



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 24, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1453

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, BMS, WVDHHR

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

████████████████████,

Claimant,

v.

Action Number: 15-BOR-1453

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 21, 2015, on an appeal filed March 2, 2015.

The matter before the Hearing Officer arises from the January 12, 2015 decision by the Respondent – and the Respondent's subsequent February 2, 2015 reconsideration decision - to deny prior authorization of Medicaid coverage for bariatric (gastric bypass) surgery.

At the hearing, the Respondent appeared by Cyndi Engle, RN, Program Manager, Bureau for Medical Services, WVDHHR. Appearing as a witness for the Respondent was ██████████, RN, Nurse Reviewer, ██████████. The Claimant appeared pro se. Appearing as witnesses for the Claimant were ██████████, the Claimant's sister; ██████████, the Claimant's mother; ██████████ the Claimant's fiancé; ██████████, Physician's Assistant, ██████████; and ██████████, Manager, ██████████.

All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Bureau for Medical Services Provider Manual Chapter 519, Covered Services, Limitations, and Exclusions for Practitioner Services
- D-2 Information received from ██████████, M.D.
- D-3 Notices of Initial Denial dated January 12, 2015
- D-4 Notices of Appeal/Reconsideration Decision dated February 2, 2015

D-5 Additional documentation provided by Claimant (received by Bureau for Medical Services on April 15, 2015)

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On January 12, 2015, the Respondent issued notices (D-3) to the Claimant, [REDACTED], M.D., and [REDACTED] advising of the denial of Medicaid authorization for bariatric surgery.
- 2) The Claimant's physician requested a reconsideration of the Department's decision; however, the request for authorization was denied upon reconsideration and subsequent denial notices were sent to the Claimant and her medical providers on February 2, 2015 (D-4).
- 3) [REDACTED] ([REDACTED] Nurse Reviewer [REDACTED] testified that documentation submitted by the medical provider (D-2) was insufficient to determine whether the Claimant met clinical indications for the invasive procedure. Therefore, medical necessity could not be established and the request for prior authorization of the surgery was denied.

Nurse [REDACTED] testified that no documentation was provided concerning the reason for the Claimant's failure at two attempts of physician-supervised weight loss with each lasting six months or longer within the past two years. In addition, no documentation was provided to indicate that the Claimant is incapacitated from obesity, or that she has the ability to comply with the dietary and lifestyle changes required. There was also no documentation (including height and weight) to verify that the Claimant has had a body mass index (BMI) of more than 40 for the past five years.

Nurse [REDACTED] testified that documentation provided by the Claimant's physician indicates that she is able to perform arm and leg lifts and can exercise on a treadmill. The documentation states that the Claimant is able to carry groceries and that she injured her toe in July 2014 while grooming her dog. Nurse [REDACTED] pointed out that the Claimant gained nine pounds from July 2014 to August 2014 while attempting medically-supervised weight loss. A psychological assessment – performed by Licensed Psychologist [REDACTED] and included in Exhibit D-2 - states that the Claimant has symptoms consistent with a panic disorder (although symptoms were insufficient to merit a diagnosis). The evaluator wrote that the Claimant could have difficulty

maintaining the use of prescribed medication due to anxiety and her tendency toward significant anger, and may have exaggerated responses to health information. The evaluation also indicates that the Claimant can eat meals outside of the home, drives, and performs housekeeping tasks such as cooking, cleaning and washing clothes.

- 4) [REDACTED], Manager of [REDACTED], contended that the psychologist performing the Claimant's pre-surgical evaluation stated in her recommendations that there is nothing to suggest the Claimant would be unsuccessful with the surgical procedure and recovery. [REDACTED], Physician's Assistant with [REDACTED], testified that the Claimant has had a BMI of more than 40 for several years and has had diabetes since 2013. The Claimant's sister, [REDACTED], testified that the Claimant was recently on a liquid diet to lose 60 pounds in preparation for her surgery, and that the Claimant would have family support in meeting her weight loss goals. In regard to her physical abilities, the Claimant testified that she broke the treadmill she was using due to her weight, and stated that she has difficulty performing tasks. She submitted photographs, included in Exhibit D-5, to document that she had lost 73 pounds in her efforts at dieting.
- 5) The Claimant provided Exhibit D-5, additional documentation submitted to the Bureau for Medical Services on April 15, 2015; however, that information was not considered because it was not available to the Department at the time of its original or reconsideration decisions. Ms. [REDACTED] indicated that the Claimant's physician could submit a new request for prior authorization of the surgery and provide any new or previously missing documentation for consideration.

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 519, Covered Services, Limitations, and Exclusions for Practitioner Services, Section 519.9.3 (D-1):

The West Virginia Medicaid Program covers bariatric surgery procedures subject to the following conditions.

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 [REDACTED]

[REDACTED]. The [REDACTED] will perform medical necessity review and prior authorization based upon the following criteria:

- 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.
- 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.

- Must be between the ages of 18 and 65. (Special considerations apply if the individual is not in this age group. If the individual is below the age of 18, submitted documentation must substantiate completion of bone growth.)
- The patient must have a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification. The rationale for this criteria is taken from the Swedish Obese Subjects (SOS) study, *International Journal of Obesity and Related Metabolic Disorders*, May, 2001
- 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 attempts failed.
- 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.
- 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 is required.
- Patient must be tobacco free for a minimum of six months prior to the request.
- 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.

DISCUSSION

Policy states that the West Virginia Medicaid Program covers medically necessary services to eligible beneficiaries. Failure to obtain prior authorization from [REDACTED] will result in the denial of services. Bariatric surgery can be covered by the Medicaid Program provided that all conditions are met. While the Claimant's physician provided documentation concerning some of the conditions required for authorization of bariatric surgery, testimony

provided on behalf of the Department reveals that the information was insufficient to determine medical necessity.

CONCLUSIONS OF LAW

The Claimant's medical provider failed to include sufficient documentation to support medical necessity for Medicaid authorization of bariatric surgery.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's denial of Medicaid authorization for bariatric surgery.

ENTERED this 24th Day of April 2015.

**Pamela L. Hinzman
State Hearing Officer**