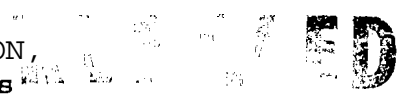


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SOCIAL SECURITY ADMINISTRATION,
Office of Hearings and Appeals



DEC 4 1996

DECISION

IN THE CASE OF

CLAIM FOR

Paula P
(Appellant)

Hospital Insurance Benefits
(Home Health Care)

(Beneficiary)

(HICN)

Blue Cross of California
(Intermediary/PRO/HMO/CMP)

STATEMENT OF THE CASE

This case is before me on a request for hearing filed by the beneficiary, who is dissatisfied with the prior determination finding her ineligible for Medicare coverage of home health care services under Title XVIII of the Social Security Act. The applicable regulations are set forth at 42 CFR 409.40, et. seq.

PROCEDURAL HISTORY

In a notice dated June 3, 1996, the beneficiary was sent a notice from Blue Cross of California, a Federal Medicare Intermediary. The notice stated that services she received from Mt. Diablo Hospital Medical Center Home Health Agency during the period of January 1, 1996 through January 31, 1996 were not covered by Medicare. The beneficiary was not liable for the charges because it was determined that she did not know that the services would not be paid for. However, she was put on notice that she would be liable for such services in the future, if they were excluded from payment for the same reasons.

The beneficiary filed a request for reconsideration on July 29, 1996. On September 9, 1996, the intermediary affirmed the prior determination. The services were again determined to be not covered under Sections 1814(a)(2)(C) and 1861(m) of the Social Security Act.

A timely request for hearing was filed on October 9, 1996 by the beneficiary's authorized representative, Evelyn Rinzler. Ms. Rinzler is a paralegal affiliated with the Contra Costa Legal Services Foundation. She requested an expedited hearing.

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For reasons summarized below, I find that a decision fully favorable to the beneficiary may be made without an oral hearing in this matter (20 CFR 404.948(a)).

Notice of this decision is being sent to the provider, Mt. Diablo Hospital Medical Center HHA, who has been made a party. If the provider is dissatisfied with this decision, and so advises me within twenty days of the date of this decision, I will re-open the case for an oral hearing at which representatives of all parties will have the right to testify.

LAW AND REGULATIONS

Home health services are furnished to the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program. These services are generally furnished by a Home Health Agency (HHA). They are usually provided on a visiting basis in the beneficiary's home and include such items as nursing care; physical, occupational, or speech therapy; medical social services; home health aide services; and medical supplies and durable medical equipment.

In order for any home health services to be covered under Medicare, specific requirements contained in the Social Security Act must be met. Section 1814(a)(2)(C) and 1835(a)(2)(A) of the Act provide requirements for coverage under Part A and Part B, respectively. Both sections require that a physician certify that the beneficiary is "confined to the home." (see also, regulations at 42 CFR 409.42)

"Confined to the home" is defined at Sections 1814(a) and 1835(a) as follows:

". . . an individual shall be considered to be "confined to his home" if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered "confined to his home", the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and

taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment."

The Home Health Agency Manual (HCFA Publication 11) states, at section 204.1.A:

"Patient Confined to The Home . . . Absences attributable to the need to receive medical treatment include attendance at adult day centers to receive medical care . . . "

EVALUATION OF THE EVIDENCE

The beneficiary is a 47 year old woman who was diagnosed with multiple sclerosis in 1978. She lives with her mother, who is her primary caregiver.. She is dependent on a wheelchair and requires assistance for virtually all daily activities.

At her own expense, the beneficiary has been a participant at the Adult Day Health program at Mt. Diablo Rehabilitation Center on and off since 1983. She was readmitted to the program for the third time on July 18, 1994. Records from the November 1995 quarterly review and the January 1996 Discharge Summary show that she received physical and occupational therapy, as well as personal care assistance and therapeutic recreation at the ADHC program. Her physical therapy included a maintenance program, three times per week for 30 minutes, approved by a physical therapist, led by a rehabilitation aide, and supervised by a physical therapist, occupational therapist, or registered nurse. It also included active assistive exercise of the upper extremities, once a week. Her occupational therapy included range of motion work in a small group, once a week for 30 minutes. Nursing services included: daily observation and monitoring of her catheter; monitoring of her medication regimen including side effects of psychotropic therapy; administration of medication for pain (Tylenol), as authorized by her physician; blood pressure monitoring; and weight loss assistance. Other services included case management, support group, socialization, and respite for family.

The beneficiary also receives home health services from Mt. Diablo Hospital Medical Center Home Health Agency. The question before me is whether the beneficiary's receipt of ADHC services

rendered her not "confined to the home" and therefore ineligible for Medicare coverage of her home health services.

Evidently, the decision by the Medicare intermediary to disallow coverage of the beneficiary's home health care services was prompted by a home visit by Marie Thompson, Director of Nursing, and Clinical Team Manager Emily Lotz, both affiliated with the Home Health Agency. They told Paula P. and her mother (Mrs.

5 that leaving home regularly three times per week, even though difficult for the beneficiary, negated her home bound status. According to Nurse Thompson's notes, the beneficiary and her mother expressed the view that Paula P. needed the respite provided by ADHC and that Paula P. needed the socialization. It was decided "though grudgingly" that Ms.

ADHC would be discontinued, in order to allow her to retain "the much needed services of home care." The beneficiary's home health services were simultaneously reduced from 7 times per week to 4 times per week.

Nurse Thompson subsequently called the beneficiary's physician, Dr. Stephens, who "confirmed" that ADHC was respite for 80 year old mother and socialization for Paula. Although her notes indicate that "Dr. Stephens agrees with the change in care plan," it actually appears that it was the reduction of home health services from 7 to 4 times per week that he agreed with, rather than the discontinuance of ADHC for his patient. Regarding the ADHC, the nurse's notes merely state that "Dr. Stephens stated he was unaware of ADH regulation and its implications in home bound status."

On July 20, 1996, Dr. Stephens wrote a letter to the beneficiary's representative stating:

I have been asked by Paula P. to give you a letter of medical necessity for her to continue in the ADH program. Since this program was terminated, she has undergone significant decline with reduction of upper extremity dexterity and reduced ability to perform necessary activities of daily living. She has also become increasingly agitated and depressed secondary to her increasing disability. I believe this program is medically necessary to maintain her current physical status and level of function. Without such ongoing therapy, it is likely she will continue to deteriorate and be at risk for further health problems, such as deep venous thrombosis and infection."

~~Ma. Plumb~~
555-76-1508

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I do not doubt that the beneficiary's participation in Adult Day Health Care three times per week provides her 80 year old mother, who at other times cares for her, with some respite. Nor do I doubt that the environment at Mt. Diablo Rehabilitation Center provides some socialization for the beneficiary, who is otherwise isolated in her home. However, the fact that these side benefits are received does not change the fact that the beneficiary receives medical treatment and medical care at the ADHC program. The records indicate that the ADHC program includes physical therapy, occupational therapy, and nursing services. Indeed, the beneficiary's physician has reported that it is Ma. Plumb's medical condition that has deteriorated without the ADHC services and is placed at further risk by her going without ADHC participation.

The Social Security Act clearly states that "an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device. . . such as a wheelchair" (Sections 1814(a) and 1835(a)). This describes the claimant.

The Act further states that "an individual does not have to be bedridden to be considered 'confined to his home.' (Sections 1814(a) and 1835(a)). The Act states that, in order to be considered 'confined to the home,' an individual's condition "should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment" (emphasis added) .

In this case, I am persuaded by the evidence before me that, as a result of multiple sclerosis, the beneficiary has a normal inability to leave home. I find that leaving home requires a considerable and taxing effort, as noted by Nurse Thompson. Finally, based on the ADHC treatment records, as well as the written statement from Dr. Stephens, I find that the beneficiary's absences from home in order to attend ADHC are attributable to the need to receive medical treatment.

I therefore conclude that the beneficiary's participation in ADHC does not change her status as "confined to the home" within the meaning of the Social Security Act. Indeed, I find her situation to fit squarely within the example set forth in the HCFA Home Health Agency Manual cited above.

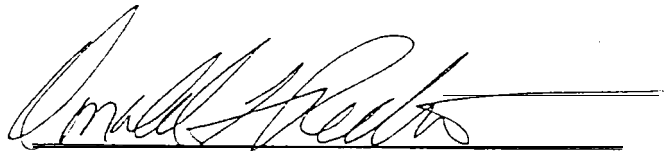
FINDINGS

Based on the entire record, I find:

1. As a result of multiple sclerosis, the beneficiary is "confined to her home," within the meaning of the Social Security Act and Health Care Financing Administration regulations.
2. Home Health services provided to the beneficiary during the month of January 1996 by Mt. Diablo Hospital Medical Center Home Health Agency are covered services under the Medicare program.

DECISION

Medicare Part A shall cover the home health care services provided to the claimant by Mt. Diablo Hospital Medical Center Home Health Agency during the period of January 1, 1996 through January 31, 1996.



DONALD F. RECTOR
Administrative Law Judge

NOV 2 1996

Date