



**BLUE SHIELD**  
of California

MARCH 31, 1981

EXHIBIT

29

**MEDICARE**

Phone: (415) 445-3000

Mail Address: MEDICARE, P. O. Box 7082, San Francisco, CA 94120

MICHAEL B W  
1712 SHELLEY DR  
SANTA ROSA CA 95401

IN ANY INQUIRY PLEASE REFER TO-  
HEALTH INSURANCE CLAIM NUMBER-  
INTERNAL CONTROL NUMBER-

YOU RECENTLY ASKED US TO REEXAMINE YOUR MEDICARE CLAIM TO DETERMINE IF IT WAS CORRECTLY PROCESSED. I HAVE MADE A NEW AND INDEPENDENT EXAMINATION OF YOUR CLAIM.

THE CLAIM WAS REVIEWED BY OUR MEDICAL ADVISORS. BASED ON THEIR EVALUATION THE SPEECH PROSTHESIS IS GOING TO BE COVERED.

THANK YOU FOR BRINGING THIS MATTER TO OUR ATTENTION. I HAVE TAKEN CORRECTIVE ACTION. PAYMENT OR NOTIFICATION WILL BE SENT AS SOON AS PROCESSING HAS BEEN COMPLETED.

IF YOU ARE DISSATISFIED WITH THIS REVIEW DETERMINATION, YOU MAY REQUEST, WITHIN 6 MONTHS OF THE DATE OF THIS NOTICE, A HEARING BEFORE A HEARING OFFICER IF THE AMOUNT IN CONTROVERSY (THE AMOUNT OF BENEFITS IN QUESTION) IS \$100 OR MORE. TO MEET THE \$100 LIMITATION, YOU MAY COMBINE OTHER CLAIMS OF YOURS THAT HAVE BEEN THROUGH THE REVIEW OR REOPENING PROCESS DURING THE SIX MONTH PERIOD BEFORE THE DATE OF THE HEARING REQUEST. THIS REQUEST MUST BE SENT EITHER TO THIS OFFICE OR TO ANY SOCIAL SECURITY OFFICE. EITHER OFFICE WILL BE GLAD TO ASSIST YOU IN REQUESTING A HEARING.

IF YOU FIND IT NECESSARY TO WRITE US FURTHER ABOUT THIS CASE, PLEASE INDICATE ON YOUR CORRESPONDENCE THE NUMBER SHOWN ABOVE WHICH WE HAVE ASSIGNED TO YOUR INQUIRY.

ANNABELLE BROUSSARD  
MEDICARE-CORRESPONDENCE

CALIFORNIA PHYSICIANS' SERVICE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

MYERS, by and through her  
best friend Charlotte Myers,  
LA WILLIS, by and through her  
best friend Clara Maxine  
unds, OLIVER LEE, by and through  
his next best friend Angela Lee,  
on behalf of themselves and all  
other persons similarly situated,

PLAINTIFFS.

vs.

CIVIL ACTION NO.  
3:94 CV 185 LN

STATE OF MISSISSIPPI, OFFICE OF  
THE GOVERNOR, DIVISION OF MEDICAID  
and HELEN WETHERBEE, in her  
Official Capacity as the Executive  
Director of the Division of Medicaid

AFFIDAVIT

DEFENDANTS.

STATE OF OHIO  
COUNTY OF WAYNE: .ss:

ELAINE KOCH, being duly sworn, deposes and says:

1. I am the manufacturing scheduler/planner for the  
Prentke Romich Company (PRC), a position I assumed in January,  
1995. From June 1988 to that date, I was PRC's funding  
coordinator. Together with a staff of 3 persons, I was  
responsible for processing all requests for third party funding  
(e.g., Medicaid, private health insurance) for PRC's AAC devices  
throughout the United States. My education includes a B.A.  
degree in speech pathology from Bowling Green State University,  
awarded in 1984.

2. I submit this Affidavit based on personal knowledge.



3. PRC is the nation's largest manufacturer of augmentative communication (AAC) devices. PRC's plant and headquarters are located in Wooster, Ohio. PRC was founded in 1966, and it has designed, manufactured and sold more than 25,000 AAC devices to people with severe expressive communication disabilities throughout the United States. PRC devices also are sold in 19 other countries throughout the world.

4. PRC's current product line of AAC devices includes the Liberator, Light Talker, Touch Talker, AlphaTalker, and WalkerTalker. PRC also designs and manufactures other electronic aids for people with severe disabilities, including environmental control devices, computer access devices, wheelchair mounting kits and switches.

5. All of PRC's devices are designed to match the individual abilities and needs of broad classes of people with disabilities; its AAC devices in particular are able to match the abilities and needs of thousands of people with severe expressive communication disabilities, which explains PRC's leadership role in AAC device sales.

6. PRC is the largest, but by no means the only AAC device manufacturer. AAC device (including both hardware and software) design, manufacturing, and marketing is an industry consisting of at least 18 companies of varying sizes. In general, each produces devices that address somewhat different segments of the population of people with severe expressive communication disabilities. Collectively, AAC device manufacturers participate

in the Communication Aids Manufacturer's Association (CAMA), and in the Electronic Industries Association.

7. PRC's AAC devices are classified as Class II medical devices (powered communication systems) by the United States Food and Drug Administration. PRC files pre-market notification to the FDA regarding the AAC devices it manufactures.

8. PRC sells its AAC devices directly to their users. From June 1988 to January 1, 1995, all Medicaid funding requests were handled by me or the staff under my direction.

9. State Medicaid program funding for PRC AAC devices is widespread, though not yet universal. PRC records indicate that 34 Medicaid programs have purchased its AAC devices. A list of the states is provided below:

Alaska (repair)	Maine	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Massachusetts	Oregon
Colorado	Minnesota	Pennsylvania
Delaware	Missouri	South Dakota
Idaho	Montana	Tennessee
Illinois	Nebraska	Texas
Indiana	New Hampshire	Utah
Iowa	New Jersey	Vermont
Kentucky	New York	Virginia
Louisiana	North Dakota	Washington
		Wisconsin

10. Of these states, 13 have specific rules or policies governing AAC device funding or access (Arkansas, Indiana, Iowa, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, Oregon, and Wisconsin).

11. State Medicaid programs not on this list do not necessarily refuse to pay for AAC devices. For example, Michigan recently issued specific Medicaid criteria to be used for AAC



device funding requests, bringing the number of states with specific AAC funding criteria to 14. PRC has not yet had any funding requests be processed through the new criteria. I also am aware that four other states (Alabama, Georgia, West Virginia and Mississippi) with no history of funding AAC devices, are participating in a federal grant that has as its central goal: to establish Medicaid access to AAC devices. In addition, AAC funding may occur in some state Medicaid programs but no request for funding may ever have been made for a PRC device. For a complete list, a comparison of the Medicaid funding experiences of other AAC device manufacturers is required.

12. In sum, at least 35 state Medicaid programs have expressed their willingness to pay for AAC devices, through express policy and/or past practice, and at least 4 others are actively being pursued to change their policy and/or practice in regard to AAC device purchases.

13. PRC also has sold AAC devices to public schools, which use a variety of funding sources (federal, state and local) to meet the costs of the devices.

14. Insurance funding for PRC AAC devices also is extensive. PRC has sold its devices to more than 200 health insurance providers, both commercial insurance providers and self-insured (ERISA) benefits providers.

15. My position as PRC funding coordinator required that I become familiar with standards of medical necessity for Medicaid as well as private insurance. I also reviewed the Mississippi

Medicaid definition of medical necessity. It states:

Medical necessity is the determination by the Medical Assistance program that a service is reasonably necessary to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap or cause physical deformity or malfunction. There must also be no other equally effective, more conservative, or substantially less costly course of treatment available or suitable for the client requesting the service.

16. The wording of Mississippi Medicaid's medical need definition cannot be distinguished from the medical need definitions used by other state Medicaid programs or health insurance policies which for many years have approved AAC device funding.

Elaine Koch  
ELAINE KOCH.

Sworn to before me this  
13<sup>th</sup> day of February, 1995

Carol L. Flessel  
Notary Public  
Commission Expires:

CAROL L. FLESSSEL  
Notary Public, State of Ohio  
My Commission Expires July 2, 1997