



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

_____ for _____

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 medical necessity as the documentation did not demonstrate that you could adjust to the diet, lifestyle, and behavioral changes necessary to facilitate weight loss.

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, WVMI
[REDACTED] Physician Assistant

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

_____,

Claimant,

v.

Action Number: 05-BOR-7035

**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 October 13, 2005.

It should be noted here that the claimant's benefits have been denied pending a hearing decision. It should be noted that the hearing was originally scheduled in _____, WV but was changed to the _____ County DHHR office at claimant's request with Department representatives participating by speaker phone.

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 representative.
3. _____, Claimant's daughter.
4. [REDACTED] Physician Assistant.
5. Patricia Woods, Nurse Administrator, Bureau for Medical Services.
6. Virginia Evans, Claims Representative, Bureau for Medical Services.
7. Liz Miller, WVMI.

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:

- #1 Copy of Medicaid regulations (3 pages).
- #2 Copy of notification letter 5-27-05 and medical documentation (54 pages).
- #3 Copy of notification letter 7-28-05 (2 pages).
- #4 Copy of medical documentation (39 pages).

VII. FINDINGS OF FACT:

- 1) A request for authorization for Medicaid coverage for bariatric surgery (gastric bypass) for the claimant by Dr. [REDACTED] 5-9-05 (Exhibit #2).
- 2) The request for Medicaid coverage for bariatric surgery was denied as not medically necessary related to the psychiatric history and no evidence of incapacitation (Exhibit #2).
- 3) A request for reconsideration was denied with notification issued on 7-28-05 (Exhibit #3) based on documentation not showing the patient could adapt and maintain the strict diet regime required with the surgery.
- 4) A hearing request on behalf of the claimant by _____ was received by the Bureau for Medical Services on 10-13-05 and by the State Hearing Officer on 2-8-06.

- 5) 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).
- 6) Testimony from Ms. Miller revealed that the request for Medicaid coverage for bariatric surgery was reviewed by a physician reviewer twice and that there were concerns about the Psychological Evaluation and the claimant's ability to provide definitive information to the Psychologist, that there was a concern for poor compliance, that the claimant has high anxiety and there are independent living concerns, that the claimant has a history of alcoholism, and that his weight gains show non-compliance.
- 7) Testimony on behalf of the claimant revealed that the Psychologist said the claimant was a good candidate for the surgery, that he followed the suggested diet by the Psychologist and was checked by Mr. [REDACTED] that the claimant's life is at stake, that the claimant saw Mr. [REDACTED] every two (2) weeks and was on an 1800 calorie diet, that he showed a willingness to comply, that his life will be shortened if he does not have the procedure, that he would have a decrease of \$450 in medications per month if he could lose the weight, that his body mass index is now 47.6%, that he quit drinking and smoking several years ago.
- 8) 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:

- 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, _____, 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.

VII. 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 43.3 (Exhibits #D-2 and #D-4). Claimant meets this criteria.
- (2) The obesity has incapacitated the patient from normal activity, or rendered the individual disabled. Claimant receives Social Security Disability benefits. (Exhibit #D-4). Claimant meets this criteria.
- (3) Must be between the ages of 18 and 65. Claimant was 61 years old when request was made (Exhibit #D-4). Claimant meets this criteria.

(4) The patient must have a documented diagnosis of diabetes that is being actively treated. The claimant has a diagnosis of diabetes and is being treated with Novalog, lantus 100 and glucophage XR (Exhibit #D-4). The claimant meets 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 loss on Xenical and physician supervised weight loss program (Exhibit #D-4). 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, hypochondriasis, obvious inability to comply with a post operative regimen, bulimia, or active alcoholism or chemical abuse. A Psychological Evaluation was completed on 3-22-05 (Exhibit #D-2). 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 3-22-05 (Exhibit #D-2) states that, in general, the claimant appears to be a suitable psychological candidate for the bariatric surgery but states that the patient's ability to provide detailed information regarding dietary guidelines and risks associated with surgery could result in poor compliance with dietary guidelines. The Evaluation also stated that the patient is probably less aware and concerned about specific details than would be desirable and that this lack of awareness could reduce his motivation to adhere strictly to his medical regimen. The Psychologist, while stating that the claimant "appeared" to be a suitable candidate, expressed concerns about his ability to comply with the lifestyle changes necessary to facilitate weight loss, such as the necessity of eliminating caffeine and the patient's reluctance to be open to that idea. The State Hearing Officer finds that the documentation does not show that 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-2).

(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. Report from [REDACTED] Center and [REDACTED] M. D. 6-29-04 and report from Dr. [REDACTED] 02-22-05 showed the claimant met this criteria.

While the Psychologist indicated that the claimant appeared to be a candidate for the bariatric surgery, his narrative in several different places of his report did not support a conclusion that the claimant could comply with the dietary, lifestyle, and behavioral changes necessary to facilitate weight loss. In order to be approved for Medicaid

coverage for bariatric surgery, the patient must meet all ten (10) of the criteria and the State Hearing Officer finds that the Psychological Evaluation does not support the conclusion that the claimant can adapt to the dietary, lifestyle, and behavioral changes in order for the surgery to lead to successful weight loss.

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.

**Thomas M. Smith
State Hearing Officer**