



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1247  
Martinsburg, WV 25402

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 22, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1515

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,

Lori Woodward  
State Hearing Officer  
Member, State Board of Review

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

cc: Stacy Broce, BMS

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

██████████,  
**Claimant,**

v.

**Action Number: 15-BOR-1515**

**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 22, 2015, on a timely appeal filed March 10, 2015.

The matter before the Hearing Officer arises from the January 23, 2015 decision by the Respondent to deny the Claimant's request for pre-authorization for inpatient Bariatric surgery due to a determination that the Claimant does not meet the medical eligibility criteria for the program.

At the hearing, the Respondent appeared by Cyndi Engle, RN, Bureau for Medical Services, WV DHHR. Appearing as a witness for the Respondent was ██████████, RN, Nurse Reviewer, West Virginia Medical Institute (WVMI). The Claimant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 WV Medicaid Provider Manual §519.9.3.1
- D-2 Documentation received from ██████████, M.D. for Reconsideration of Initial Denial for gastric bypass surgery, dated February 2, 2015
- D-3 Notice of Initial Denial, dated January 23, 2015
- D-4 Notice of Reconsideration denial, dated March 10, 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) A request for prior authorization of Medicaid payment for inpatient bariatric surgery was submitted to the Respondent. On January 23, 2015, the Respondent issued a Notice of Initial Denial, notifying the Claimant that the medical information submitted with the request did not meet medical necessity criteria. (Exhibit D-3)
- 2) On February 2, 2015, the Claimant's physician, Dr. [REDACTED], submitted additional documentation for reconsideration of the initial denial. (Exhibit D-2) Upon a second review by the WVMI physician consultant, the initial denial was upheld stating (Exhibit D-4):

After reviewing additional information provided via the reconsideration process, WVMI has affirmed the initial denial. There was no documentation of failure and the reason for the failure of two attempts of physician supervised weight loss with each lasting six months or longer in the past two years. There was no documentation that the patient is incapacitated from obesity. There was also no documentation that the patient has the ability to comply with the dietary behavioral and lifestyle changes required. There was no current documentation of an evaluation from a cardiologist or pulmonologist that cleared the patient for surgery. The documentation provided did not support the medical necessity of this procedure due to the fact that the patient is not a diabetic that is being actively treated.

- 3) The Respondent's witness, [REDACTED] (Ms. [REDACTED] RN reviewer with WVMI, testified that the request for bariatric surgery was denied based on failure to meet medical necessity criteria. Nurse [REDACTED] stated that the documentation reveals the Claimant failed to show incapacity from obesity, referring to Exhibit D-2 (pages 49 and 51), History and Physical dated November 13, 2013, "The patient has attempted the following weight loss methods in the past: Slim Fast, Diet Center and walking (and/or running) ... The patient is not disabled. The patient does not require an assist [sic] device. The patient does not require a wheelchair or motorized scooter." Nurse [REDACTED] noted that the Claimant failed to meet the policy criteria of having a documented diagnosis of diabetes being actively treated with oral agents, insulin, or diet modification, specifically stating that the Claimant is pre-diabetic. (Exhibit D-2, pages 7 and 18) Nurse [REDACTED] stated that there is no reason documented for the Claimant's failure to lose weight or a current evaluation from a cardiologist or pulmonologist that cleared the patient for surgery.
- 4) The Claimant stated that she believed she did everything she was supposed to do, and did not understand why her request was denied.

## APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 519, Covered Services, Limitations, and Exclusions for Practitioner Services, Section 519.9.3.1 (D-1):

### **519.9.3.1 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), [REDACTED]. [REDACTED] The West Virginia Medical Institute (WVMI) 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 these 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 West Virginia Medical Institute will result in the denial of services. Testimony provided on behalf of the Department reveals that documentation submitted by the Claimant's physician was insufficient to determine medical necessity for inpatient bariatric surgery.

### **CONCLUSION OF LAW**

The Claimant failed to provide sufficient documentation to support medical necessity for Medicaid authorization of inpatient surgery.

### **DECISION**

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

**ENTERED this 22<sup>nd</sup> day of April 2015.**

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**Lori Woodward, State Hearing Officer**