



their respective treating physicians documenting their underlying conditions and their subsequent medical need for the supplies. Both plaintiffs were denied coverage, and each plaintiff thereafter filed a separate appeal with the agency. Separate hearings were held for each plaintiff resulting in similar decisions denying Medical Assistance coverage. The DHS's denials concluded that "incontinence supplies [adult diapers] are not covered under the scope of services" under Rhode Island's Medical Assistance Plan. Decision of Hearing Officer, Docket No. 95-844, dated November 16, 1995. The DHS's policy manual cites examples of various items for which there is no provision for payment "since they do not meet the definition of Durable Medical Equipment, Surgical Appliances or Prosthetic Devices . . ." DHS Agency Policy Manual, Section 0300; Medical Assistance Program - Scope of Services. An example provided for which there is no provision for payment is "disposal diapers."

The plaintiffs each filed a timely appeal to the Superior Court. The two cases were consolidated and are now before this Court. The sole issue presented is whether DHS's undisputed policy to exclude incontinence supplies from its discretionary scope of services, regardless of the medical necessity of those

fact. Costa v. Registry of Motor, 543 A.2d 1307, 1309 (R.I. 1988); Carmody v. R.I. Conflict of Interest Co-, 509 A.2d 453, 458 (R.I. 1986). Therefore, this Court's review is limited to determining whether substantial evidence exists to support the Commission's decision. Newport Shipyard v. Rhode Island Commission for Human Rights, 484 A.2d 093 (R.I. 1984). "Substantial evidence" is that which a reasonable mind might accept to support a conclusion. Id. at 897. (Quoting Caswell v. George Sherman Saad & Grav o, 120 R.I. 1981, 424 A.2d 646, 647 (1981)). This is true even in cases where the court, after reviewing the certified record and evidence might be inclined to view the evidence differently than the agency. Berberian v. Dept. of Employment . Security, 414 A.2d 480, 482 (R.I. 1980). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981). However, questions of law are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. Carmody v. R.I. Conflicts of Interests Commission, 509 A.2d at 458. The Superior Court is required to uphold the agency's findings and conclusions if they

(SSI), known as the "categorically needy," must be provided with MA benefits. 42 U.S.C. § 1396a(a)(10)(A)(i).

The state of Rhode Island is a willing participant in the MA program which was established to ensure that eligible persons "receive adequate medical care and treatment in time of need." G.L. 1956 § 40-8-1. Federal law requires the states which have chosen to participate to provide certain "mandatory services" which include hospital and physician coverage. Participating states may elect to provide additional coverage by offering other "optional categories of service." See 42 U.S.C. § 1396a(a)(10); 42 C.F.R. § 440.210; and 42 U.S.C. § 1396d(a). The first "optional categories of service" are "prescribed drugs, dentures, and prosthetic devices." 42 U.S.C. § 1396d(a)(12).

The second optional category is defined in 42 U.S.C. 5 1396(a)(13) as

" other . . . preventive and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician . . . for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level."

The state of Rhode Island offers both of these options. See DHS "Medical Assistance Manual," § 330.20.05; Rhode Island Medical Assistance State Plan

[t]he decision of whether or not certain treatment . . . is 'medically necessary' rests with the individual recipient's physician and not with clerical personnel or government officials." Pinneke at 550.

Clearly, the Act creates a presumption in favor of the medical judgment of the attending or treating physician. Pinneke at 549.

When a participating state's limits have the dire effect of denying medically necessary treatment or supplies, courts often find them to have run afoul of the Act, frequently citing Beal v. Doe, 432 U.S. 438, 97 S.Ct. 2366, 53 L.Ed.2d 464 (1977). In Beal, the United States Supreme Court had emphasized the importance of professional medical judgments in determining medical need and warned that ". . . serious statutory questions might be presented if a state Medicaid plan excluded necessary medical treatment from its coverage." Beal at 550.

The record reveals that the incontinence supplies requested in the case at bar are the only available treatment for the plaintiffs' conditions. Their physicians have thoroughly documented medical necessity of the incontinence supplies as the only available treatment. Neither party disputes the fact that each plaintiff suffers a physiological condition which causes medically-determinable incontinence. Plaintiff Bristol may eventually require an artificial sphincter, and plaintiff Doe has

considered judgment. It is inconsistent with the stated purposes and objectives of the Act, 42 U.S.C. § 1396, as it undercuts, rather than promotes, a recipient's ability to attain or retain capability for independence and self-care. Contrary to 42 U.S.C. § 1396a(a) (19), DHS' exclusionary policy fails to ensure that eligibility for care and services is provided in a manner consistent with the best interests of recipients.

The agency decisions in these two consolidated cases are wholly inconsistent with the purposes of the Rhode Island Medical Assistance statute: to ensure that eligible persons will receive adequate medical care and treatment in time of need. R.I.G.L. § 40-8-1. The record demonstrates that each plaintiff in the case at bar is eligible for Medical Assistance and has a medical need for incontinence supplies as prescribed by their treating physicians. The court finds the exclusion to be unreasonable and contrary to the Act.

An agency policy which does not and cannot respond to medical need is arbitrary and capricious. Furthermore, the reliable, probative and substantial evidence on the whole record is that these incontinence supplies required by these two plaintiffs are a reasonable and viable treatment alternative and

Department of Human Services denying Medical Assistance coverage to the plaintiffs are arbitrary and capricious. In addition, these decisions are not supported by the reliable, probative and substantial evidence of the whole record. Consequently, substantial rights of the plaintiffs have been prejudiced. Accordingly, this court reverses the agency decisions and orders the Department of Human Services to find the plaintiffs eligible for Medical Assistance retroactive to the date of request, to reimburse the plaintiffs for expenses incurred, and to immediately begin providing plaintiffs with Medical Assistance coverage of the requested incontinence supplies.

Counsel shall submit the appropriate judgment for entry.