



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 17, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid coverage for a CPAP machine.

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: the patient must have at least 15 Apnea-Hypopnea Index (AHI) to meet medical necessity criteria for CPAP/BIPAP (Medicaid Regulations Chapter 500-CPAP/BIPAP Criteria, Medical Necessity).

The information which was submitted at your hearing revealed that a sleep studies conducted on June 17, 2005 and July 16, 2005 showed Apnea-Hypopnea Indexes of only 6 and 2 respectively.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny Medicaid coverage for a CPAP machine.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Patricia Woods, Bureau for Medical Services  
Paula Clark, WVMI

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6887**

**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 15, 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 15, 2006 on a timely appeal filed November 2, 2005.

It should be noted here that the claimant's benefits have been denied pending a hearing decision.

**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. Patricia Woods, Nurse Administrator, Bureau for Medical Services (by speaker phone).
3. Virginia Evans, Claims Representative, Bureau for Medical Services (by speaker phone).
4. Paula Clark, R. N., WV Medical Institute (WVMI) (by speaker phone).

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 a CPAP machine.

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

Medicaid Regulations Chapter 500, DME/Medical Supply Manual, Attachment I, HCPCS Codes for Durable Medical Equipment/Medical Supplies, effective May 1, 2005.

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

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

- A Copy of request for CPAP and sleep studies (14 pages).
- B Copy of WVMI evaluation, decision, and notification letters (7 pages).
- C Copy of CPAP/BIPAP Medical Necessity Criteria (2 pages).

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

- CI-1 Copy of letter dated 11-8-05 from [REDACTED] M. D. (ruled as inadmissible as the letter was dated after the time in which the denial action took place.)

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

- 1) A request for authorization for Medicaid coverage for a CPAP machine was submitted for the claimant by [REDACTED] MD on 7-7-05 (Exhibit #A).
- 2) The request for Medicaid coverage for a CPAP machine was denied as not meeting medical necessity criteria with notification sent to Dr. [REDACTED] and the claimant on 9-15-05 (Exhibit #B).
- 3) A request for reconsideration was received from Dr. [REDACTED] on 10-14-05 and was again denied with notification issued on 10-28-05 (Exhibit #B).
- 4) A hearing request was received by the Bureau for Medical Services on 11-2-05, by the Board of Review on 12-29-05, and by the State Hearing Officer on 1-27-06.

- 5) Testimony from Ms. Clark revealed that a request for Medicaid coverage for a CPAP machine was received from Dr. [REDACTED] that additional information was requested and received on 9-1-05, that two (2) sleep studies were conducted on 6-17-05 and 7-16-05 (Exhibit #A) which showed an Apnea-Hypopnea Index (HPI) of six (6) and two (2) respectively while the regulations require at least 15 (Exhibit #C), that the request for Medicaid was denied as not meeting medical criteria with notification issued on 9-15-05, that a request for reconsideration was received on 10-16-05 (Exhibit B) but was the denial was affirmed by the physician reviewer with notification on 10-28-05.
- 6) Testimony from the claimant revealed that she lost her breath in the hospital and was better when she used the CPAP machine.
- 7) Medicaid Regulations from DME/Medical Supply Manual, Attachment I, HCPCS Codes for Durable Medical Equipment/Supplies from Chapter 500-17, May 1, 2005 state, in part:

“CPAP/BIPAP CRITERIA

Medical Necessity

Diagnosis: Obstructive Sleep Apnea

Definitions: Apnea: cessation of airflow for at least 10 seconds

Hypopnea: abnormal respiratory event lasting at least 10 seconds with at least 30% reduction in thoracoabdominal movement or airflow, and with at least a 4% oxygen desaturation.

Full channel somnography: sleep study that includes EEG, EOG, EMG, ECG, snore microphone, oronasal air flow, chest wall effort, and oxyhemoglobin saturation.

AHI: Apnea-Hypopnea Index. Equals the total number of apnea and hypopnea episodes divided by the number of hours sleep.

Required: A. Full channel somnography (not required for BIPAP ST\*) performed within the last 6 months in a facility-based sleep center, (not in patient’s home, mobile facility, or by a DME supplier).

B. Apnea-Hypopnea Index (AHI) consistent with one of the following:

\* at least 15

\* at least 5 and less than 14 and with one or more of the following:

Excessive daytime sleepiness documented by a score of less than 10 by the Epworth Sleep Scale

Impaired cognition

Mood disorders or insomnia

Hypertension, ischemic heart disease, or history of stroke

C. If the CPAP cannot be tolerate or is ineffective, BIPAP titration is required.\*\*

**NOTES:**

BIPAP does not require sleep studies. It is used in cases of respiratory failures when a therapeutic ventilator if appropriate\*.

CPAP is not indicated for central sleep apnea.

Only physicians trained in the diagnosis and treatment of Obstructive Sleep Apnea can prescribe CPAP.

Children with apnea more than 1 episode per hour or sustained saturations under 90% will be considered case-by-case.

Individuals who desaturate to less than 70% or demonstrate more than or equal to 20 episodes of desaturation to less than 88% will be considered on a case-by-case basis.

NON-COVERED”

**VIII. CONCLUSIONS OF LAW:**

- (1) Regulations from Medicaid Chapter 500 DME/Medical Supply Manual, Attachment I, HCPCS Codes for Durable Equipment/Medical Supplies clearly state that medical necessity is shown either by an Apnea-Hypopnea Index (AHI) of 15 or an AHI of between 5 and 14 with one of the following: (1) Excessive daytime sleepiness documented by a score of at least 10 on the Epworth Sleep Scale, (2) Impaired cognition, (3) Mood disorders or insomnia, (4) Hypertension, ischemic heart disease, or history of stroke.
- (2) The claimant’s sleep studies conducted on 6-17-05 and 7-16-05 showed AHI’s of six (6) and two (2). The sleep studies do not show that the claimant meets the medical criteria for Medicaid coverage for a CPAP machine on the basis of AHI’s.
- (3). The claimant’s sleep studies and additional documentation shows six (6) AHI’s from the sleep study conducted on 6-17-05 but only two (2) from the one conducted 7-16-05. However, the documentation does not show that the claimant has any of the four (4) conditions listed in Conclusions of Law #1 (excessive daytime sleepiness, impaired cognition, mood disorders or insomnia, or hypertension, ischemic heart disease or history of stroke. The claimant does not meet the medical necessity criteria on the basis of AHI’s between five (5) and fourteen (14).

**IX. DECISION:**

It is the decision of the State Hearing Officer that the Department took the correct action to deny Medicaid coverage for a CPAP machine.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 17th Day of March, 2006.**

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**Thomas M. Smith**  
**State Hearing Officer**