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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 9, 2007

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Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2007. Your appeal was based on the Department of Health and Human Resources' action to deny payment of specific prescription medications through the Medicaid Pharmacy Program.

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.

The regulations that govern the Medicaid program provides Medicaid recipients with prescription drug coverage. In addition to being eligible for Medicaid, some medications, such as stimulants and related agents, require the Medicaid member to obtain prior authorization before Medicaid payment can be made. Prior authorization may be initiated either by the dispensing pharmacist, the prescriber, or the prescriber's designee. Requests may be made by telephone, fax, or mail. If all the necessary information is provided, requests will be addressed within 24 hours. Policy states that it is the responsibility of the provider of the service, either the physician or pharmacist, to obtain the authorization before rendering the service. Requests for prior authorization after the service is rendered will be denied except in cases of back-dated eligibility. If the service is provided before prior authorization is obtained, the Medicaid member must be informed that he/she will be responsible for the bill. (West Virginia Medicaid Policy Manual, Chapter 507.1)

The information submitted at the hearing fails to demonstrate that your physician or pharmacist provided information necessary to obtain prior authorization before August 2006. Because policy states that the Medicaid member will be responsible for payment of services received before prior authorization criteria has been met, the Department was correct to deny retroactive payment for services received during the period December 2005 through July 2006.

It is the decision of the State Hearing Examiner to **uphold** the Department's action in denying Medicaid payment for non-preferred medication without the required prior authorization criteria being met.

Sincerely,

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

cc: Chairman, Board of Review
Peggy King, R.Ph., Pharmacy Director for Medicaid, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

____,

Claimant,

v. **Action Number 06-BOR-2976**

West Virginia Department of Health & Human Resources,

Respondent.

DECISION OF THE STATE HEARING EXAMINER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 9, 2007 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 convened on January 19, 2007 on a timely appeal filed September 18, 2006.

II. PROGRAM PURPOSE:

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

III. PARTICIPANTS:

____, Claimant
Peggy King, R.Ph., Pharmacy Director for Medicaid, BMS

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department is correct in its decision to deny retroactive Medicaid payment for prescription Oxycontin during the period December 2005 through July 31, 2006.

V. APPLICABLE POLICY:

West Virginia Medicaid Policy Manual, Chapter 500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibit(s):

D-1 Patient Medication History Report
D-2 Rational Drug Ther Prog Notes
D-3 BMS, WV Medicaid, Preferred drug list with prior authorization criteria.
D-4 West Virginia Medicaid Policy Manual, Chapter 507.1 (Process of Requesting Prior Authorization)
*D-5 Memorandum dated 1/26/07, two MedWatch faxes and a summary from RDTP of actions taken on the Claimant's case.

* Indicates information was received subsequent to the hearing as agreed on the record.

VII. FINDINGS OF FACT:

1) On or about September 18, 2006, the Claimant filed a verbal appeal to contest the denial of Medicaid payment for Oxycontin retroactive for the period December 1, 2005 through July 31, 2006.

2) The Department submitted Exhibit D-3 to show that Oxycontin is a "non-preferred agent." In order for Medicaid to approve payment for a non-preferred agent, Prior Authorization (PA) criteria must be met. PA criteria is met for Oxycontin when - Three of the preferred agents must be tried for at least 72 hours before a non-preferred agent will be authorized unless one of the exceptions on the PA form is present.

3) Peggy King, R.Ph., testified that the Claimant's medical history (Exhibit D-1 and D-2)

reveals that the Claimant was denied prior authorization for Medicaid payment of Oxycontin on at least two (2) previous occasions – November 16, 2005 and again on February 17, 2006, and neither of these two denials were appealed to the Medical Director at the Bureau for Medical Services (BMS). Although there is no documentation in Exhibit D-1 to show that the Claimant met all of the PA criteria (no record of duragesic use etc. . .), PA was established in August 2006 when the Rational Drug Therapy Program (RDTP) took the word of the Claimant's physician (See Exhibit D-5, MedWatch dated 8/4/06) that the Claimant has an allergic reaction anytime she uses any of the generic Oxycontin medications. Ms. King went on to say that the denied payments of Oxycontin found on Exhibit D-1 after August 2006 were the result of dosing issues or early refills – PA Criteria had been met.

4) The Claimant testified that she has asked for retroactive payment of Oxycontin due to her financial situation. She testified that she had allergic reactions to generic Oxycontin products a long time ago. She does not know why her physician did not attempt to obtain PA earlier because she verbally requested that her physician seek PA for Oxycontin.

5) As a matter of record, the Department was allowed 10-days to secure additional information regarding RDTP's PA denials and to allow the Claimant an opportunity to provide any evidence that PA criteria should have been met before August 2006. The Department's information was received timely and has been identified as Exhibit D-5, however, the Claimant failed to provide any additional information.

6) West Virginia Department of Health and Human Resources Medicaid Policy Manual, Chapter 507.1 states:

> The Rational Drug Therapy Program (RDTP is the agency contracted to provide prior authorizations services to the West Virginia Medicaid Pharmacy Program. RDTP is a non-profit organization affiliated with the West Virginia University School of Pharmacy.
>
> Prior authorizations may be initiated either by the dispensing pharmacist, the prescriber, or the precriber's designee. Requests may be made by telephone, fax or mail. If all the necessary information is provided, requests will be addressed within 24 hours. It is the responsibility of the provider of the service, either the physician or pharmacist, to obtain the authorization before rendering the service. <u>Requests for prior authorization after the services is rendered will be denied, except in cases of back-dated eligibility. If the services is provided before prior authorization is obtained, the Medicaid member must be informed that he/she will be responsible for the bill</u> [Emphasis added].
>
> There is a maximum approval limit of one year.

VIII. CONCLUSIONS OF LAW:

1) The policy that governs the West Virginia Medicaid Pharmacy Program states that

medications in the Therapeutic Drug Class (Analgesics, Narcotic) require prior authorization before payment can be made for non-preferred agents.

2) The prior authorization process is outlined in Chapter 500 of the West Virginia Medicaid Policy Manual and states that it is the responsibility of the provider of the service, either the physician or pharmacist, to obtain authorization before rendering the service. Requests for prior authorization after the services is rendered will be denied, except in cases of back-dated (Medicaid) eligibility. If the services is provided before prior authorization is obtained, the Medicaid member must be informed that he/she will be responsible for the bill.

3) The evidence reveals that there were two prior authorization requests made for Medicaid payment of the "non-preferred" medication Oxycontin before prior authorization was approved in August 2006. Neither of the denied requests for prior authorization were appealed to the Medical Director at BMS and the Claimant failed to produce evidence that the requests were wrongfully denied.

4) Based on the evidence, the Claimant is not eligible for retroactive payment for money spent on Oxycontin during the period December 2005 though July 2006. If the service is provided before prior authorization is obtained, the Medicaid member is responsible for payment.

IX. DECISION:

It is the decision of the State Hearing Examiner to **uphold** the Department's action in denying retroactive Medicaid payment for medication without the required prior authorization criteria being met.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 9th Day of February 2007.

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Thomas E. Arnett
State Hearing Examiner