

Did You Know?

State Medicaid Agencies Can Fund Adaptive Tricycles

For children with disabilities, exercise such as cycling can be therapeutic as well as fun. Cycling may provide a variety of health benefits. For example, children with severe mobility limitations may have few, if any, other options for strengthening their cardiovascular system, or cycling may improve stamina, range of motion and coordination, and strengthen muscles.

Adaptive tricycles are tricycles designed for persons with disabilities, and are not the standard, off-the-shelf variety used by young tikes. Adaptive tricycles generally come equipped with modified handlebars, trunk support, pedal straps, and myriad other accessories that make them useful only to people with disabilities. In many instances, adaptive tricycles will meet a state's definition of durable medical equipment (DME).

At least one state, New York, routinely denies adaptive tricycles as non coverable because they are exercise equipment. In several instances, denials have been successfully challenged at administrative fair hearings: decisions have held that adaptive tricycles meet the definition of DME and are therefore coverable. In one such case, *Matter of Kaitlyn*, FH # 4034949N (NY 5/13/04), the decision found an adaptive tricycle to be both DME and medically necessary and directed the agency to approve funding of the tricycle. The Medicaid agency then asked for a corrected decision, arguing that floodgates will open if Medicaid agencies are required to fund exercise equipment. In response, the appellant's advocate submitted a letter from the Department of Health and Human Services, Health Care Financing Administration (HCFA, now Centers for Medicare and Medicaid Services or CMS) dated March 7, 1996, which stated that tricycles are coverable benefits under the Medicaid program for recipients under the age of 21 if medically necessary. (See AT Advocate, *Medicaid, AT and Kids*, Winter 2008 at www.nls.org/av/winter08.pdf.) The principal administrative law judge (ALJ) relied upon the HCFA letter to deny the agency's request to correct the decision.

Even for Medicaid recipients over the age of 21, Medicaid may not deny funding of an item on the basis that it is exercise equipment, when that item clearly meets the state's definition of DME and has been shown to be medically necessary to the individual. Categorically denying items of DME because they might also be exercise equipment violates the federal Medicaid Act. In response to a Second Circuit decision, *DeSario v. Thomas*, 139 F.3d 80 (1998), that allowed the state to use a pre-approved list of covered items to determine Medicaid coverage of DME, CMS issued a policy letter dated September 4, 1998, stating that while states may use a pre-approved list of DME for administrative convenience, the states must have a mechanism for recipients to request items that do not appear on the pre-approved list. (See www.cms.gov/smdl/downloads/SMD090498.pdf.)

The Supreme Court remanded the case to the Second Circuit for further consideration in light of the interpretive guidance issued by the Health Care Financing Administration on September 4, 1998. *Slekis v. Thomas*, 525 U.S. 1098 (1999). See also, *Lankford v. Sherman*, 451 F.3d 496, 511 (8th Cir. 2006) ([A] state's failure to provide Medicaid coverage for non-experimental, medically-necessary services within a covered Medicaid category is both per se unreasonable and inconsistent with the stated goals of Medicaid.)

While ALJs have been finding adaptive tricycles to be DME coverable under the Medicaid program, a tricycle must still be demonstrated to be medically necessary to the individual. That can be done by detailing the various medical benefits that the individual will derive from cycling and by specifying a set plan for the use of the tricycle, including how it will be used by the individual on a regular basis throughout the year.

In some instances, home and community based waiver programs have paid for adaptive tricycles. For those states that define DME in such a way as to make it difficult to fund adaptive tricycles under Medicaid fee-for-service or managed care, Medicaid waiver programs may be an alternative funding source. Also, coverage categories other than DME, such as physical therapy, which includes necessary supplies and equipment, or rehabilitative services, could be a source of funding adaptive tricycles. See, 42 CFR 440.110 (physical therapy), 440.130 (rehabilitative services).

Please feel free to contact us for copies of any of the hearing decisions we have referenced or if you have any questions or comments. Also, if you won a hearing or court appeal/lawsuit regarding an adaptive tricycle or any item of DME, please send us copies of the hearing decisions or court decisions/documents, so that we can share them with the AT network.

Those who are reading this post are encouraged to use reply all to share comments or questions that they want to reach all participants on the list serve. Use reply to communicate only with the person who did the posting.

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