



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 12, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 2006. Your appeal was based on the Department of Health and Human Resources' denial of your request for a laparoscopic cholecystectomy under the Medicaid Program.

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.

Eligibility for the Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: Prior approval is necessary for specified services to be delivered for an eligible client by a specified provider before services can be performed, billed, or payment made. A utilization review method used to control certain services which are limited in amount, duration, or scope. (West Virginia Provider Manual Chapter 200 – Definitions)

Information submitted at the hearing revealed that the documentation provided did not meet the criteria for the procedure to be approved.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny payment for a laparoscopic cholecystectomy.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Evelyn Whidby, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

v.

Action Number 06-BOR-1756

West Virginia Department of Health & Human Resources,

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 23, 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 originally convened on June 23, 2006 on a timely appeal filed April 4, 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:

The following individuals participated telephonically:

_____, Claimant
Barbara White, Program Manager, BMS

Stacy Holstine, RN, West Virginia Medical Institute
Sharon Lopez, RN, West Virginia Medical Institute

Observing:

Evelyn Whidby, Bureau for Medical Services

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency complied with policy in denying the Claimant's request for a laparoscopic cholecystectomy.

V. APPLICABLE POLICY:

WVBMS Provider Manual Chapter 200, West Virginia Bureau for Medical Services Practitioners Manual Chapter 500, Section 502, and West Virginia Bureau for Medical Services Hospital Manual, Chapter 500, Section 508.1.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-A Information received from Dr. [REDACTED]
- D-B Results of West Virginia Medical Institute's medical review
- D-C Hospital Manual, Chapter 500, Section 508.1, No. 4 Attachment 3
Practitioners Manual, Chapter 500, Section 502

VII. FINDINGS OF FACT:

- 1) The request for a laparoscopic cholecystectomy was reviewed by WVMI on February 13, 2006. On February 7, 2006 Dr. [REDACTED] made a request for Medicaid outpatient services. Surgical Procedure Requested: LAP Chole. Diagnosis related to Surgical Procedure: Chronic Cholecystitis. Clinical reasons for surgery: Nausea decreased ejection fraction 35%, vomiting pain mid epigastric - loin chest region - radiates to back - awakens her at night.
- 2) The Claimant was notified in a letter (D-B) dated February 13, 2006 of the denial of her request for laparoscopic cholecystectomy. The letter stated, in part:

The request for the following services has been denied:
Laparoscopic Cholecystectomy

The reason for this decision is it did not meet the criteria for the indications for the procedure.

- 3) A request for reconsideration of the above decision was received on March 2, 2006. (D-B)
- 4) The Claimant was notified in a letter (D-B) dated March 2, 2006 of the denial of the reconsideration. The letter stated, in part:

WVMI received your request for reconsideration of the initial denial of authorization for the above listed patient for the following service(s): Laparoscopic Cholecystectomy

After due consideration of all relevant factors including documentation in the medical record and any additional information provided, WVMI upheld the initial denial.

The reason for this decision is with the information provided, surgery is not indicated.

- 5) Testimony from Ms. Lopez revealed when the referral was received it listed a diagnosis of chronic cholecystitis – Code 47562. With that, a patient needs to have one of the following: biliary colic, pain in the upper abdomen or back greater than one episode, or pancreatitis. The claimant did fall under the second category as the one of the reasons for surgery listed is “pain mid epigastric loin chest region – radiates to the back”. However, there is another indicator under cholecystitis being gallbladder abnormality. With the gallbladder abnormality, there has to be one of two things – 1) either gallstones or sludge by a prior imaging study or current imaging or 2) gallbladder wall thickening by ultrasound. With the information provided, the RN did not have the criteria to approve the procedure.
- 6) The information was sent to the Physician Reviewer who is a surgeon. Additional information on any other workups was needed. The nurse’s notes read in part: 08/26/05 – Had numerous attacks since date shown. Been hospitalized multiple EGD’s – negative findings – gastritis. 2003 – placed on Proton pump inhibitor – continues to have pain. Gnawing pain mid epigastric region into back. Currently on Nexium, Reglan > continues to have pain.
- 7) The Physician Reviewer determined the following: Symptoms not described as related to meals. Ed ER > 30%. No demonstrated gallbladder disease. This physician appears to be a little light on his vindications for gallbladder surgery. This was the initial denial. See #2 above for the notification.
- 8) In light of the initial denial, additional information was sent in. Dr. [REDACTED] notes of 02/03/06 read in part: Mrs. _____, unfortunately, suffered a heart attack in July and it was recommended that she wait six months before considering surgery.The treatment options were again discussed with the patient including continued conservative care versus laparoscopic cholecystectomy.This procedure was further explained and the risks and complications were again discussed including bleeding, infection, and injury including injury to bowel or bile duct as well as any medical complications such as MI, stroke, or blood clot. I have also explained the possibility of post-cholecystectomy diarrhea and the fact the removal of her gallbladder will not improve reflux or any of her hiatal hernia symptoms. A scan indicated possible right ureteric stone. Ms. Lopez stated this would also cause pain in the right, upper area.
- 9) The reconsideration was sent to a Physician Reviewer. It reads: At this time, no clear

evidence of gallbladder disease as source of symptoms – Patient had MI 6 months ago, still smokes – no report from upper GI (?) available. Cannot agree to surgery with the information provided. The original referral was affirmed. A letter was sent dated March 2, 2006. See #4 above. There was no clear evidence it was gallbladder disease.

- 10) Testimony from Ms. _____ revealed that after the above decision she had to enter the hospital for eleven days and later outpatient gallbladder surgery was done 05/03/06. Unicare coverage began 04/01/06. Her doctor did not send a request to prior approve the gallbladder surgery.
- 11) Under questioning from Ms. White, Ms. _____ confirmed she is under the Unicare Health Plan. Testimony from Ms. White revealed that any medical procedure after November has to go through Unicare.
- 12) Testimony from Ms. Holstine revealed they do not review retrospectively.
- 13) West Virginia Bureau for Medical Services Provider Manual Chapter 200 reads in part that prior approval is necessary for specified services to be delivered for an eligible client by a specified provider before services can be performed, billed, or payment made. A utilization review method is used to control certain services which are limited in amount, duration, or scope.
- 14) West Virginia Bureau for Medical Services Practitioners Manual Chapter 500, Section 502 reads in part that all services must be medically necessary and appropriate to the member's needs in order to be eligible for payment. The medical records of all members receiving Practitioner Services must contain documentation that establishes the medical necessity of the service.
- 15) West Virginia Bureau for Medical Services Hospital Manual, Chapter 500, Section 508.1, # 4 reads in part certain surgeries performed in place of service 22 (Outpatient Hospital) and 24 (Ambulatory Surgical Center) will require prior authorization, effective February 15, 2006. The selected surgeries that require prior authorization through the BMS review contractor are listed in Attachment 4, along with the PA form that may be utilized. 47562 – Lap. cholecystectomy.

VIII. CONCLUSIONS OF LAW:

- 1) The Bureau for Medical Services must provide prior authorization before payment for a laparoscopic cholecystectomy can be approved.
- 2) In conjunction with this provision, the Claimant's physician completed a request on February 7, 2006 for the above procedure. The request was denied because the request did not meet the criteria for the indications for the procedure.
- 3) A request was received for reconsideration of the initial decision. This was also denied because with the information provided, surgery was not indicated.
- 4) There was no convincing evidence or testimony provided to change the Department's determination.
- 5) The Department's denial of payment for a laparoscopic cholecystectomy is valid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of the Claimant's request for payment of a laparoscopic cholecystectomy 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 September, 2006.

**Margaret M. Mann
State Hearing Officer**

**CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,**

Administrative Disqualification Hearings, and Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.