STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Karen L. Bowling
Cabinet Secretary

Phone: (304) 235-4680 **Fax (304) 235-4667**

February 6, 2015

RE: v. WV DHHR
ACTION NO.: 14-BOR-3638

Dear Ms.

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Stacy Broce, WV Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Claimant,

v. **ACTION NO.: 14-BOR-3638**

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 [redacted]. 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 January 15, 2015, on an appeal filed November 10, 2014.

The matter before the Hearing Officer arises from the November 3, 2014 decision by the Respondent to deny Medicaid payment for in-patient services, gastric bypass surgery.

At the hearing, the Respondent appeared by Representative Cyndi Engle, RN, of the WV Bureau for Medical Services (WV BMS). Appearing as a witness for the Department was [redacted], RN, of the WV Medical Institute (WVMI). The Claimant appeared *pro se*. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual, Chapter 510, §510.4, and Chapter 519, §519.9
- D-2 WV Medicaid Provider Manual, Chapter 510, Attachment 1, Special Coverage Considerations and Billing Instructions
- D-3 WV Medicaid Prior Authorization Request for In-Patient Services and additional documentation from the [redacted], Center for Surgical Weight Control, dated October 16, 2014
- D-4 Initial Denial Notification from APS Healthcare, dated November 3, 2014

Claimant's Exhibit:

- C-1 Letter from [redacted], PA-C, [redacted], dated December 22, 2014

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) The Claimant's medical care provider, [redacted], Center for Surgical Weight Control, [redacted], submitted a WV Medicaid Prior Authorization Request for In-patient Services and additional medical documentation (Exhibit D-3) to the WV Medical Institute (WVMI) on October 16, 2014, requesting prior authorization for a medical procedure, laparoscopic gastric bypass surgery.

2) The Department denied the request for in-patient services and issued a denial letter (Exhibit D-4) dated November 3, 2014. The denial letter reads as follows, in pertinent part: "There are inadequate documented clinical indications for the invasive procedure requested. The documentation provided did not support the medical necessity of this procedure due to the fact that WV Medicaid criteria was [*sic*] not met. 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."

3) The request for in-patient services (Exhibit D-2) contains monthly Assessment Flow Sheets which document the Claimant's weight loss and/or gain for the months of March 2013 through January 2014, an eleven-month period of time. Assessment Flow Sheets document that the Claimant was walking half an hour a day four times per week, and was swimming daily during warm-weather months. The request for inpatient services contains several letters from the Claimant's friends and family pledging their support for and commitment to the Claimant and her attempts to lose weight.

4) The Claimant's nurse-practitioner wrote a letter to the WVMI dated December 22, 2014 (Exhibit C-1), in support of the Claimant's need for bariatric surgery. The letter states as follows in part:

> [Claimant] has came [*sic*] to this facility in an attempt to do the appropriate steps in getting bariatric surgery . . . [Claimant] has followed all requirements of the state in order to get bariatric surgery performed, however it has been denied at this point. [Claimant] started her efforts with a BMI [Body-Mass Index] of 70.8 and within a year, lost to a BMI of 62.4 . . . [Claimant] has done wonderfully with doing her part of getting this surgery approved but this BMI is still considered morbidly obese and this in addition to her other co-morbidities: arthritic symptoms of weight-bearing joints, diabetes, and hypertension should more than qualify her for this surgery. [Claimant] has followed a very strict 1600 calorie diet over the last year and has walked 30 minutes daily when her arthritis allowed her to do so. She was prescribed a cane and she does use it quite regularly in order to

> motivate. [Claimant] has done the appropriate referrals to GI and psych for surgical clearance, and was cleared by all. I feel [Claimant] is mentally and physically capable of surviving the surgery as well as the post-surgical effects involved. She has completed all of the requirements the state has set in order to have the surgery done . . .

5) The Claimant testified that her request for services (Exhibit D-3) met the criteria for laparoscopic gastric bypass surgery. She testified that the letter from her nurse-practitioner indicates she was incapacitated, in that she uses a cane to walk. She stated that she does walk for exercise, but only about twenty minutes per day. She stated that the Assessment Flow Sheets mention her swimming, but when a person swims, he or she is "weightless."

6) The Department's representative stated that the letter from the Claimant's nurse-practitioner (Exhibit C-1) is dated December 22, 2014. She stated that the WVMI did not have access to this letter when it evaluated the Claimant's request for inpatient services.

APPLICABLE POLICY

WV Medicaid Provider Manual, §510.9.3.1 – "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.
- Patient must have documented failure at two attempts of physician supervised weight loss, each attempt 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.
- 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."

WV Medicaid Provider Manual, §519.9.3.5 – "Covered Bariatric Procedures:

- 43842 – Gastric restrictive procedure, without gastric bypass, for morbid obesity; vertical-banded gastroplasty;
- 43843 – Gastric restrictive procedure, without gastric bypass, for morbid obesity; vertical-banded gastroplasty;
- 43846 – Gastric restrictive procedure, with gastric bypass for morbid obesity; with short limb (less than 100 cm) Roux-en-Y gastroenterostomy;
- 43847 – Gastric restrictive procedure, with gastric bypass for morbid obesity; with small intestine reconstruction to limit absorption;
- 43848 – Revision of gastric restrictive procedure for morbid obesity. (This is only for correction of serious complications caused by the procedure within the first six months postoperatively.)"

WV Medicaid Provider Manual, §519.9.3.6 – "The following procedures will not be covered by the West Virginia Medicaid Program:

- Mini-gastric bypass surgery;
- Gastric balloon for treatment of obesity;
- Laparscopic adjustable gastric banding."

DISCUSSION

The request for inpatient services (Exhibit D-2) contained documentation regarding Claimant's weight loss, but it did not document two specific periods of physician-supervised weight loss attempts. The Assessment Flow Sheets which document the Claimant's weight loss and/or gain only cover the period from March 2013 through January 2014, an eleven-month period of time. The request did not document that the Claimant was incapacitated. The Assessment Flow Sheets document that the Claimant was walking half an hour a day, up to four times per week, and was swimming daily when weather permitted. The request did document that the Claimant had the ability to comply with the dietary, behavioral and lifestyle changes required. Policy states that "Evidence of adequate family participation to support the patient with the necessary lifelong lifestyle changes is required." The letters from the Claimant's friends and family members found in the request document that she has the support necessary to make these changes.

The denial letter outlines three criteria that the Claimant's request for services did not meet: documentation of two failed attempts at physician-supervised weight loss of six months' duration, documentation that the Claimant is incapacitated by obesity, and documentation that the Claimant has the ability to comply with dietary, behavioral and lifestyle changes. The request for inpatient services documents the last of these three criteria. However, all criteria must be met,

and since the request did not document the first two of these three criteria, the Department acted correctly to deny the services.

CONCLUSION OF LAW

Because the request for services did not document the failure and the reason for failure of two attempts of physician-supervised weight loss of six-months' duration within the past two years, and it did not document that the Claimant was incapacitated by her obesity, it did not meet all of the criteria for gastric bypass surgery, as found in the WV BMS Provider Manual, §519.9.3. Therefore, the Department acted correctly to deny prior authorization for Medicaid payment for inpatient services, gastric bypass surgery.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny prior authorization of Medicaid payment for inpatient services, gastric bypass surgery, on the Claimant's behalf.

ENTERED this 6th Day of February, 2015.

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Stephen M. Baisden
State Hearing Officer