

JAN 25 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOIS ZELLS,

Plaintiff - Appellant,

v.

U.S. SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant - Appellee.

No. 09-56564

D.C. No. 2:09-cv-02506-SJO-
FMO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Lois Zells appeals pro se from the district court's order dismissing her action challenging the Secretary's denial of reimbursement for hearing aids under the Medicare Act, 42 U.S.C. § 1395, et seq. We have jurisdiction under 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo the district court’s dismissal for failure to state a claim. *Kahle v. Gonzales*, 487 F.3d 697, 699 (9th Cir. 2007). We affirm.

The district court properly dismissed the action because, under the plain language of the statute, hearing aids are not covered by Medicare. *See* 42 U.S.C. § 1395y(a)(7) (excluding from coverage “hearing aids or examinations therefor”); *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”). Contrary to Zells’s contention, there is no support for the argument that Congress intended to deny coverage only for “routine” hearing aids.

Zells’s remaining contentions are unpersuasive.

AFFIRMED.