



HYPERBARIC MEDICINE
TODAY

GEORGIA MEDICAID ORDERED TO REIMBURSE HYPERBARIC OXYGEN THERAPY FOR BRAIN INJURY

By Arthur Radley

On October 11, 2001, after a long and complicated 18-month struggle, the Superior Court of Dekalb County, Georgia ruled Georgia Medicaid must reimburse Hyperbaric Oxygen Therapy for a brain-injured child.

It was a stunning defeat for the state of Georgia and a magnanimous victory for brain-injured children everywhere.

The case was James Freels vs. the Commissioner of the Georgia Department of Community Health, division of Medical Assistance. The ruling actually came on appeal. Jimmy is seven years old and suffers from mid-brain injury that has impaired his mobility, balance, and speech. He is still not yet sitting up or walking.

The Freels family first sought HBOT reimbursement in April 1999. Georgia Medicaid denied the initial request because "There is no documentation from the Undersea and Hyperbaric Medical Society to support the use of Hyperbaric Oxygen Therapy for this diagnosis".

This statement was untrue, as the UHMS possessed substantial documentation of utilizing HBOT for brain-injured children. In fact, during the fall of 1998 the UHMS had commissioned an "ethics task force" to consider the expansion of the UHMS indications list to include currently "off label" conditions.

In May 1999, Jimmy's church, family, friends, and neighbors paid for a series of 42 treatments of hyperbaric oxygen at Atlanta Hyperbarics. Jimmy had a SPECT-scan prior to any HBOT and then a second SPECT-scan after the 21st treatment. The second SPECT revealed brain tissue that wasn't functioning before was now functioning (since his brain blood flow had increased by 25.4%).

The federal Medicaid law states that children are entitled to "such other necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan."

After the first denial, Jimmy's parents learned that Hyperbaric Medicine is not taught as core curriculum in any American medical school, thus most physicians have no knowledge of

Hyperbaric Oxygen Therapy. Thus, Jimmy's second HBOT request on September 2, 1999 included his before/after SPECT-scans and 300 pages of HBOT documentation divided into 38 exhibits that included 3 videos, including 10 before/after cases of children receiving Hyperbaric Oxygen Therapy.

"We wanted to give them the opportunity to make an informed decision," said David Freels, Jimmy's father.

Georgia Medicaid denied Jimmy a second time on November 30, 1999, stating, "Our physician panel has determined that HBOT in Cerebral Palsy is experimental - investigational and is not a generally accepted practice at this time."

The Freels family appealed because it couldn't be determined from the denial letter if Georgia Medicaid had ever reviewed the evidence from the before/after SPECT scans. In addition, the categorization of "experimental and investigational" is irrelevant in the context of the Medicaid law for children. The only criteria are that the treatment be "necessary to correct or ameliorate".

The third denial on January 12, 2000 declared in capital letters THERE IS NO SCIENTIFIC DATA TO SUPPORT THE MEDICAL NECESSITY FOR HBOT IN THIS CASE.

The Medicaid law for children does not require that a treatment or service be "medically necessary". Instead, the statute actually creates its own definition of medical necessity. If it is a treatment or service for a defect or illness, then it is medical. If the treatment or service corrects or ameliorates, then it is necessary, thus creating its own definition of "medically necessary".

The Freels family was never informed by Georgia Medicaid of any of the denials, nor were the Freels ever given written instructions on how to request a hearing. "I had to make a lot of phone calls," said Mr. Freels. "Georgia Medicaid has no written, documented method for conducting a review, so we didn't know why they had denied the request. Judging from the denials, we had no idea whether they had ever looked at any of the evidence that had been presented. We didn't know who was evaluating the request or what their qualifications were."

The Freels big break came when a parent put this post on the Internet:

Subject: hbo-list: HBOT and SPECT scan
Date: Sun, 13 Feb 2000 14:22:55 -0600

BestServHost: lists.best.com

To: hbo-list@lists.best.com

Dear List:

Is it true that SPECT scans cannot be reliable when it comes to HBOT? A doctor in St. Louis, MO told me that the scan changes



from day to day. The seizures make it change and he said that the changes we saw (and Dr. Uszler reported on) were really not improvements, I guess just mistakes. If you take another scan the next day it would be different. What is the truth about this? This doctor was used by Georgia to determine if a child would get the treatments paid for. Of course he denied that it helped in any way. He said the SPECTs did not prove that a real change occurred. Can anyone explain? This doctor was a Neurologist. Mr. Freels said, "I faxed the post to Dr. Harch and asked if he would testify at Jimmy's hearing. I had never met Dr. Harch before, just talked with him on the phone once. He was incensed by the false statements about SPECT scan imaging made by the neurologist and agreed to appear as an expert witness. We both felt like Jimmy's case could set a precedent for every brain-injured child."

Ironically, the St. Louis neurologist used to practice in Atlanta and was a friend of one of Jimmy's patterning volunteers. The patterning volunteer had asked the neurologist by phone in July 1999 of the likelihood of Jimmy's improvements from hyperbaric oxygen. The neurologist had followed up in August with a two-page letter in which he concluded HBOT was "scientifically silly".

In November 1999 the same neurologist was hired as a consultant by Georgia Medicaid

to evaluate the same treatment for the same child. "You can't get an objective review if you don't have objective reviewers, or an objective review process," said Mr. Freels. The request for a hearing was made on February 1, 2000. The state finally set a hearing date for July 6, 2000. Dr. Harch testified on that date. Next, the state changed the Administrative Law Judge and decided September 29, 2000 was the next available date, some 10 months after Georgia Medicaid had issued its third denial. Jimmy's attorney, Michael Rosetti, stated, "Administrative law judges rarely read transcripts. By changing judges on us, the state tried to negate the testimony of Dr. Harch. However, the appeal judge read the transcript and looked at the evidence."

In the final ruling, the Dekalb Superior Court judge wrote, "Overall, the Respondent's [Georgia Medicaid] Final Decision was without basis in fact. By contrast, the evidence of record clearly demonstrates that HBOT is a safe and effective treatment for CP and specifically for the Petitioner [Jimmy Freels]. The reliable and substantial evidence demonstrates that HBOT is correcting and ameliorating the Petitioner's mid-brain injury. Since this is the showing required for Medicaid reimbursement of services pursuant to 42 USC § 1396d(r)(5) [the Medicaid law for children], the findings of the Respondent are reversed and the Respondent is ordered to honor the Petitioner's request for Medicaid reimbursement for HBOT."

The Dekalb Superior Court judge reversed the case on two counts. (1) The state of Georgia was not in compliance with the federal Medicaid law for children. (2) The judge also reversed the findings of fact, meaning the state of Georgia never had grounds to deny HBOT to Jimmy in the first place. By overturning the findings of fact it will be nearly impossible for the state to even have grounds for an appeal.

An elated David Freels said, "What this means is that the judge ruled that Momma, Daddy, and Dr. Harch were right and that 3 or 4 or 5 pediatric neurologists were wrong. This also means the necessity for a double-blind controlled study first published in a peer-reviewed medical journal has been thrown out the window. The boy is getting back in the chamber."

Mr. Freels also said, in the best interest of brain-injured children, a new listserv has been formed to help parents and advocates access Medicaid reimbursement of HBOT. To subscribe to this list, just send a blank E-mail to: medicaidforhbot-subscribe@yahoogroups.com. New subscribers will automatically receive a PDF file explaining how the Medicaid law for children specifically applies to HBOT. New

subscribers also receive a PDF of the Georgia court decision.

Since Medicaid guidelines are federal law and applicable in all 50 states, this decision could be used as a model for other states. Since this listserv began on September 21, 2001, four states have changed their policy decisions on Hyperbaric Oxygen Therapy for brain-injured children: Alaska, Arkansas, Texas, and Florida.

Once Medicaid reimburses HBOT and universal improvements occur, the insurance companies will quickly follow suit. At the same time, this will force public accountability onto pediatric neurology, as pediatric neurologists will have to explain how 90+% of every brain-injured child can improve from HBOT when most have said such improvements are impossible, if not "scientifically silly".

With public acknowledgement of brain-injury recovery through public funding of Hyperbaric Oxygen Therapy in Texas, Georgia, and now other states, it is anticipated that research funding into the full potential of HBOT as a healing agent for brain-injury will finally occur. Since improvement and even recovery from stroke, multiple sclerosis, Alzheimer's, Parkinson's, and Traumatic Brain Injury (TBI) have also shown promise with Hyperbaric Oxygen Therapy, it's become quite obvious that the full potential of HBOT can save millions of heartaches and billions, if not trillions, of dollars. A large obstacle is that each state is free to administer Medicaid whichever way they want; however, each state must comply with the federal Medicaid law for children--which specifically stipulates that a treatment like HBOT must be paid for by state Medicaid plans whether it is "covered by the state plan or not". Through this forum, parents, caregivers, advocates, and legislators will be able to exchange information, tips, and advice on how to access HBOT for children. In addition to invaluable conversation and encouragement, list members can also download over two dozen PDF files that can be used to put together a request for Medicaid reimbursement through their own state agencies.

"Together we can make a difference. Separately we may never make a difference," said Mr. Freels.

References:
 1. (EPSDT statute: EPSDT stands for Early, Periodic, Screening, Diagnostic, and Treatment services) 42 USC § 1396d(r)(5) [the Medicaid law for children]. It can be found on the internet at http://caselaw.findlaw.com/casecode/uscodes/42/chapters/7/subchapters/xix/sections/section_1396d.html When you get there and the page has finished loading, do a "find" (should be your command key and then the letter 'F') then enter the word "ameliorate defects" (without the quotation marks), and it will take you to the body of Paragraph 5 of the EPSDT statute.
 2. <http://groups.yahoo.com/group/medicaidforhbot>
 3. Superior Court of Dekalb County; James Freels vs. the Commissioner of the Georgia Department of Community Health, division of Medical Assistance. Final order 10/10/01 (Phone: (404) 371-2836)



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