



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 12, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 6, 2006. Your appeal was based on the Department of Health and Human Resources' denial of your request for Medicaid payment of a power wheelchair.

In arriving at a decision, the State Hearing 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.

Medicaid regulations state that the WV Medicaid Program offers a comprehensive scope of Durable Medical Equipment (DME) / Medical Supply services to Medicaid members, subject to medical necessity appropriateness criteria and prior authorization requirements. The DME/Medical Supply Provider must provide the most economical items/services that meet the member's basic health care needs. Expensive items are not covered when less costly items/services are available. (West Virginia Department of Health and Human Resources, Chapter 500)

The information submitted at the hearing reveals that a properly equipped power wheelchair will encourage neuromuscular and orthopedic development in your child and will promote social development through independent, self-directed mobility. Whereas the Department failed to show how a manual wheelchair could provide similar benefits, and your child has demonstrated the ability to safely operate a power wheelchair with modified controls, medical necessity/appropriateness criteria has been met.

It is the decision of the State Hearing Examiner to **reverse** the action of the Department in denying Medicaid payment for your power wheelchair.

Sincerely,

Thomas E. Arnett
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Nissar Kalwar, Esq., Assistant Attorney General's Office
Charles Rogers, Esq., Legal Aid of WV
Evelyn Whidby, BMS

_____,

Claimant,

v.

Action Number 06-BOR-1556

West Virginia Department of Health & Human Resources,

Respondent.

DECISION OF THE STATE HEARING EXAMINER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 12, 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 convened on September 6, 2006 on a timely appeal filed February 3, 2006.

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 the development of regulations to implement Federal and State requirements for the program. The Department of Health & Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

- _____, Claimant
- _____, Esq., Legal Aid of WV, Counsel for Claimant
- _____, Claimant's mother
- _____, Physical Therapist, _____ Co. Board of Education
- _____, Occupational Therapist, _____ Co. Board of Education
- Nissar Kalwar, Esq., Counsel for BMS (Participated Telephonically)
- Virginia Evans, Claims Representative, BMS (Participated Telephonically)
- Sandra Joseph, MD, Medical Director, BMS (Participated Telephonically)
- Elizabeth Miller, RN, WVMI (Participated Telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department is correct in its decision to deny Medicaid payment for a power wheelchair.

V. APPLICABLE POLICY:

West Virginia Bureau for Medical Services Provider Manual Chapter 500, Volume 6
West Virginia Bureau for Medical Services Provider Manual Chapter 200

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- Exhibit A Information received from _____, M.D. and Home Medical Equipment Company
- Exhibit B-1 Review by West Virginia Medical Institute (WVMI)
- Exhibit B-2 Notice of Initial Denial by WVMI
- Exhibit B-3 Notice of Denial by Children with Special Health Care Needs
- Exhibit C-1 Reconsideration information from _____ M.D.
- Exhibit C-2 Results of WVMI's reconsideration review
- Exhibit C-3 Notice of Reconsideration Determination by WVMI
- Exhibit C-4 Reconsideration information from _____, M.D.
- Exhibit C-5 Notice of Reconsideration Determination by WVMI
- Exhibit D West Virginia BMS Provider Manual, Chapter 500, Volume 6 (Medicaid Manual) - Covered Services, Limitations and Exclusions for DME/Medical Supplies, Section 500, 502.2 and 503.

VII. FINDINGS OF FACT:

- 1) A Certificate of Medical Necessity, signed by _____, M.D. on July 21, 2005, was submitted on behalf of the Claimant to determine eligibility for Medicaid payment of a power wheelchair.
- 2) On or about August 30, 2005, West Virginia Medical Institute (WVMI) notified the Claimant, through the Utilization Review Coordinator from Home Medical Equipment, via a Notice of Initial Denial (Exhibit B-2), that the documentation submitted does not support medical necessity for a power chair. A second denial (Exhibit B-3) was sent by the Children with Special Health Care Needs Program (CSHCN) on September 16, 2005. This notice also indicates that the request for a power wheelchair was denied - "Not Medically Necessary."
- 3) A request for reconsideration, Exhibit C-1, was filed on behalf of the Claimant. This correspondence states, in pertinent part - "As mentioned in the justification letter, she (Claimant) is unable to crawl, walk, or propel a manual wheelchair. Without the use of a powerchair customized for her individual medical needs, she will not have the opportunity to develop critical mobility skills, interfering with her ability to participate in functional activities with greater independence."
- 4) On October 28, 2005, WVMI's Physician Reviewer completed a Reconsideration of Initial

Denial Determination (Exhibit C-2). The reviewing physician documented the following - "After reviewing the information provided to me, it is my professional opinion that a wheelchair may be beneficial for this patient, but the request for a power wheelchair does not meet criteria for medical necessity. Therefore I recommend that the denial for a power wheelchair be upheld."

- 5) On or about November 3, 2005, the Claimant, through the Utilization Review Coordinator from Home Medical Equipment, was notified via a Provider Notice of Preadmission Reconsideration Determination (Exhibit C-3) that her reconsideration request was denied. This notice includes these pertinent statements:

WVMI received your request for reconsideration of the initial denial of authorization for the above listed patient. After due consideration of all relevant factors, including documentation in the medical record and any additional information provided, WVMI upheld the initial denial.

After review of the additional information provided, the physician reviewer has affirmed the original denial for a power wheelchair. While a wheelchair may be beneficial for this patient, a power wheelchair does not meet criteria for medical necessity.

- 6) Exhibit C-4 is a second (2nd) request for reconsideration sent to WVMI (dated 1/16/06). In this request, the Claimant's representatives state - "Being professionals that treat Angel on an ongoing basis, considering a powerchair 'not medically necessary' is not consistent with her diagnosis and physical characteristics." This document goes on to say- "The recommended powerchair will provide adequate seating to facilitate postural control and encourage active movement, diminishing adverse orthopedic, digestive and respiratory effects resulting from static positions. A powerchair is the only option that will provide [REDACTED] with independent, self-directed functional mobility."

- 7) In response to Exhibit C-4, a Notice of Preadmission Reconsideration Determination, West Virginia Medicaid (Exhibit C-5), was issued by WVMI. This notice states, in part:

WVMI received your request for reconsideration of the initial denial of authorization for the above listed patient. After due consideration of all relevant factors, including documentation in the medical record and any additional information provided, WVMI upheld the initial denial.

After review of the additional information by the Bureau for Medical Services' Medical Director, the original denial for a power wheelchair was upheld. Based on the information provided along with claims data, documentation to support the medical necessity for a power wheelchair is insufficient as [sic] this time.

- 8) Exhibit B-1 is WVMI's DME Report. This report was completed by Elizabeth Miller, RN, WVMI. RN Miller notes in the DME report the Claimant's diagnoses and the reason for the power wheelchair request. RN Miller's report indicates that the Claimant was frustrated

when she was not able to manage a standard joystick or mechanical switches. RN Miller went on to say that the Claimant was able to activate and release proximity switches placed in her functional range having the chair react consistently as expected. She notes that the stroller currently used by the Claimant only provides her with dependent mobility, directly interfering with her ability to develop life skills. The only statement in RN Miller's report to indicate that the power wheelchair is not medically necessary is the last sentence which states – "Will refer to physician, since pt is 3 yrs old, this is not appropriate."

- 9) RN Miller testified during the hearing that the child's age, in conjunction with her physical and mental limitations, resulted in the determination that a power wheelchair is not appropriate. According to RN Miller, the records show that the child becomes easily frustrated and the safety concerns that exist with a 3-year-old operating a power wheelchair are compounded by the fact that the Claimant is developmentally delayed. In addition to these reasons, RN Miller testified that a power wheelchair is not cost effective. She stated that the Claimant could qualify for a good manual wheelchair with proper seating that would grow with her and meet her needs for a longer period than the power wheelchair.
- 10) Dr. Sandra Joseph testified that as the Medical Director at the Bureau for Medical Services, she had the ability to review the Certificate of Medical Necessity (Exhibit A) and the Claimant's Medicaid claims history. Information in the Medicaid claims history indicates that the Claimant has some cognitive difficulties related to mental retardation, which would further complicate the Claimant's ability to operate such a technical piece of equipment. Dr. Joseph testified that the Department cannot be sure that the Claimant will be able to operate the power wheelchair safely. The Claimant's potential was mentioned in generic terms and there was no treatment plan submitted to demonstrate how the Claimant's independence would be accomplished with the use of the power wheelchair. She indicated that she does not know in what capacity Dr. [REDACTED] has been involved with the Claimant and there are no notes from him indicating how the Claimant will benefit medically. She stated the only objective information provided in the request is the Claimant's height and weight. After reviewing all of the information available, Dr. Joseph testified that she authorized the written notice identified as Exhibit C-4.
- 11) [REDACTED] is a Physical Therapist (PT) who has been working with the Claimant on a weekly basis for the past two (2) years. Ms. [REDACTED] testified that the Claimant would medically benefit from the customized power wheelchair as the gate trainer will allow her to remain in a vertical standing upright position that will assist her with weight bearing, bone density and hip formation. It will also help her with digestion and she will be able to interact, explore and play more like children in her peer group. The power wheelchair will need to be equipped with power sensors much like that of an automated paper towel dispenser that will enable the Claimant to initiate movement despite her inability to sustain pressure through her grasp. If she covers one button, she will go forward, if she covers another button she will go left, and so on. This chair is set up to include safety features and these features can be unlocked as the Claimant progresses to allow her more mobility and independence as she grows. Ms. [REDACTED] contends that this chair can grow with the child and will better serve the Claimant toward independence than a manual wheelchair, which she may never be able to manipulate.
- 12) [REDACTED] the Claimant's Occupational Therapist for the last two years, concurred with the testimony presented by [REDACTED] PT, and indicated that the child will likely never be able to propel a manual wheelchair. She stated that a power wheelchair will

encourage the development of independence.

- 13) The Claimant's mother testified that her child is not mentally retarded, but acknowledged that she is developmentally delayed. She stated that her daughter is learning sign language because she is not verbal. She uses her left hand to communicate as her right hand is impaired due to muscle and tissue damage. She indicated that they are systematically increasing the amount of food she can eat by mouth so that the feeding tube can be removed.
- 14) The Department cited the answer to question #3 on the WVMI Statement for Certification of Manual/Power Wheelchair (included in Exhibit A) to indicate that the Claimant was incapable of operating the power wheelchair. The Department cited diminished strength and difficulties with coordination resulting in frustration when the Claimant was unable to operate the power wheelchair with a standard joystick or mechanical switches. Conversely, the last statement in the response to this question states – "[REDACTED] was able to activate and release proximity switches placed in her functional range, having the chair react consistently as expected." In other words, the child demonstrated the ability to operate the power wheelchair with the modified controls.
- 15) West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 200 (Definitions) defines the term *Medically Appropriate* as - An effective service that can be provided, taking into consideration the particular circumstances of the beneficiary and the relative cost of any alternative services, which could be used for the same purpose, that is, the most economical service that meets the beneficiary's health.

Medically Necessary is defined as – Services or supplies that are proper and needed to diagnose or treat a medical condition.

- 16) Chapter 500, of the West Virginia BMS Provider Manual includes covered services, limitations, and exclusions for DME/Medical Supplies. Section 500 (Introduction) states that the WV Medicaid Program offers a comprehensive scope of Durable Medical Equipment (DME)/Medical Supply services to Medicaid members, subject to medical necessity appropriateness criteria and prior authorization requirements.
- 17) Policy found in Chapter 500, Section 502.2 of the West Virginia BMS Provider Manual states that the DME/Medical Supply Provider must provide the most economical items/services that meets the members' basic health care needs. Expensive items are not covered when less costly items/services are available.
- 18) Section 503 of the West Virginia BMS Provider Manual, Chapter 500, states DME/medical supplies and other related services/items provided through DME are considered for reimbursement by WV Medicaid when requested by a prescribing practitioner and determined medically necessary to meet the basic health care needs of the member. The most economical items/services will be provided. Expensive items are not covered when less costly items/services are available.

VIII. CONCLUSIONS OF LAW:

- 1) The West Virginia BMS Provider Manual includes covered services, limitations, and exclusions for DME/Medical Supplies and states that Durable Medical Equipment (DME)/Medical Supply services are subject to medical necessity appropriateness criteria and prior authorization requirements. The DME/Medical supply provider must provide the most economical items/services that meet the members' basic health care needs. DME/Medical Supplies and other related services/items provided through DME are considered for reimbursement by WV Medicaid when requested by a prescribing practitioner and determined medically necessary to meet the basic health care needs of the member. Expensive items are not covered when less costly items/services are available.
- 2) *Medical necessity*, in this case, means that the documentation reviewed for eligibility (Certificate of Medical Necessity) must demonstrate that the power wheelchair is proper and needed to treat the Claimant's medical condition. In order for the power wheelchair to be found *medically appropriate*, the documentation must show that the power wheelchair will be effective, taking into consideration the particular circumstances of the beneficiary and the relative cost of any alternative services, which could be used for the same purpose.
- 3) The Department's denial is based solely on the Claimant's age and reported cognitive/mental functioning capacity. While the Claimant's representatives acknowledge that the Claimant has developmental delays, there is no evidence to confirm a diagnosis of Mental Retardation or that the Claimant does not have the mental capacity to control the power wheelchair with modifications. The Claimant demonstrated the ability to operate the power wheelchair during a trial period with her physical therapist and her progress with sign language indicates that she has the mental capacity to interact and manipulate her environment. With regard to the Claimant operating the power wheelchair safely, the modified controls can be programmed to the Claimant's ability and then tailored as she becomes more proficient at operating the power wheelchair.
- 4) The medical benefits realized as a result of the modified power wheelchair are multiple and include neuromuscular and orthopedic benefits (weight bearing, bone density and hip formation) as well as postural control which will diminish adverse digestive and respiratory effects resulting from static positions. In addition to the medical benefits realized by the Claimant, the power wheelchair will promote social interaction and the exploration of her environment through independent, self-directed functional mobility.
- 5) The Department recommended a manual wheelchair but failed to indicate if a manual wheelchair could be modified to offer the medical benefits of the power wheelchair. In addition, the evidence indicates that the Claimant may never be able to operate a manual wheelchair independently. The power wheelchair is designed to grow with the child and will, therefore, provide the Claimant with several years of medical and social benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of the Claimant's

request for payment of a power wheelchair through the Medicaid Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 12th Day of October 2006.

**Thomas E. Arnett
State Hearing Examiner**