

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DEPARTMENTAL APPEALS BOARD

**DECISION OF MEDICARE APPEALS COUNCIL**  
**Docket Number: M-12-1289**

**In the case of**

**Claim for**

National Seating & Mobility  
(Appellant)

Supplementary Medical  
Insurance Benefits (Part B)

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(Beneficiary)

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(HIC Number)

DME MAC - Jurisdiction B  
(Contractor)

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(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated February 17, 2012, which concerned Medicare coverage for a replacement power motorized wheelchair (HCPCS code K0856)<sup>1</sup> with power seat tilt (E1002), cushioned headrest (E0955), wheelchair batteries (E2361), lateral trunk/hip support (E0956), hip abductor support (E0956), skin protection seat cover (E2624), and applicable mounting hardware (E1028), furnished by the appellant to the beneficiary on January 13, 2011. The ALJ determined that the documentation was not sufficient to establish that Medicare coverage and payment requirements were met for the replacement power wheelchair, power seat tilt, and accessories. The ALJ also found the provider liable for the costs. The appellant has asked the Medicare Appeals Council (Council) to review this action.

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

<sup>1</sup> The Center for Medicare & Medicaid Services (CMS) developed the Healthcare Common Procedure Coding System to establish "uniform national definitions of services, codes to represent services, and payment modifiers to the codes." 42 C.F.R. § 414.40(a).

review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c). The Council has entered the appellant's request for review, received March 8, 2012, into the record as Exhibit (Exh.) MAC-1.<sup>2</sup>

The Council has considered the record and the exceptions set forth in the appellant's request for review. For the reasons explained below, the Council reverses the ALJ's decision. The Council finds that the power motorized wheelchair with power seat tilt and accessories is covered by Medicare.

### BACKGROUND

The beneficiary was thirty-seven years old on the motorized wheelchair's date of delivery, January 13, 2011. Exh. 1 at 4, 33-34. He lives on his own, independently. *Id.* at 5. The appellant wheelchair supplier furnished detailed medical records for the beneficiary from more than one provider (see Exh. 3), and at the ALJ's request during the hearing, furnished additional medical records including a number from the year 2008 (when the beneficiary received a prior wheelchair) and the year 2011 (after the beneficiary received the wheelchair at issue in this case) (see Exh. 7).<sup>3</sup> Relevant details from these medical records are listed in a chart as Attachment A to this decision.

To summarize the beneficiary's pertinent medical history, after severe crushing injuries in a car-train accident when he was nine months old, he had a right hip disarticulation and a left above-the-knee amputation. Exh. 1 at 4, 8-9. He has had several surgeries for problems related to wound healing in the left leg. *Id.* He also had a rectus abdominus free flap muscle transposition onto the left upper thigh with grafting about fifteen years ago, in an attempt to stop his bouts of cellulitis. *Id.* He has chronic pain problems in his left leg with sharp, shooting pains diagnosed as neuropathy. *Id.* He underwent a right femur bone residual components removal but

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<sup>2</sup> The appellant's request for review also has one hundred sixty-one pages of documents attached. It appears that many of these documents are already part of the administrative record in this case. The appellant has not asserted that it has good cause for submitting this evidence for the first time at the Council level. See 42 C.F.R. § 405.1122(c)(requiring such a good cause showing). Therefore, the Council is excluding these duplicates from the record, but they are marked for identification purposes as Exh. MAC-2 (Excluded).

<sup>3</sup> A number of the medical documents contained in Exh. 3 are also contained in Exhs. 1 and 7.

continues to suffer with sharp, shooting, intermittent pain in the center of that hip region with neuropathic pain that his doctor states could be from sciatic neuroma behind his acetabular bone. *Id.* He also has some right lumbar paraspinal muscle region deficits from sitting postures. *Id.* As of July 2010, he had undergone multiple right shoulder surgeries including two rotator cuff surgeries and two acromioplasties. *Id.*

The medical records in this case document that during 2008 to 2011 the beneficiary had chronic pain and multiple surgeries in his upper extremities and trunk, including his wrists, elbows, shoulders, and back. These problems resulted from overuse of his trunk and upper extremities (required by his bilateral leg amputations), and included arthritis, tendonitis, strain, and sprain of his ligaments. See Exh. 1 at 4, 8-9; Exh. 7 at 30-31, 48-53; see also Attachment A.

The medical records in this case also show that the beneficiary experienced increasing and worsening dermatological problems in his buttocks and gluteal areas, coccyx, rectal area, left and right stumps, beginning (according to the medical records) in approximately April 2008. See Attachment A. These problems will be described in further detail, as relevant, in the discussion below.

The beneficiary had received a prior motorized wheelchair on August 18, 2008. Dec. at 3. Therefore, less than three years had elapsed prior to his receiving a replacement wheelchair on January 13, 2010. A period of five years is generally considered the reasonable useful lifetime of durable medical equipment. See 42 C.F.R. § 414.210(f)(1). Nevertheless, one of the beneficiary's physicians initiated the process of obtaining a new wheelchair for the beneficiary with a detailed occupational therapy examination and letter of medical necessity on July 26, 2010, and August 30, 2010, followed by a face-to-face examination and mobility assessment on November 22, 2010. Exh. 1 at 4-7, 8-9. Following the provisions of National Coverage Determination 280.3, the appellant supplied the replacement wheelchair on January 13, 2011.

The contractor denied Medicare coverage for the power wheelchair with power seat tilt and accessories, initially and then on redetermination. Exh. 1 at 16 (initial denial); Exh. 3 at 17-29 (redetermination denial). On reconsideration, the Qualified Independent Contractor (QIC) denied Medicare coverage on the

ground that the documentation submitted did not show that the beneficiary had experienced any major health changes since he obtained his prior wheelchair approximately two years earlier. Exh. 2 at 2.

On appeal, the ALJ also denied Medicare coverage for the replacement wheelchair, on the ground that the documentation submitted did not demonstrate that the beneficiary had undergone a change in his medical condition that would warrant a replacement wheelchair with a power seat tilt function. Dec. at 14-16. The ALJ stated that:

- the beneficiary's back and buttock ulcerations pre-dated the acquisition of his prior wheelchair (in August 2008);
- the beneficiary's wounds were "basically or completely healing" with his use of the prior wheelchair;
- the beneficiary admitted that he could transfer himself and change positions; and
- the beneficiary was "at times noncompliant with his physician's instructions regarding wound care, causing a delay in the healing process."

*Id.* at 14-15 (citations omitted).

The appellant filed a request for Council review, contending that the beneficiary's medical condition had changed to the point that by mid-2010 he required a power seat tilt feature on his wheelchair, which could not be added to his previous "captain's seat" wheelchair (from a different supplier). Exh. MAC-1. Further, the appellant asserts that because of the beneficiary's amputations and wound problems, he has postural deviations and requires pressure relief that cannot be achieved with his previous wheelchair. *Id.* Also, the appellant asserts that the accessory items on the beneficiary's previous wheelchair could not be transferred or altered to fit on the new system. *Id.*

#### **DISCUSSION**

It is undisputed that the beneficiary received a prior motorized wheelchair on August 18, 2008. Dec. at 3. Therefore, the first issue in this case is whether the beneficiary's medical condition had worsened sufficiently to warrant Medicare coverage

of a different wheelchair in less than the five years considered the reasonable useful lifetime of durable medical equipment. See 42 C.F.R. § 414.210(f)(1) (defining reasonable useful lifetime); Pub. 100-04, Medicare Claims Processing Manual (MCPM), Chapter 20, § 50 (providing for replacement when a change in the beneficiary's condition is documented). The second issue is whether the beneficiary required a wheelchair with a power seat tilt and/or recline function. See LCD L27223 (Wheelchair Options/Accessories).

The Council has reviewed approximately three hundred pages of medical records from multiple physicians and related professionals, submitted by the appellant and covering the period from March 2008 through November 2011. See Attachment A (chart of medical records), based on Exhs. 1, 3, and 7. Based on this review, the Council has concluded that the beneficiary's medical condition did change significantly between August 18, 2008 (when he received his prior wheelchair) and January 13, 2011 (when he received the replacement wheelchair with the power seat tilt function). The beneficiary's condition changed in at least two important ways.

First, the dermatological problems on the beneficiary's buttocks and gluteal areas, coccyx, rectal area, posterior of his thighs, and amputation stumps worsened by increasing in frequency, including pressure ulcers for the first time (as documented in the record), and healing more slowly. This increased the importance of the beneficiary being able to shift his weight from these areas (both in order to limit additional problems and to assist with healing) by the use of a power seat tilt function with an appropriate headrest. However, as the beneficiary explained to the occupational therapist, by July 2010 his arms were "getting so painful that he can't hold himself up anymore with his prosthetic legs," and he was "no longer able to sustain push-ups throughout the day for w/c [wheelchair] pressure relief due to pain in both of his arms." Exh. 1 at 4. The occupational therapist attributed this to overuse syndrome in his bilateral upper extremities, including his shoulders and elbows, with arthritis, tendonitis, and strain and sprain of his ligaments. *Id.* The medical record documents these conclusions in detail. See the discussion below and Attachment A.

This relates to the second way in which the beneficiary's medical condition changed significantly between the date he obtained his prior wheelchair and the date he obtained the replacement wheelchair with the power seat tilt function. In

that period of time, the beneficiary experienced both structural and functional declines in his upper extremities and upper trunk, including increasing pain in his wrists, elbows, shoulders, and back; rotator cuff surgery; a repeat of right wrist carpal tunnel surgery; a right elbow arthroscopy and surgery for reconstruction; and a diagnosis of degenerative arthritis in both of his shoulders and both elbows. Exh. 1 at 4 (summary of medical history); Exh. 7 at 115-17 (further medical history, also re-do of right wrist open carpal tunnel release, and right elbow arthroscopy with debridement); 128-29 (pain management and MRI of right elbow); 132-34 (right shoulder rotator cuff surgery); 135-36 (pain management needs).

For the reasons in the foregoing paragraph, the beneficiary was accurate in his statements to the occupational therapist that he could no longer shift his weight sufficiently to obtain the relief from pressure he needed to avoid further pressure sores and to ensure that the wounds in the lower part of his body healed. See Exh. 1 at 4. Although the beneficiary stated that he could still transfer himself to his bed and change positions (Exh. 7 at 20-21), he was essentially bed-bound when his wounds were healing (often for weeks or months at a time), because his wheelchair would not operate to take the pressure off the lower part of his body. See ALJ Hearing, December 2, 2011 (ALJ Hearing) at 10:55 to 10:56, 11:01 to 11:08 a.m.; see also Exh. 7 at 128-29, 131-32, 137 (wounds took seven months to heal). The replacement wheelchair, with the power seat tilt function, operates to take the pressure off the lower part of his body, by allowing him to tilt back or recline while still in the chair. Exh. MAC-1; ALJ Hearing at 10:46 to 10:47, 10:53, 11:01 to 11:08 a.m. This also lessens the amount of stress and strain he must place on his upper body and limbs by decreasing the frequency with which he needs to transfer from the wheelchair to bed and back each day. The medical record also documents these conclusions in detail. See the discussion below and Attachment A.

The records show that the beneficiary experienced very few dermatological problems between March 2008 and October 2008. In fact, the ALJ erred in finding that the beneficiary's back and buttock ulcerations pre-dated the acquisition of his prior wheelchair (on August 18, 2008). Cf. Dec. at 14. There is no record of the beneficiary having any decubitus or pressure sores prior to August 5, 2010, shortly before the appellant provided him with a "loaner" wheelchair with a power seat tilt to try. See Attachment A; see also Exh. 7 at 28-29 (loaner power

wheelchair with tilt seat provided). According to the medical records, the only skin problems that the beneficiary experienced before he received his prior wheelchair in August 2008 were epidermal cysts on his left abdomen (Exh. 7 at 156-58); a pilonidal cyst on his tailbone area (*id.* at 154-55); lumps (of unspecified type and location) which occurred when he was wearing his leg prosthesis (*id.* at 150); and a post-operative fistula on his elbow (*id.* at 146, 148).

However, after the beneficiary received his prior wheelchair on August 18, 2008, his dermatological problems became more serious and more frequent. From October 26, 2008, through May 12, 2009, for a total of seven months, his physician recorded ongoing swelling, edema, and clear fluid draining from his left stump, and advised him that he needed to be out of his wheelchair for two periods each day in the daytime. See, e.g. Exh. 7 at 137-38 (Oct. 26, 2008); 135-36 (Dec. 30, 2008); 128-29 (May 12, 2009). By August 25, 2009, the beneficiary's bilateral lower lymphedema was recurring. *Id.* at 124. On June 8, 2009, he had a boil, abscess, and infection on his buttocks that his physician incised and debrided. *Id.* at 126-27. On November 2, 2009, he saw his physician about an anal fistula, with odorous drainage, that he had had for a month. *Id.* at 122-23. On November 30, 2009, he needed a surgical deroofing procedure to drain an abscess and excise two skin lesions. *Id.* at 95.<sup>4</sup> When his physician saw him on June 24, 2010, the beneficiary had developed rectal and perianal hidradenitis suppurativa in multiple areas, including tunneling under the skin between abscesses. *Id.* at 95-96. This continued through at least August 2010, as his physician treated the wounds surgically, and advised the beneficiary to keep his weight off the wounds as much as possible. *Id.* at 92-93 (July 2, 2010); 90-91 (July 21, 2010); 88 (Aug. 2, 2010); 86-87 (Aug. 4, 2010). In the two months that followed this surgery, the beneficiary had considerable problems with getting the wounds to heal and controlling the pain. Exh. 7 at 20-29 (Aug. 5, 2010, through Sept. 30, 2010).<sup>5</sup>

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<sup>4</sup> Deroofing is a surgical procedure to treat skin lesions that have developed tunnels under the skin between the abscesses, which is characteristic of hidradenitis suppurativa. See Simone van Hattem, Julia Spoo, Barbara Horvath & Fredrik W.J. Leeman, *Surgical Treatment of Sinuses by Deroofing in Hidradenitis Suppurativa*, 38:3 DERMATOLOGIC SURGERY 496 (March 2012).

<sup>5</sup> During this period, there is a doctor's note on one day (only) that states that the beneficiary has not been following wound care instructions. Exh. 7 at 86 (Aug. 4, 2010). However, just two days earlier, a different doctor's

By August 5, 2010, the physician's notes state (for the first time) that the beneficiary was experiencing multiple pressure ulcers, secondary to pressure and/or infection. Exh. 7 at 20-21; see also 24-25 (August 12 & 19, 2010). The medical records show that these wounds both spread and continued to heal for approximately two months. *Id.*; Exh. 7 at 84-85 (Aug. 30, 2010); 10 (Aug. 31, 2010); 22-23 (Sept. 2, 2010); 9 (Sept. 9, 2010); 26-29 (Sept. 9 & 30, 2010). The physicians treating the beneficiary performed regular debridements on the pressure ulcers. *Id.* On September 2, 2010, during this episode of pressure sores, the physician's notes show that the appellant supplier has loaned the beneficiary a wheelchair with a power seat tilt function, which he is using to "offload" the weight and pressure on his wounds. *Id.* at 28-29. One of the physicians writes that the beneficiary is "much better able to offload [his] wounds" with the loaner wheelchair.<sup>6</sup> *Id.* During this period, one of the physicians and the occupational therapist continued their efforts to document the beneficiary's need for a replacement wheelchair with a power seat tilt function. See, e.g., Exh. 7 at 86; Exh. 1 at 4-7, 8-9. On January 13, 2011, the beneficiary received the replacement wheelchair and returned the loaner. Exh. 1 at 33-34. After that date, and for the next ten months, the medical records show only one new, minor dermatological problem in his lower body areas --- an epidermal cyst on his right buttock. See Attachment A; see also Exh. 7 at 16.

In summary, the beneficiary's serious dermatological problems in the lower areas of his body started *after* he received his prior wheelchair, worsened significantly over a period of

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note states that the beneficiary has been compliant with the wound care instructions. *Id.* at 88 (Aug. 2, 2010). None of the other doctors' notes state that the beneficiary has not been compliant with wound care instructions. Therefore, the Council disagrees with the ALJ's finding that the beneficiary was "at times noncompliant with his physician's instructions regarding wound care." *Cf.* Dec. at 15.

<sup>6</sup> The ALJ erred in stating that the beneficiary's wounds were "basically or completely healing" with the use of his prior wheelchair. *Cf.* Dec. at 14-15. Many of the beneficiary's most serious wounds, such as his pressure ulcers and his hidradenitis suppurativa, did not occur until shortly before he received his replacement wheelchair, and did not heal (either fully or substantially) while he was using his prior wheelchair. See Attachment A. Dr. R.W.'s wound care progress note, which states that some of the wounds have "basically" or "completely" healed, was written at a visit *after* the beneficiary started using the loaner wheelchair with the power seat tilt function. *Id.*; see also Exh. 7 at 28.



approximately twenty-two months, and gradually abated after he received first a loaner wheelchair and then a new wheelchair from the appellant, both with the power seat tilt function.

In addition, during that same twenty-two month period between the beneficiary's receipt of his prior wheelchair and his receipt of his new wheelchair, his trunk and upper body extremities, which were already stressed and deteriorating as a result of overuse, worsened significantly. As noted above, prior to that time, he had undergone a bilateral carpal tunnel release for his wrists, arthroscopy for his right elbow, arthroscopy lateral ligament repair of his left elbow, two rotator cuff surgeries, and two acromioplasties, *inter alia*. Exh. 1 at 4, 8; Exh. 7 at 92. Then in February 2009 he had repeat rotator cuff surgery (Exh. 7 at 132-34); in October 2009 a diagnosis of degenerative arthritis in both shoulders and both elbows (Exh. 1 at 4); in March 2010 a repeat open carpal tunnel release on his right wrist and a right elbow arthroscopy with debridement (Exh. 7 at 115-17); in September 2010 an MRI showing further damage to his right elbow and requiring physical therapy and a bracing of both elbows the following month (*id.* at 79-80, 71-72); and in November 2010 recurrent back pain radiating into his hip and leg (*id.* at 67-68, 65-66). Shortly after the beneficiary received his replacement wheelchair with the power tilt function he had repeat right elbow surgery in February 2011 (with healing that required at least two months). See *id.* at 51-53 (reports surgery on Feb. 9, 2011); 30-31 (nonhealing right elbow wound from surgery continues on April 19, 2011). In November 2011 he had spinal surgery. *Id.* at 32. The developments listed in the foregoing sentences constitute and reflect significant changes in the beneficiary's medical condition, and changes which made it far more difficult for him (as a bilateral leg amputee) to use his trunk and upper extremities to shift the weight off of wounds on the lower part of his body.

Moreover, the occupational therapist reports that the beneficiary gained approximately seventy-five pounds in weight between 2009 and 2010, distributed over a frame thirty-eight inches in height from his hips to the top of his head, in part because of inactivity due to multiple medical problems. Exh. 1 at 5. Given the worsening condition of the beneficiary's wrists, elbows, shoulders, and back (described above), this weight gain also contributed to the change in his medical condition and his need for a different power wheelchair, one with a power seat tilt function. Therefore, the beneficiary had

at least two significant changes in his medical condition after receiving the prior wheelchair, which prompted his need for and acquisition of the new wheelchair with a power seat tilt function from the appellant supplier.

For many of the same medical reasons identified above, the beneficiary clearly qualified for Medicare coverage of a power wheelchair with a power seat tilt function, when he received it on January 13, 2011. The beneficiary in this case meets all four of the criteria specified in LCD L27223 (Wheelchair Options/ Accessories). First, he meets all of the coverage criteria for a power wheelchair described in NCD 280.3 and in the applicable LCD (L27239). Second, a specialty evaluation of the beneficiary's seating and positioning needs was performed by an occupational therapist with specific training and experience in rehabilitation wheelchair evaluations, and with no financial relationship with the supplier. See Exh. 1 at 4-7, 28. Third, the wheelchair was provided by a supplier that employs a RESNA-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who had direct, in-person involvement in the wheelchair selection for the beneficiary. See Exh. 1 at 13; ALJ Hearing at 10:34 a.m. Fourth, the beneficiary is at high risk for development of a pressure ulcer and is not able to perform a functional weight shift, to take the pressure off his lower body area sufficiently, that is, for long enough and frequent enough periods of time. See Exh. 1 at 4. The Council notes that there is a substantial difference between the beneficiary's ability to transfer himself and change positions (in his wheelchair or in bed), and his ability (given his reduced upper body strength and functioning) to transfer himself multiple times in the course of a day, to sustain push-ups for wheelchair pressure relief when he is experiencing pain in both arms, and to change his position sufficiently and for long enough in his wheelchair (without the power seat tilt function) to allow wounds on his lower body to heal.

#### **DECISION**

For all of the foregoing reasons, the Medicare Appeals Council has decided that the replacement power motorized wheelchair (HCPCS code K0856) with power seat tilt (E1002), cushioned headrest (E0955), wheelchair batteries (E2361), lateral trunk/hip support (E0956), hip abductor support (E0956), skin

protection seat cover (E2624), and applicable mounting hardware (E1028) furnished by the appellant to the beneficiary on January 13, 2011, are all covered by Medicare. The ALJ's decision is reversed.

MEDICARE APPEALS COUNCIL

/s/ Clausen J. Krzywicki  
Administrative Appeals Judge

/s/Constance B. Tobias, Chair  
Departmental Appeals Board

Date: June 15, 2012