



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

March 30, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms.\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 27, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid coverage for bariatric surgery (gastric bypass).

In arriving at a decision, the State Hearings Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: medical necessity review and prior authorization are required for approval of Medicaid coverage for bariatric surgery (WV Medicaid Regulations Chapter 500-15, November 1, 2004).

The information which was submitted at your hearing revealed that you did not meet the criteria of having a diagnosis of diabetes.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny Medicaid coverage for bariatric surgery (gastric bypass).

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Patricia Woods, Nurse Administrator, Bureau for Medical Services  
Liz Miller, R. N., WVMi

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-1045**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 27, 2006 for \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on March 27, 2006 on a timely appeal filed December 13, 2005.

It should be noted here that the claimant's benefits have been denied pending a hearing decision. It should also be noted that the hearing was convened in Charleston, WV at claimant's request.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

### **III. PARTICIPANTS:**

1. \_\_\_\_\_, Claimant.
2. \_\_\_\_\_, Claimant's husband.
3. Patricia Woods, Nurse Administrator, Bureau for Medical Services.
4. Virginia Evans, Claims Representative, Bureau for Medical Services.
5. Liz Miller, R. N., WVMJ.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department took the correct action to deny Medicaid coverage for bariatric surgery (gastric bypass).

### **V. APPLICABLE POLICY:**

Medicaid Regulations Chapter 500-15 effective November 1, 2004.

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Copy of regulations (4 pages).
- D-2 Copy of denial letter 6-10-05 (2 pages).
- D-3 Copy of denial letter 7-6-05 (2 pages).
- D-4 Copy of denial letter on reconsideration 11-17-05 (2 pages).
- D-5 Copy of additional letter from Dr. [REDACTED] 6-22-05 (5 pages).
- D-6 Copy of reconsideration request from Dr. [REDACTED] (3 pages).
- D-7 Copy of WVMJ review (58 pages).

#### **Claimant's Exhibits:**

- Cl-1 Copy of medical problems and medications.

### **VII. FINDINGS OF FACT:**

- 1) A request for authorization for Medicaid coverage for bariatric surgery (gastric bypass) was submitted for the claimant by Dr. [REDACTED] on 5-12-05 (Exhibit #D-7).
- 2) The request for Medicaid coverage for bariatric surgery was denied based on not meeting medical necessity due to patient not being diabetic and not being able to adapt to lifestyle changes required after surgery based on psychiatric history and a denial notification letter was mailed on 6-10-05 (Exhibit #D-2).
- 3) An additional letter from Dr. [REDACTED] dated 6-22-05 was reviewed by WVMJ and another denial letter was issued on 7-6-05 upholding the initial denial (Exhibit #D-3).

- 4) A request for reconsideration was received from Dr. [REDACTED] dated 7-4-05 along with a letter from the claimant (Exhibit #d-6).
- 5) The reconsideration resulted in WVMI upholding the original denial with another denial letter issued on 11-17-05 (Exhibit #D-4).
- 6) A written hearing request was received by the Bureau for Medical Services on 12-13-05, by the Board of Review on 1-3-06, and by the State Hearing Officer on 2-8-06.
- 7) Testimony from Ms. Woods revealed that regulations are contained in WV Medicaid Program Coverage Bariatric Surgery Procedures from Medicaid Program Chapter 500-15 effective November 1, 2004 (Exhibit #D-1).
- 8) Testimony from Ms. Miller revealed that medical necessity was reviewed and it was determined that the claimant did not meet the medical necessity criteria as she does not have diabetes, there was no information about whether she was tobacco free, and the Psychological Evaluation completed 4-21-05, while saying she was an appropriate candidate for the surgery, stated that she had suicidal ideations, was an emotional eater, and suffered from depression, and that the regulations require that the individual be receiving actual treatment for diabetes.
- 9) Testimony from the claimant indicated that she does not have diabetes but will get it in the future if nothing is done about her weight, that the report dated 4-21-05 says that she is tobacco free, that her sugar on 12-28-04 was 104 which is not high but is borderline, that she is depressed because of her weight, that the depression could go away if she got some help with the weight, that she has 17 medical problems and takes 11-13 medications daily (Exhibit #CI-1), that she suffered Post-traumatic Stress Syndrome (PTSD) after a wreck with an 18 wheeler, and that she was on Zoloft but does not receive active treatment for depression.
- 10) Testimony from Mr.\_\_\_\_ revealed that his wife lost 85 pounds with weight watchers but they could not afford for her to continue, that the doctor thinks his wife will die if she does not have the surgery, and that she would put 100% into it.
- 11) WV Medicaid Program Coverage Bariatric Surgery Procedures from Medicaid Chapter 500-15 effective November 1, 2004 states, in part:

“The West Virginia Medicaid Program covers bariatric surgery procedures subject to the following conditions:

a. Medical Necessity Review and Prior Authorization

The patient’s primary care physician or the bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all the required information, to the West Virginia Medical Institute (WVMI), 3001 Chesterfield Place, Charleston, WV 25304. The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon the following criteria:

1. A Body Mass Index (BMI) greater than 40 must be present and documented for at least the past 5 years. Submitted documentation must include height and weight

2. The obesity has incapacitated the patient from normal activity, or rendered the individual disabled. Physician submitted documentation must substantiate inability to perform activities of daily living without considerable taxing effort, as evidenced by needing to use a walker or wheelchair to leave residence.
3. Must be between the ages of 18 and 65.....
4. The patient must have a documented diagnosis of diabetes that is being actively treated with attempts each lasting six months or longer. These attempts at weight loss must be within the past two years, as documented in the patient medical report, including a description of why the attempt failed.
5. Patient must have documented failure at two attempts of physician supervised weight loss, attempts each lasting six months or longer. These attempts at weight loss must be within the past two years, as documented in the patient medical record, including a description of why the attempt failed.
6. Patient must have had a preoperative psychological and/or psychiatric evaluation within the six months prior to the surgery. This evaluation must be performed by a psychiatrist or psychologist, independent of any association with the bariatric surgery facility, and must be specifically targeted to address issues relative to the proposed surgery. A diagnosis of active psychosis; hypochondriasis; obvious inability to comply with a post operative regimen; bulimia; and active alcoholism or chemical abuse will preclude approval.
7. The patient must demonstrate ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance of weight loss. Evidence of adequate family participation to support the patient with the necessary lifelong lifestyle changes required.
8. Patient must be tobacco free for a minimum of six months prior to the request.
9. Contraindications: Three (3) or more prior abdominal surgeries; history of failed bariatric surgery; current cancer treatment; Crohn's disease; End Stage Renal Disease (ESRD); prior bowel resection; ulcerative colitis; history of cancer within prior 5 years that is not in remission; prior history of non-compliance with medical or surgical treatments.
10. Documentation of a current evaluation for medical clearance of this surgery performed by a cardiologist or pulmonologist, must be submitted to ensure the patient can withstand the stress of the surgery from a medical standpoint."

## **VIII. CONCLUSIONS OF LAW:**

Regulations from West Virginia Medicaid Program Coverage Bariatric Surgery Procedures clearly state that medical necessity and prior authorization must occur before Medicaid will pay for bariatric surgery and that WVMI will perform a review of medical necessity based on the following criteria:

- (1) A body mass index (BMI) greater than 40 percent for past 5 years. Claimant has a BMI of 69 (Exhibit #D-7) and meets this criteria.
- (2) The obesity has incapacitated the patient from normal activity, or rendered the individual disabled. Claimant has hypertension, hypertensive cardiovascular disease, obstructive sleep apnea, GERD and depression. (Exhibit #D-7). Claimant meets this criteria.
- (3) Must be between the ages of 18 and 65. Claimant was 35 years old when request was made (Exhibit #D-7). Claimant meets this criteria.
- (4) The patient must have a documented diagnosis of diabetes that is being actively treated. The claimant does not have a diagnosis of diabetes (Exhibit #D-7). The claimant does not meet this criteria.
- (5) Patient must have documented failure at two attempts of physician supervised weight loss lasting six months or longer. The claimant has attempted weight watchers, diet pills, Susan Poweter, etc. (Exhibit #D-7). Claimant meets this criteria.
- (6) Patient must have had a preoperative psychological and/or psychiatric evaluation within the past six months without a diagnosis of psychosis, hypochondirasis, obvious inability to comply with a post operative regimen, bulimia, or active alcoholism or chemical abuse. A Psychological Evaluation was completed on 4-21-05 (Exhibit #D-7). Claimant meets this criteria.
- (7) The patient must demonstrate ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance of weight loss with evidence of adequate family support. The Psychological Evaluation completed 4-21-05 (Exhibit #D-7) states that the claimant suffers from depression and suicidal ideation and should receive active treatment and that she is an emotional eater. However, the Psychologist, [REDACTED] indicated that the claimant was an appropriate candidate for bariatric surgery and that under physician guidance, should be able to implement dietary and exercise lifestyle changes. The claimant meets this criteria.
- (8) Patient must be tobacco free for a minimum of six months prior to the request. The claimant was tobacco free (Exhibit #D-7).
- (9) Contraindications: Three (3) or more prior abdominal surgeries; history of failed bariatric surgery; current cancer treatment; Crohn's disease; End Stage Renal Disease (ESRD); prior bowel resection; ulcerative colitis; history of cancer within prior 5 years that is not in remission; prior history of non-compliance with medical or surgical treatment. The claimant has none of the contraindications and meets this criteria.
- (10) Documentation of current evaluation for medical clearance of this surgery performed by a cardiologist or pulmonologist to show the patient can withstand the surgery from a medical standpoint. Letter from cardiologist dated 5-23-05 and report from pulmonary function test 12-28-04 showed the claimant met this criteria.

While the Department denied the request for bariatric surgery because the claimant did not have diabetes, was not tobacco free, and could not adjust to lifestyle changes due to psychological issues, the State Hearing Officer found that the only criteria the claimant did not meet was in regard to the diabetes. The medical documentation shows that the claimant is not diabetic and the criteria requires a diagnosis of diabetes. The State Hearing Officer found that the claimant is tobacco free and that there was a Psychological Evaluation which indicated that the claimant was an appropriate candidate for the surgery. However, since the claimant did not meet all ten (10) requirements of the criteria, she cannot be approved for Medicaid coverage for bariatric surgery.

**IX. DECISION:**

It is the decision of the State Hearing Officer that the Department took the correct action to deny Medicaid coverage for bariatric surgery (gastric bypass).

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 30th Day of March, 2006.**

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**Thomas M. Smith  
State Hearing Officer**