



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

October 17, 2006

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held August 24, 2006. Your appeal was based on the Department of Health and Human Resources' denial of intermittent urinary catheters 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 additional sterile intermittent urinary catheter kits are medically necessary.

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny a request for intermittent urinary catheters.

Sincerely,

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

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

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

\_\_\_\_\_ By: \_\_\_\_\_

**Claimant,**

v.

**Action Number 06-BOR-1972**

**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 August 24, 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 August 24, 2006 on a timely appeal filed May 11, 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:**

\_\_\_\_\_ for \_\_\_\_\_, Claimant

The following individuals participated telephonically:  
Dr. \_\_\_\_\_ Witness for the Claimant

Dr. John Brehm, West Virginia Medical Institute  
Patricia Woods, Nurse Administrator, Bureau for Medical Services  
Virginia Evans, Claims Representative, Bureau for Medical Services  
Elizabeth Miller, RN, West Virginia Medical Institute  
Oretta Keeney, RN Supervisor, West Virginia Medical Institute

**Observing:**

Evelyn Whidby, Bureau for Medical Services  
Nora McQuain, RN, Bureau for Medical Services  
Karen Spencer, RN, West Virginia Medical Institute  
Debbie Pauley, RN, West Virginia Medical Institute

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 intermittent urinary catheters.

**V. APPLICABLE POLICY:**

West Virginia Bureau for Medical Services Provider Manual Chapter 500, Section 505  
Attachment I HCPCS Codes For Durable Medical Equipment & Supplies

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

**Department's Exhibits:**

- D-Exhibit A Information received from \_\_\_\_\_, M.D. and [REDACTED]  
D-Exhibit B 1) Results of medical review by West Virginia Medical Institute (WVMI)  
2) Notice of Initial Denial  
D-Exhibit C 1) Reconsideration submitted by \_\_\_\_\_, M.D.  
2) Reconsideration submitted by \_\_\_\_\_  
3) Notice of WVMI's reconsideration review  
D-Exhibit D Chapter 500, Durable Medical Equipment/Medical Supply Manual, Section 505  
and Attachment 1

**Claimant's Exhibits:**

- C-Exhibit A Statement dated 05/02/06 from \_\_\_\_\_ R.P.H., [REDACTED]  
C-Exhibit B Statement from Dr. \_\_\_\_\_ dated 08/23/06

**VII. FINDINGS OF FACT:**

- 1) A Certificate of Medical Necessity for \_\_\_\_\_ was made by Dr. \_\_\_\_\_

on October 4, 2005 for 180 sterile urinary catheters HCPCS Code A4353. A statement dated October 3, 2005 from Dr. \_\_\_\_\_ reads in part: \_\_\_\_\_ has a neurogenic bladder and requires catheterization with a sterile catheter every 4 to 6 hr. He will need 180 catheters a month. He is getting recurrent urine infections with resistant organisms. (D-Exhibit A)

- 2) Testimony from Ms. Miller revealed that the request for 180 sterile urinary catheters per month was reviewed by WVMI on October 12, 2005. Documentation from the physician and vendor noted the client was getting recurrent urinary infections and was being treated with oral antibiotics. Information was also received that the client was still getting urinary tract infections even when they used sterile catheters. (D-Exhibit A) The request was denied by an urologist as there was no information to support the need of sterile catheterization in the home.
- 3) The Claimant was notified in a letter (D-Exhibit B 2) dated October 27, 2005 of the denial of the request for intermittent urinary catheters. The letter stated, in part:

By contract, WVMI reviews Medicaid services to determine if they are medically necessary.

After review of the information provided, it was determined that the requested services do not meet medical necessity and therefore, cannot be authorized. This is in request for 180 catheters per month. The documentation provided does not indicate the patient could not use clean technique with catheterizations.

- 4) A request for reconsideration of the above decision was made. This request was sent to a different urologist who also determined there was not any documentation to support the need. Most of the written documentation in the medical world does not support the need for sterile catheterization. Most of the recommendations are they can be washed with soap and water.
- 5) Dr. \_\_\_\_\_ sent a statement dated 04/13/06 which reads in part: \_\_\_\_\_ has a neurogenic bladder and requires 4 catheterizations a day. Before we used sterile catheter kits we used sterile catheters and clean technique. He had almost constant urinary tract infections. With rigid sterile technique & cath kits we rarely have such infections.
- 6) The Claimant was notified in a letter (D-Exhibit C) dated June 8, 2006 of the denial of his request for incontinence supplies. The letter stated, 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 reviewing the additional documentation provided, the physician reviewer upheld the initial denial. This is in reference to your request for 180 intermittent urinary catheters per month. The information provided does not

support that sterile catheterization is required in an in home setting, or that this patient was symptomatic with bacteriuria.

- 7) Testimony from Dr. \_\_\_\_\_ revealed that he has researched the issue in question. It is correct that clean, aseptic technique needs to be observed but that does not necessarily require a brand new kit and catheter itself. All of the literature he has read indicates they can be adequately be cleaned with washing using various soap solutions, vinegar or just plain tap water. There is no very good study out there but the ones that are state this is an acceptable approach.
- 8) Testimony from Dr. \_\_\_\_\_ revealed that they have tried the above procedures. With frequent catheterizations, they have cut his urine infections down from quite a few a month down to practically none. This is important. With a neurogenic bladder and paraplegic, \_\_\_\_\_ is going to die of kidney infections. These infections get worse and worse over the years. This is a serious manner. They have shown in \_\_\_\_\_ that they can cut down on the number of infections he gets by simply catheterizing more frequently and with a sterile catheter itself. When they try washing the catheters they have frequent infections. \_\_\_\_\_ did continue to have infections after using sterile catheterization but the number was reduced significantly. Studies are suppose to lead us but they are not suppose to govern us.
- 9) Testimony from \_\_\_\_\_ revealed that \_\_\_\_\_ does not catheterize himself. There are several people who catheterize \_\_\_\_\_. When they first started using four or five catheters per day, it was found, after the fact (about six months into it), that the school personnel were not following rigid technique. This was not corrected until about April or May of the last school year. When they stopped them from not using rigid sterile techniques, the urinary tract infections dropped significantly. The documentation submitted at that time may have shown urinary tract infections after the beginning use of the sterile kits, but it was not the fault of the patient or the sterile kit, it was the fact that at school they were not following sterile techniques.
- 10) Testimony from \_\_\_\_\_ revealed that three or four years ago \_\_\_\_\_ had scoliosis repair in \_\_\_\_\_ by Dr. \_\_\_\_\_. For some reason, there was a problem in the surgery which caused him to be partially paralyzed from the waist down. He lost bowel and bladder control. They started out using a full time catheter and \_\_\_\_\_ had constant infections. They started using a single catheter, no kit one per day. They washed it, used regular gloves, did not use Betadine swabs because they did not have them, and had constant urinary infections. They requested and got sterile kits later on. They were then notified they could get only 31. This is a child who has had several infections requiring intravenous antibiotics and several infections which are only responsive to one or two antibiotics. If he gets in a situation in which the infections cannot be controlled, he is going to die. The family has picked up the cost of the extra kits. The cost runs \$270.00 per month. When every one uses the sterile technique, the number of urinary tract infections drop. They can get by with four catheterizations a day. It is difficult to understand what documentation the Department wants.
- 11) Testimony from the Department's witnesses revealed that the policy changed last year from 180 to 31 catheters per month. If the documentation is there, the amount over 31 per month can be approved. It is the Department's position that the documentation was not there to

approve the request. Questions asked to support the request included how many urinary tract infections had \_\_\_\_\_ had recently, how was he treated, was he hospitalized, why clean techniques had not been used, does he catheterize himself or does someone else, and does he see a urologist. Information was received on all questions but the urologists felt it was not enough supporting documentation to approve the request.

- 12) Testimony from Dr. \_\_\_\_\_ revealed that he agrees that sterile technique is needed to cut down on infection. How it is done is not for him to say. A patient who is continually catheterized has a 100% chance of infection.
- 13) West Virginia Bureau for Medical Services Provider Manual Chapter 500, Section 505 dictates that codes requiring PA must be reviewed and approved by the UMC (WVMI) before service is rendered. When documentation submitted fails to justify medical necessity for DME or medical supplies, the UMC may request additional information, and/or deny the request for lack of medical necessity.
- 14) Attachment I HCPCS Codes For Durable Medical Equipment & Supplies reads in part: HCPCS Code A4353 Intermittent Urinary Catheter, With Insertion Supplies, Service Limit 31 per month – Non-reimbursable with A4310, A4332, A4351, A4352; Coverage limited to sterile technique only when specifically prescribed in writing by prescribing practitioner.

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

- 1) The Bureau for Medical Services must provide prior authorization before certain supplies can be approved. These cases are reviewed by the West Virginia Medical Institute. When documentation submitted fails to justify medical necessity for DME or medical supplies, the UMC may request additional information, and/or deny the request for lack of medical necessity. Attachment I HCPCS Codes For Durable Medical Equipment & Supplies reads in part: HCPCS Code A4353 Intermittent Urinary Catheter, With Insertion Supplies, Service Limit 31 per month. Coverage limited to sterile technique only when specifically prescribed in writing by prescribing practitioner. Testimony from the Department's witness revealed if the documentation is there, more than 31 can be approved.
- 2) In conjunction with this provision, the Claimant's physician completed a Certificate of Medical Necessity, which was signed on October 4, 2005. The request was for 180 sterile catheter kits HCPCS Code A4353. This request was denied as the Department determined that the requested services did not meet medical necessity. Testimony revealed that all of the medical journals indicate that catheters can be cleaned with good washing techniques.
- 3) A request for reconsideration of the above decision was made. This request was denied June 8, 2006 because the information provided does not support that sterile catheterization is required in an in home setting, or that patient was symptomatic with bacteriuria. Testimony revealed that all questions regarding the reconsideration were answered but the urologist reviewing the request felt there was not enough supporting documentation to approve the request.
- 4) Convincing testimony from Dr. \_\_\_\_\_ strongly supported the need for sterile catheterizations as did the testimony from \_\_\_\_\_. Dr. \_\_\_\_\_ noted that they have shown they can cut down on the number of

kidney infections by simply catheterizing more frequently and with a sterile catheter itself. Mr. \_\_\_\_\_ stated that with the use of rigid sterile technique, urinary tract infections have dropped significantly. They can get by with four catheterizations per day.

- 5) The State Hearing Officer found the Department's argument weak in not supporting the need for sterile catheters. They were mostly relying on journalistic studies and also did not clearly state just what information was needed to grant the approval for sterile catheters. All information requested at the time of reconsideration was provided.
- 6) The preponderance of the information and evidence provided at the hearing supports the medical necessity for additional intermittent sterile catheter kits.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's denial of the request for payment of intermittent urinary catheters through the Medicaid Program. Testimony supported the medical need for four sterile catheterizations per day. The additional sterile catheter kits will be approved.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

**ENTERED this 17<sup>th</sup> Day of October 2006.**

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**Margaret M. Mann  
State Hearing Officer**

**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.