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SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

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DECISION

NOV 23 1996

IN THE CASE OF

CLAIM FOR

LAUREN R. [REDACTED]
(Appellant)

Hospital ASSOCIATED HOSPITAL SERVICE OF MAINE, INC.
Insurance Benefits
(Home Health Services)

LAUREN R. [REDACTED]
(Beneficiary)

[REDACTED]
(HICN)

ASSOCIATED HOSPITAL SERVICE OF MAINE
(Intermediary/PRO/HMO/CMP)

This case is before the undersigned Administrative Law Judge upon a request for hearing filed on July 17, 1995 by the beneficiary (Exhibit 5). However, no hearing was held in this matter because Edward M. Dale, Esq., of Elder Law and Legal Assistance to Medicare Patients, on February 21, 1996, submitted a legal memorandum in lieu thereof (Exhibit 8).

The issue is whether the appellant required and received a covered level of home health services during the period from November 1, 1994 through November 30, 1994. If the care is found to be noncovered, it must be determined whether the appellant and/or the provider knew or could reasonably be expected to know that the services the appellant received during the period in question would not be covered by the Medicare program. Pursuant to the following discussion, the services in question are entitled to Medicare coverage.

On February 9, 1995, initially, the Fiscal Intermediary, Associated Hospital Services of Maine, issued an initial determination denying Medicare coverage for 23 skilled nursing visits, and \$1,098.07 in medical supplies, all of which were provided to the appellant by Visiting Nurse and Community Health of Eastern Connecticut from November 1, 1994 through November 30, 1994. The denial of Medicare coverage was based on a determination that the services did not meet the Medicare intermittency criteria. Medicare paid the provider for the cost of the services. Because of a special provision in the Medicare law, it was determined that neither the appellant nor the provider knew or had reason to know that the services would be denied Medicare coverage (Exhibit 2).

On May 10, 1995, on reconsideration, the Fiscal Intermediary affirmed the initial denial of Medicare coverage for the 23 skilled nursing visits and \$1,098.07 in medical supplies. The Fiscal Intermediary concluded that there was not date or time-frame given when skilled services would be rendered less than daily (five times a week). Thus, it was determined that the Medicare criteria for intermittency was not met. The Fiscal Intermediary stated that neither the appellant, nor the provider, Visiting Nurse and Community Health of Eastern Connecticut, knew or could reasonably have been expected to know that the noncovered services would not be allowed. Medicare was found to be liable for the cost of the noncovered services because Visiting Nurse and Community health of Eastern Connecticut had a favorable Waiver status (Exhibit 4).

Mr. Dale, in his February 21, 1996 memorandum, states that the appellant, who suffered a pulmonary embolism, among other conditions, began to receive daily nursing services from Visiting Nurse and Community Health of Eastern Connecticut in September 1994. He continued to receive daily nursing care through February 17, 1995. The Fiscal Intermediary denied coverage only at to a 30-day period from November 1, 1994 through November 30, 1994 during which time the beneficiary received 23 skilled nursing visits. The Fiscal Intermediary awarded Medicare coverage for the other five months and offered no explanation for the inconsistency (Exhibit 8).

Mr. Dale argues that Medicare law provides for home health care coverage for those requiring daily part-time nursing services even if there is no predictable end date for the need for such services. He states that both the Medicare law and regulations provide that home care benefits are available to those who require "intermittent skilled nursing care" (42 USC 1395d(a)(3), 42 CFR 409.42(c)(1)). Mr. Dale states that both the Medicare statute and regulations provide that Medicare home health care benefits include skilled nursing on a "part-time or intermittent basis." (42 CFR 409.44(b)(2)). Thus, it is argued Congress and the Secretary intended that skilled nursing care should be covered in the home care setting so long as the care is being provided on less than a full-time or 24 hours per day basis.

Mr. Dale argues there is nothing in the Medicare statute or regulations that restricts Medicare coverage based on the lack of prognostication as to the expected duration of care. He argues that the Fiscal Intermediary's insistence that a patient's care providers must be able to quickly and accurately predict the specific date of medical improvement is unsupported by law, regulation, policy or reason.

The Administrative Law Judge is persuaded by the arguments advanced by Mr. Dale and finds that the 23 skilled nursing visits

provided from November 1, 1994 through November 30, 1994 qualify as "intermittent services." (42 CFR 409.42(c)(1)). Under such circumstances, the appellant is entitled to Medicare coverage for the 23 skilled and \$1,098.07 in medical supplies.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. During the period from November 1, 1994 through November 30, 1994, the appellant received home health services from Visiting Nurse and Community Health of Eastern Connecticut, for which Medicare Part A coverage was denied for 23 skilled nursing visits and \$1,098.07 in medical supplies by the Fiscal Intermediary.
2. The skilled nursing services in question met the Medicare part-time/intermittency criteria.

DECISION

Reimbursement under Medicare may be made for the 23 skilled nursing visits and \$1,098.07 in medical supplies provided to the appellant by Visiting Nurse and Community Health of Eastern Connecticut from November 1, 1994 through November 30, 1994.

The component responsible for authorizing Medicare payments will determine whether the appellant meets all pertinent nonmedical factors for coverage, including whether he has available days for which payment of Medicare benefits may be made. If the nonmedical requirements are satisfied, the appellant will be notified of the amount of benefits payable and the month(s) for which payment will be made.



H. H. CLARK

OCT 11 1996

Date

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