

**IN THE MATTER OF M.D.**

Initial Decision: March 17, 1980      Final Agency Decision: April 24, 1980

Superior Court, Appellate Division Decision Appears at: 179 *N.J. Super.* 541 (App. Div. 1981)

Supreme Court of New Jersey Decision Appears at: 91 *N.J.* 1 (1982)

**SYNOPSIS**

The Division of Medical Assistance and Health Services denied authorization for the purchase of an air cleaner for a nine-year-old asthmatic boy based on an initial determination that an air cleaner is environmental and not medical equipment.

The administrative law judge assigned to the case determined that *N.J.A.C.* 10:54-1.8(b) provided an exception to the rule that funding was not to be supplied for environmental equipment. Under the regulation, equipment which is used to serve a medical purpose and is generally not medically useful to a person in the absence of an illness was not deemed to be environmental equipment. Finding that the air cleaner fell into that category, the administrative law judge concluded that funding for the air cleaner should be approved.

Upon review of this initial decision by the Division of Medical Assistance, the decision was rejected. The agency determined that the regulations clearly prohibited payment for environmental control equipment and that the air cleaner fell into that category.

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**ROBBINS, ALJ:**

Petitioner requests relief from the administrative determination by the Division of Medical Assistance and Health Services denying authorization for purchase of a HEPA air cleaner. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

At issue is the administrative determination to deny authorization for purchase of a HEPA air cleaner. The relevant regulation found in the Health Services Program Medical Supplier Manual, Section 204.6 provides that payment will not be authorized for "environmental control equipment and supplies."

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Petitioner is a nine-year-old boy who suffers from asthma and allergic rhinitis. Because of this condition, his physician recommended use of a HEPA air cleaner. The request for purchase of this device was denied.

Dr. Barbano of the Middlesex County Local Medical Assistance Unit testified that the air cleaner is a type of non-medical equipment which is not authorized for payment by Medicaid. Regulations provide that environmental control equipment and supplies are items which are not covered for payment. As the requested equipment falls in that classification, purchase was not authorized.

Petitioner's mother testified that her son has suffered from asthma and allergic rhinitis for approximately 3 years. He has had ongoing treatment of medication and injections for this condition without success. He was hospitalized for a six day period in 1977 and a five day period in March 1979 because of his asthma. In addition, he has required hospital emergency room treatment approximately twice monthly.

Testimony further established that the petitioner's physician prescribed the use of a HEPA air cleaner and this equipment was rented for petitioner at the end of October 1979. Petitioner's mother paid an initial \$35 rental charge with the anticipation that payment for this equipment would be made by Medicaid. According to petitioner's mother, the petitioner has been greatly improved since he began using this equipment. He has not required any visits to the emergency room at the hospital and he feels well, is able to sleep properly, function normally and attends school regularly.

Petitioner's mother further testified that this equipment removes the allergens from the air and, therefore, prevents the asthmatic attack. In her opinion, this kind of equipment should not be classified as nonmedical as it is treatment that helps to prevent the illness.

Subsequent to this proceeding, a letter was submitted from petitioner's physician, Dr. Schulaner. Dr. Schulaner who is a Board certified allergist stated that he has been treating the petitioner since July 1978 for "bronchial asthma and allergic rhinitis due to inhalation of pollens, dust and molds." He reports that the "HEPA air cleaner cleans the air of very small particles of house dust, molds, pollens" and "is medically necessary" for petitioner's condition. The petitioner's condition has improved since he has been using the HEPA air cleaner and he has needed less frequent medical attention. Dr. Schulaner further states that there "is no relation between an air cleaner and an air conditioner or humidifier: and "the air cleaner

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prevents symptoms and contributes to keeping petitioner out of the emergency room and hospital.”

Based upon the foregoing, I **FIND**:

1. Petitioner is a 9 year old boy who is eligible for medical assistance as a public assistance recipient.
2. He suffers from asthma and allergic rhinitis.
3. His physician recommended use of a HEPA air cleaner for this condition.
4. Approval for purchase of the air cleaner was denied by the Division of Medical Assistance and Health Services based on the opinion that an air cleaner is equipment for environmental control.
5. Notwithstanding the above, Section 204.6 provides that vaporizers are an exception and, therefore, are considered an item covered for payment by Medicaid.
6. *N.J.A.C.* 10:54-1.8(b) defines environmental equipment as equipment which:
  - (1) can withstand repeated uses; and
  - (2) is primarily and customarily not used to serve a medical purpose; and
  - (3) generally is not medically useful to a person in the absence of an illness or injury.
7. The petitioner’s use of the HEPA air cleaner is to eliminate the antigens in the air that create his allergic reaction that results in an asthmatic attack.
8. The HEPA air cleaner is customarily used to serve a medical purpose and is generally not medically useful to a person in the absence of an illness.
9. The air cleaner is equipment in the same class as a vaporizer and, therefore, according to the *ejusdem generis* rule should also be listed as an exception under Section 204.6.

Based upon the above findings as applied to Section 204.6 of the Health Services Program Medical Supplier Manual, I **CONCLUDE** that the decision by the Division of Medical Assistance and Health Services denying authorization for purchase of a HEPA air cleaner be **REVERSED**.

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**FINAL DECISION BY THE DIRECTOR OF THE DIVISION  
OF MEDICAL ASSISTANCE AND HEALTH SERVICES,  
THOMAS M. RUSSO:**

The Director, Division of Medical Assistance and Health Services, has reviewed the record in this matter including the initial decision of the administrative law judge. Exceptions were filed by Alfred J. Barbano, M.D., Medical Consultant, Division of Medical Assistance and Health Services and Mary Jo Belardi, Esquire, Middlesex County Legal Services Corporation.

The Director disagrees with the findings of the administrative law judge that the HEPA Air Cleaner should be considered in the same category as a vaporizer. Subsequent Medicaid regulations have implemented the policy of the Division of Medical Assistance and Health Services that prohibit payment for environmental control equipment (*N.J.A.C.* 10:59-1.6(a) (6)), specifically electrostatic air filters.

Therefore, the decision of the administrative law judge is reversed and the denial of the HEPA Air Cleaner is affirmed. This decision constitutes final agency action.