



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 11, 2005

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 20, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny Medicaid coverage of your Bariatric Surgery Procedure.

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 that the 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. In addition, the list of contraindications includes three (3) or more prior abdominal surgeries.

The information which was submitted at your hearing reveals that you have not demonstrated the ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and you have had three (3) or more abdominal surgeries which place you at a greater risk for complications with the bariatric surgery procedure. Additionally, the psychological evaluation approving you for surgery was not completed by a facility independent of the bariatric surgery facility.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for Medicaid to cover bariatric surgery.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Twonna Williams, RN, BMS  
WVMI

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-6001**

**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 October 11, 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 originally scheduled to convene on July 22, 2005 but was rescheduled at the request of the Claimant and convened on September 20, 2005 on a timely appeal filed April 28, 2005.

**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 (by phone)  
\_\_\_\_\_, Claimant's mother (by phone)  
Twonna Williams, RN, BMS (by phone)  
Liz Miller, RN, WVM (by phone)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Agency is correct in their action to deny the Claimant Medicaid coverage for bariatric surgery.

### **V. APPLICABLE POLICY:**

Department of Health and Human Resources, Chapter 500-14 – West Virginia Medicaid Program Coverage Bariatric Surgery Procedures, November 1, 2004

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

#### **Department's Exhibits:**

- D-1 DHHR, Chapter 500-14, November 1, 2004 – WV Medicaid Program Coverage Bariatric Surgery Procedures.
- D-2 Notice of Initial Denial dated 11/16/04  
Reconsideration of Initial Denial Determination dated 3/8/05  
Notice of Preadmission Reconsideration Determination dated 3/30/05  
Provider Notice of Preadmission Reconsideration Determination dated 7/5/05.
- D-3 WVM Acute Inpatient Report dated 11/15/04
- D-3a Medical documents and psychological evaluations reviewed for eligibility

### **VII. FINDINGS OF FACT:**

- 1) In response to the Claimant's request for Medicaid to pay the costs associated with bariatric surgery, the Department sent a Notice of Initial Denial on November 16, 2004. This notice states in pertinent part:

There are inadequate documented clinical indications for the invasive procedure requested. This is in reference to your request for bariatric surgery. The documentation provided through the psychological assessment did not support that the patient demonstrated the ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance of weight loss in a realistic manner.

- 2) A reconsideration of the Initial Denial Determination was reviewed to which the Department responded with a Notice of Preadmission Reconsidered Determination dated March 30, 2005 (D-2). This notice states:

After review of the information received, the physician reviewer has upheld the initial denial for gastric bypass surgery. The patient has demonstrated a lack of ability to comply with the post-operative dietary, behavioral and lifestyle changes that are required. She is being actively treated for depression and has a history of 3 previous abdominal surgeries.

- 3) On July 5, 2005, the Department sent a Provider Notice of Preadmission Reconsidered Determination (D-2) to [REDACTED] Hospital. This notice states in pertinent part:

After reviewing this request for bariatric surgery through a 2<sup>nd</sup> level reconsideration, the physician reviewer affirmed the initial 2 denials. The documentation provided did not support medical necessity/appropriateness for this surgery as the psychological evaluation showed unreasonably high expectations and poorly controlled depression which would limit her ability to manage the postoperative compliance issues. The patient has also had 3 prior abdominal surgeries.

- 4) The Department cited exhibit D-3, WVMi Acute Inpatient Report, which is RN [REDACTED] review of the Claimant's request for gastric bypass surgery. RN [REDACTED] cited information in section (5) which states – Per dietary evaluation, she has tried Herbal Life, Meridia, Redux, Weight Watchers, cabbage soup diet, 1500 calorie ADA diet. Her present weight is 435.8, and she has lost 100 lbs in the past on Redux tx that lasted 2 years, but gained it all back [emphasis added].

In section (6) of this of this report, RN Miller indicates that the Claimant has unrealistic expectations as noted in the psychological evaluation dated 10/14/04. “She has symptoms of depression, including excessive tearfulness and low self esteem, but when questioned about them, she indicated that she feels this is normal. This evaluation (included in exhibit D-3a) concludes by the psychologist stating – “Given her history of depression, and the ongoing nature of some of her issues, she should be monitored for an intensification of her symptoms.” It was noted that the October 14, 2004 psychological evaluation does not clear the Claimant for surgery.

\*The psychological evaluation referred to in the WVMi Acute Inpatient Report was completed by [REDACTED] Psy.D., Clinical Psychologist, [REDACTED] Medical Center on October 14, 2004.

- 5) The Claimant testified that a second Psychological Evaluation was completed by [REDACTED] PhD, [REDACTED] on December 15, 2004 (included in exhibit D-3a). This evaluation concludes with Dr. [REDACTED] recommendation that there are no psychological contraindications for including the Claimant in a weight loss surgery program. However, testimony reveals that Dr. [REDACTED] is associated with [REDACTED] Hospital of [REDACTED] (the bariatric surgery facility).

- 6) Representatives testifying on behalf of the Department stated that the Claimant's medical records reveal that she has had a hysterectomy, a tubular procedure, gallbladder surgery and an appendectomy. This information was confirmed by the Claimant during the hearing. Testimony received at the hearing reveals that individuals who have undergone three (3) or more abdominal surgeries are at greater risk for complications during bariatric surgery and are therefore not approved for Medicaid coverage.
- 7) Department of Health and Human Resources Policy, chapter 500-14, (November 1, 2004) West Virginia Medicaid Program Coverage Bariatric Surgery Procedures:
  - (#6) - 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.
  - (#7) - 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.
  - (#9) - Contraindications: Three (3) or more prior abdominal surgeries.

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

- 1) The Claimant's preoperative psychological evaluation completed on October 14, 2004 reveals that the Claimant has unrealistic expectations of the bariatric surgical procedure and there is concern that her symptoms of depression could intensify. In addition to these concerns, the October 14, 2004 evaluation failed to clear the Claimant for surgery.
- 2) The second Psychological Evaluation completed by [REDACTED] PhD, [REDACTED] on December 15, 2004, concludes with the recommendation that there are no psychological contraindications for including the Claimant in a weight loss surgery program, however, West Virginia Medicaid Policy prohibits considering this evaluation as Dr. [REDACTED] is associated with [REDACTED] Hospital of [REDACTED] (the bariatric surgery facility).
- 3) The Claimant's dietary evaluation revealed that the Claimant had lost 100 lbs on one occasion while on Redux tx. The weight loss lasted 2 years, but then she gained it all back. This demonstrates that the Claimant does not have the ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance weight loss.

- 4) The Claimant has undergone three (3) or more abdominal surgeries and because this puts her at a greater risk for complications, Medicaid will not cover bariatric surgery.

**IX. DECISION:**

After reviewing the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for Medicaid to cover bariatric surgery.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11<sup>th</sup> Day of October, 2005.**

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**Thomas E. Arnett**  
**State Hearing Officer**