

Support Notes on Commissioner's Advice

Exclusions: Medical Items

1. General approach

The approach outlined in this section of the Commissioner's Advice is based on:

- dictionary definitions of the word “medical” in Direction 23,
- an examination of the Secretary of State's Guidance,
- the lessons of case law.

Definitions. Authoritative dictionaries list the aims of “medicine” as the cure, alleviation, treatment, diagnosis and prevention of disease.

The Guidance. The relevant paragraphs of the *Social Fund Guide* are 4567-4572. They make the point that the exclusion is mostly intended to cover items that the NHS would normally provide. In addition, Paragraph 4570 states that:

Applicants may ask for items in everyday use, although the need may have arisen from a medical or other condition, e.g. someone with an allergy may need cotton sheets. Payments for such items from the social fund are not specifically excluded.

Case law. The only case law we have on this subject is the *Connick JR* from 1993. In this case, the Inspector had excluded a request for incontinence pads on the grounds that “these pads would not be needed unless there was a medical problem.” The judge quashed the decision on the grounds that the Inspector had applied the wrong test. He argued that, according to this test, Inspectors could find themselves excluding items such as bowls or handkerchiefs, if they were needed for a specific medical problem. This, he argued, would be contrary to the obvious meaning of the direction. In his reasoning he referred with approval to the paragraph from the *Guide* quoted above.

The Commissioner's Advice aims to avoid this error by focussing on the purpose for which the item was *manufactured*, rather than that for which it is *used*. If an item is manufactured for any purpose other than the cure, alleviation etc. ...of a medical condition, then it is not an excluded medical item. This applies even if the *primary* purpose of the item is medical. It applies irrespective of what the applicant uses it for. Even if the item is *used* by the applicant solely for medical purposes, it will not be excluded provided that it was not *manufactured* solely for medical purposes.

Some examples of the outcomes that this approach would lead to are included in the table below.

| Medical Items | Not Medical Items |
|---|---|
| Nebulisers Insulin guns Tens machines Syringes Over-the-counter medicines | Fridges for storing medicines Specially adapted beds Non-allergic bedding Lactose-free foods Hydrotherapy units Wheelchairs Incontinence pads |

Explanatory notes

“Tens machines” There has been some uncertainty amongst Inspectors about whether tens machines should be excluded, because of a belief that they can sometimes be used for muscle toning as well as for pain relief. Our investigations with retailers have shown, however, that tens machines are made for the sole purpose of treating or alleviating pain, especially arthritic pain. They should therefore be excluded. Similar devices, which use the same basic technology, are available for the purposes of muscle toning, but these are not normally known as tens machines.

Hydrotherapy units are manufactured for the dual purpose of providing pain relief for sick people and relaxation for healthy people. This latter purpose means that they are not excluded items.

2. Items that alleviate the consequences of a medical condition.

We consider that where items alleviate the consequences of a medical condition, but not the condition itself, the link to the medical condition is too indirect for them to be classed as medical items. We consider that this category includes items such as wheelchairs, incontinence pads, commodes and other aids and adaptations that disabled people need to help them do ordinary tasks, e.g. stairlifts, walking frames, “helping hands”.

3. Items for monitoring medical conditions

No support notes.

4. Further note: other exclusions.

It should be remembered that some items which fall outside the medical items exclusion might fall within another excluded category. Wheelchairs, for example, are excluded from the crisis loan scheme as mobility needs.