covered by Medicare.

EVIDENCE OF RECORD AND BACKGROUND

This case addresses Medicare coverage for equipment which the beneficiary purchased on October 7, 2008 to replace equipment destroyed in a residential fire.

The record contains an "Incident Worksheet," dated August 2, 2008, for property owned by J*** and K*** M*** in Marmaduke, Arkansas. Exh. MAC-1, at 4. The worksheet bears the handwritten caption "M***, J*** Fire Report;" gives property address, description, and value; and lists responders and times of arrival and departure. *Id.* Medicare printout sheets indicate that K*** M*** is the representative payee for beneficiary J*** M*** and that J*** M*** lived at her address, as listed on the Incident Worksheet. Exh. 1, at 22.

A S*** Insurance Companies Fire Insurance Policy established a \$12,500 limit of liability for personal property at the residence of J*** and K*** M***, during policy period April 4, 2008, through April 4, 2009. Exh. 1, at 20. The insurance agent is listed as "B*** H***, Inc." *Id.* The Claims Department of S*** Insurance Companies wrote the appellant supplier on September 8, 2008, stating that insureds J*** and

¹ The Council notes that the record contains several documents behind "Attachment 1," an orange sheet behind the ALJ decision which states that "possible new evidence" is excluded from evidence as good cause not established. The ALJ made no findings in his decision concerning the exclusion of these documents. The Council finds that these documents generally duplicate those already in the record and need not address their evidentiary status for purposes of this decision.

K*** M*** "suffered a total fire loss to their dwelling and contents" on loss date August 2, 2008, and that limits on dwelling and contents had been paid. Exh. 1, at 18. A handwritten letter, also dated September 8, 2008, and signed by B*** H*** of "S*** Insurance," states that "the personal property of \$12,500.00 covered the property belonging to J*** & K*** M***. It did not cover the loss of property to J*** M***." Exh. 1, at 19. The record also contains an undated statement, signed by J*** M***, which states: "My power wheelchair, hospital bed, patient lift and nebulizer machine were complete destroyed in the house fire on August 02, 2008." Exh. MAC-1, at 5.

A physician's order, dated October 6, 2008, prescribes a "powerchair (PMD)" for the 68 year old beneficiary. Exh. 2 at 39. The order lists beneficiary diagnoses with ICD-9-CM codes 436 (acute, but ill-defined, cerebrovascular disease); 290.40 (vascular dementia, uncomplicated); 728.87 (muscle weakness, generalized); and 438.20 (late effect of cerebrovascular disease, hemiplegia affecting unspecified side). *Id.*; see HCPCS Codebook - 2008. An office visit note, also dated October 6, 2008, states the beneficiary cannot use a walker or cane, cannot bear weight due to a previous CVA (cerebrovascular accident), has difficulty with ADLs (activities of daily living), a scooter is not suited for the home, and the beneficiary "is physically and mentally able to use a power chair." *Id.* at 28.

The appellant wrote the physician on October 6, 2008, stating that it would provide a "Pronto M41" Invacare motorized wheelchair and battery to the beneficiary. Exh. 1, at 17. The appellant then submitted a Medicare claim for a power wheelchair (HCPCS code K0823) and accessories (HCPCS code E2365), with date of service October 7, 2008. Exh. 1, at 14.² The form CMS-1500 contains the entry "destroyed in house fire." *Id.*³

The Durable Medical Equipment Medicare Administrative Contractor (DME MAC) denied the claim initially and on redetermination.

² The Centers for Medicare & Medicaid Services (CMS) 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). HCPCS code K0823 is a "Power Wheelchair, Group 2 Standard, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds." HCPCS Codebook - 2008. HCPCS code E2365 is a "Power Wheelchair Accessory, U-1 Sealed Lead Acid Battery" *Id.*

³ The Council notes that the charges on appellant's letter to the physician are different from those on its Medicare claim. *Compare* Exh. 1, at 14, 17.

Exh. 1, at 8-12, 15. In the redetermination, the DME MAC stated that Medicare had previously allowed coverage for "same or similar equipment." *Id.* at 9, citing DME MAC Jurisdiction C Supplier Manual, Ch. 3. The DME MAC found nothing to support that prior equipment had been lost in a fire. *Id.* The DME MAC affirmed the coverage denial and found the appellant liable for non-covered charges. *Id.*

On December 31, 2008, the appellant filed a request for reconsideration. Exh. 1, at 7. The appellant stated the reason for appeal as, "Denied for same/similar. Previous w/c was destroyed in fire. No homeowners to cover. Letter from ins. and fire report attached. Please reprocess for payment." *Id.* On March 5, 2009, the Qualified Independent Contractor (QIC) issued an unfavorable reconsideration decision. Exh. 1, at 4-5.⁴ The QIC determined that "statements from the insurance company stated due to a loss of dwelling and contents, a claim was paid for J*** and K*** M***, but not J*** M***. The information submitted did not support the replacement for this beneficiary. Replacement of durable medical equipment is allowed when the reason is given and supported by a new prescription, Certificate of Medical Necessity (CMN), and police/fire report." *Id.* at 4B. The QIC pointed out that a new physician order and/or CMN (if required) is necessary to "reaffirm the medical necessity of the item." *Id.* The QIC also stated that the reason for replacement must be supported by proper documentation. *Id.* The QIC found that Medicare did not cover the power wheelchair and battery and that the appellant was liable for non-covered charges. *Id.*

The ALJ conducted an on-the record review. Exh. 1, at 2. The ALJ stated that the "beneficiary had previously received a wheelchair," and that "[a] claim was put in for a second wheelchair because the Appellant claimed the beneficiary first wheelchair [sic] was destroyed in a fire." Dec. at 6. The ALJ noted a "letter in the file stating that the property of the beneficiary was not covered under the insurance policy," but then stated that "the documentation submitted is insufficient to meet the documentation requirements in the pertinent LCD." *Id.* The ALJ also found that "[t]here is no indication that the beneficiary needs a replacement." *Id.* The ALJ concluded that the power wheelchair and battery provided were "not medically reasonable and necessary." *Id.*

⁴ The QIC issued the reconsideration decision on two-sided paper. Citations to the back of a specific page is designated with a "B."

APPLICABLE LEGAL AUTHORITY

CMS states that, under certain conditions, “[r]eplacement of equipment which the beneficiary owns or is purchasing is covered in cases of loss, or irreparable damage or wear.” Medicare Claims Processing Manual (MCPM)(Pub. 100-04) Ch. 20, § 50.⁵ The DME MAC explains:

Replacement refers to the provision of an *identical or nearly identical item*. Equipment which the beneficiary owns or is a capped rental item may be replaced in cases of loss or irreparable damage. Irreparable damage refers to a specific accident or to a natural disaster (e.g., fire, flood, etc.)

DME MAC Jurisdiction C Supplier Manual, Ch. 5, at 12 (emphasis supplied).

“Replacement may be reimbursed when a new physician order and/or new CMN, when required, is needed to reaffirm the medical necessity of the item.” DME MAC Jurisdiction C Supplier Manual, Ch. 5, at 13.⁶ “A new physician’s order is required before replacing lost, stolen or irreparably damaged items to reaffirm the medical necessity of the item. Proof of loss or damage through documentation such as a police report, picture, or corroborating statement should be submitted with the claim.” *Id.*, Ch. 3, at 8.

DISCUSSION

In his June 9, 2009 decision, the ALJ found that the documentation in the record is insufficient to meet the documentation requirements of the local coverage determination or to establish that the beneficiary needs a replacement power wheelchair. In its request for review, the appellant argued that many of the documentation requirements for power wheelchairs and accessories do not apply to equipment which is replacement equipment for damaged or destroyed items. The Council agrees with the appellant.

⁵ Manuals issued by CMS can be found at <http://www.cms.hhs.gov/manuals>.

⁶ The “face to face examination” requirement for power mobility devices (PMDs) does not apply to replacement PMDs, since the “replacement PMD would be the same device as previously ordered.” Medicare Program Integrity Manual (MPIM)(Pub. 100-08) Ch. 5, § 5.9.2.

The record establishes that a fire occurred at the beneficiary's residence on August 2, 2008. The evidence further indicates that the beneficiary's previous power wheelchair was destroyed in that fire, and that the previous wheelchair was not covered under the homeowners' insurance policy. The record contains a prescription and certificate of medical necessity for a replacement wheelchair and battery, which establishes that a power wheelchair remains medically necessary for the beneficiary. The Council finds that the power wheelchair and battery provided to the beneficiary on October 7, 2008 are thus covered by Medicare.

However, as noted, Medicare covers a replacement power wheelchair and accessories to the extent that they are "same or similar" or "identical" to equipment irreparably damaged. DME MAC Jurisdiction C Suppler Manual, Ch. 5, at 12. Medicare will not pay for upgraded equipment unless a beneficiary demonstrates, through a new face-to-face examination and home evaluation, that his medical needs have changed since the previous equipment was furnished and that such needs are supported in the medical records and qualify him for different equipment.

The Medicare print-outs in the record do not reflect the type or value of equipment previously provided to the beneficiary. Exh. 1, at 21-37. The Council finds that Medicare covers the instant claim, but only to the extent that the power wheelchair and battery furnished to the beneficiary on October 7, 2008 replace "same or similar" or "identical" equipment previously furnished to the beneficiary. The appellant is financially responsible for any non-covered charges (i.e., upgraded or luxury features which are not the same or similar to those of the previous power wheelchair and battery.)

CONCLUSION

The power wheelchair and accessories provided to the beneficiary on October 7, 2008, are covered by Medicare as "same or similar" or "identical" replacement equipment. The ALJ decision is

reversed. The DME MAC shall effectuate this decision consistent with the above analysis.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

/s/ M. Susan Wiley
Administrative Appeals Judge

Date: June 22, 2010