



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D. Ph.D
Cabinet Secretary

December 17, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of a nebulizer.

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 for Durable Medical Equipment (DME) services and items requiring prior authorization review for medical necessity by WVMI, it is the responsibility of the prescribing practitioner to submit the appropriate clinical documentation for approval (Durable Medical Equipment/Medical Supplies Manual § 506.5).

The information submitted at your hearing failed to establish the medical necessity of a nebulizer per InterQual criteria.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny prior authorization of a nebulizer.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Bureau of Medical Services

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

-----,

Claimant,

v.

Action Number: 10-BOR-2062

**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 29, 2010 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.

II. PROGRAM PURPOSE:

The Program entitled Medicaid is 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

Virginia Evans, Bureau of Medical Services
Barbara Reid, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny prior authorization of a nebulizer.

V. APPLICABLE POLICY:

Durable Medical Equipment/Medical Supplies Manual § 506.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Durable Medical Equipment/Medical Supplies Manual § 506.5
- D-2 InterQual Criteria – Durable Medical Equipment
- D-3 Prior Authorization Request dated September 30, 2010
- D-4 Denial Notification Letter dated October 1, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for prior authorization for a nebulizer was submitted to the West Virginia Medical Institute (WVMI) on September 30, 2010 for approval (D-3). A denial notification letter was issued by the Department which read in pertinent parts (D-4):

A request for prior authorization was submitted for durable medical services. Based on the medical information provided, the request has been denied.

According to InterQual criteria, documentation of a previously failed trial of a meter dose inhaler [MDI] with spacer/holding chamber, symptoms that persist despite use of an MDI and the name of the medication prescribed for the nebulizer treatments must be provided for review.

- 2) Barbara Reid, nurse reviewer with WVMI, testified to the reasons for the denial of the nebulizer for Claimant. Ms. Reid stated the authorization request submitted by Claimant's physician gave Claimant a diagnosis of COPD. Ms. Reid stated the authorization request form lacked information regarding the clinical indications for requesting the nebulizer and the type of medication to be used with the nebulizer. There was also no documentation explaining why Claimant was unable to use a meter dose inhaler (D-3). Ms. Reid stated the request for the nebulizer was denied because the InterQual criteria could not be met without the above information (D-2).

3) Claimant testified that she has used a meter dose inhaler but with no results. She stated she already has the medication for the nebulizer, which is useless without the nebulizer. Claimant stated she felt like she needed to find a new physician.

4) WV Bureau of Medical Services Provider Manual § 506.5 states:

For DME services and items requiring prior authorization review for medical necessity by WVMH, it is the responsibility of the prescribing practitioner to submit the appropriate clinical documentation i.e., ICD-9 code(s), all information required on the written prescription (see 506.4, and paragraph, (2) for clarification) and any other relevant information.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that it is the responsibility of the prescribing practitioner to submit appropriate clinical documentation for a determination of medical necessity to be made.
- 2) Claimant's physician failed to provide documentation of Claimant's failed use of a meter dose inhaler and the clinical reasons for requesting the nebulizer. Without this information, the medical necessity of a nebulizer could not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny prior authorization of a nebulizer for Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of December, 2010.

**Kristi Logan
State Hearing Officer
Member, Board of Review**