



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third Street
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 16, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 15, 2004. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid coverage for the replacement of breast implants.

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 Medicaid services is based on current policy and regulations. Some of these regulations state as follows: Services which are not medically justified are not covered by the Medicaid Program. (Medicaid Regulations, Chapter 500, Section 545, Item 29, Physician Services Manual)

Evidence and testimony presented during the hearing failed to substantiate medical necessity for the replacement of your breast implants.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny Medicaid coverage for implant replacement surgery.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Patricia Woods, BMS

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

_____,

Claimant,

v.

Action Number: 05-BOR-1639

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 16, 2005 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 convened on December 15, 2004 on a timely appeal filed May 3, 2004.

II. PROGRAM PURPOSE:

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

_____, Claimant

_____, daughter of Claimant

Patricia Woods, RN, BMS (participating telephonically)

Dr. Sandra Joseph, BMS (participating telephonically)

Virginia Evans, BMS, Claim Representative (participating telephonically)

Presiding at the hearing was Theodore R. Dues Jr., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in its decision to deny Medicaid coverage for the replacement of breast implants.

V. APPLICABLE POLICY:

Medicaid Regulations, Chapter 500, Section 544.8, Item II, Physician Services Manual

Medicaid Regulations, Chapter 500, Section 545, Item 29, Physician Services Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Letters from _____ dated February 9, 2004 and April 1, 2004

D-2 Medicaid Regulations, Chapter 500, Section 544.8, Item II, Physician Services Manual

D-3 Medicaid Regulations, Chapter 500, Section 545, Item 29, Physician Services Manual

D-4 Results of review by medical director, BMS

Claimant's Exhibits:

C-1 Letter from Dr. _____ regarding Claimant's mental state

VII. FINDINGS OF FACT:

- 1) The Claimant had bilateral breast mastectomies and implant surgery in 1978 as a result of fibrocystic breast disease.
- 2) In a letter to the Medicaid Preauthorization Department dated February 9, 2004 (D-1), Dr. _____ stated that he had evaluated the Claimant on January 27, 2004 in his plastic surgery clinic. The letter stated, in part:

She [the Claimant] presents in my clinic after completion of her CT scan of her chest for evaluation for possible implant rupture. She states that the breast pain that she experiences persists and has not changed in nature. It continues to affect her activities of daily living.

The CT scan revealed a possible rupture of the left side of her silicone implant. I feel that a bilateral explantation, capsulectomies, and placement of tissue expanders for reconstruction bilateral insertion of implants would rectify her existing medical problems and have outlined the procedure to her. She has requested that I contact you regarding insurance coverage for same.

Her medical history includes bilateral mastectomies which have been in the remote past and I cannot completely rule out the presence of persistent breast tissue. Due to this, I am going to also recommend that she receive screening mammography prior to surgery.

- 3) Dr. [REDACTED] testified that no CT scan results or mammography reports were provided by Dr. [REDACTED] and that Baker Class 3 and 4 implant malfunctions are the only classifications that qualify for removal. She testified that Medicaid will pay for the removal of damaged implants, but will only pay for the replacement of implants if the reason for the original implant surgery was a diagnosis of cancer. She testified that Dr. [REDACTED]'s letter stated that the Claimant's implant had a "possible rupture" and the Department could not verify that replacement would be medically necessary. In addition, Dr. [REDACTED] testified that no documentation was presented to indicate whether the Claimant was taking pain medication, had functional limitations, or required technical assistance due to a limited range of motion stemming from breast pain.
- 4) The Claimant testified that both her mother and grandmother had breast cancer and that she was told that cysts forming as a result of fibrocystic breast disease could be either benign or malignant. She testified that she has no remaining breast tissue and that additional chest reduction has occurred as a result of the implant leakage.
- 5) The Claimant's daughter testified that her mother has suffered mental anguish as a result of her condition and has problems completing tasks of daily living, including household chores.
- 6) Medicaid Regulations, Chapter 500, Section 544.8, Item II, Physician Services Manual (D-2) states that breast implant surgery for the diagnosis of cancer requires prior authorization.
- 7) Medicaid Regulations, Chapter 500, Section 545, Item 29, Physician Services Manual (D-3) states that services which are not medically justified are not covered by the Medicaid Program.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant underwent implant surgery as a result of bilateral breast mastectomies in 1978 stemming from fibrocystic breast disease. No evidence was presented to indicate that the Claimant had been diagnosed with cancer at the time of the implant surgery.
- 2) Documentation from Dr. [REDACTED] indicates that the Claimant has a possible rupture of the left side of her silicone implant.

- 3) The Department testified that Medicaid will pay for the removal of damaged implants but will only pay for the replacement of implants when the original reason for the insertion was a diagnosis of cancer.
- 4) Policy dictates that insertion of breast implants for a "diagnosis of cancer" is a procedure that requires prior authorization under the Medicaid Program. Breast reconstructive surgeries for other reasons are not specified.
- 5) Policy also dictates that services which are not medically justified are not covered under the Medicaid Program.
- 6) Evidence and testimony presented during the hearing indicated that the Claimant has breast pain which affects her activities of daily living, however no supporting documentation was provided to justify medical necessity for replacement of her implants or to indicate that her implants were placed as a result of a cancer diagnosis.
- 7) The Department took the correct action in denying the Claimant's request for breast implant replacement.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny Medicaid payment for the replacement of the Claimant's breast implants.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of November, 2005.

Pamela L. Hinzman
State Hearing Officer