



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 West Washington Street  
Charleston, West Virginia 25313  
E-mail Address: raywoods@wvdhhr.org

Joe Manchin III  
Governor

March 7, 2005

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

Dear Ms. \_\_\_\_\_;

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 12, 2004. Your hearing request was based on the Department of Health and Human Resources' action, to determine you were not eligible for Bariatric Surgery.

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 and benefit levels for Medicaid Programs are determined based on current regulations. One of these regulations states in part,

"Effective with services rendered on or after January 1, 2004, the West Virginia Medicaid Program will begin covering bariatric surgery procedures subject to the following conditions:

The patient's primary care physician or the bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all the required information, to the West Virginia Medical Institute (WVMI), 3001 Chesterfield Place, Charleston, West Virginia 25304. The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon (established) criteria."

**(Medicaid Program Instruction MA-03-64 dated November 7, 2003; Effective January 1, 2004 – West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures).**

The information submitted at the hearing revealed: You did not provide the necessary information to determine eligibility for bariatric services.

It is the decision of the State Hearing Officer, to uphold the denial of Bariatric Surgery for Ms. \_\_\_\_\_. She failed to provide required documentation to determine eligibility.

Sincerely,

Ray B. Woods, Jr.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Auburn Cooper, B M S  
Linda Chambers, Legal Secretary, B M S

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

### **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 7, 2005 for Ms. \_\_\_\_\_.

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 on November 3, 2004 on a timely appeal filed August 13, 2004. The Bureau for Medical Services requested to reschedule to allow a representative from West Virginia Medical Institute to be present. The hearing was rescheduled and finally convened on December 10, 2004.

It should be noted here that, Ms. \_\_\_\_\_ was an active Medicaid recipient at the time of the hearing.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties. Ms. \_\_\_\_\_ did not have legal representation.

#### **II. PROGRAM PURPOSE**

The program entitled Medical Assistance Only is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged, disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

#### **III. PARTICIPANTS**

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

\_\_\_\_\_, Mother

\*Oretta Keeney, RN – West Virginia Medical Institute

\*Liz Miller, RN – West Virginia Medical Institute

\*Auburn Cooper, Director - Office of Medical Health and Policy Coordinator, Bureau of Medical Services (B M S)

\* Participated by conference call

Presiding at the hearing was Ray B. Woods, Jr., State Hearing Officer and; A member of the State Board of Review.

#### **IV. QUESTION(S) TO BE DECIDED**

Did Ms. \_\_\_\_\_ meet the eligibility criteria for bariatric surgery?

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

Medicaid Program Instruction MA-03-64 dated November 7, 2003; Effective January 1, 2004 – *West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures*.

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

- D-1 Medicaid Program Instruction MA-03-64 dated November 7, 2003; Effective January 1, 2004 – *West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures*.
- D-2 Scheduling Notice dated 11/08/04 (12/10/04 Hearing)
- D-3 Scheduling Notice dated 10/07/04 (11/03/04 Hearing)
- D-4 Letter to Ms. \_\_\_\_\_ from State Hearing Officer dated 10/01/04
- D-5 Hearing Request Referral from Client Services dated 08/04/04
- D-6 GroupWise Messages re: Scheduling dated 09/21/04 – 11/12/04

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

- According to Mr. Cooper, the denial was based on the lack of information to determine medical necessity.
- Ms. Liz Miller confirmed Mr. Cooper's statement. The case was not based on the denial of medical necessity but, the lack of information to determine medical necessity. The patient did not submit documentation about having Diabetes; Diet failure and whether she has tried any types of diets; The need for a psychiatric evaluation; Ability to deal with the dietary and lifestyle changes; Questions relating to abdominal surgery and; An evaluation by a bariatric surgeon. The patient submitted a pulmonary clearance after the case had been denied for lack of information.

- Effective January 1, 2004, the policy changed and requires an evaluation by a bariatric surgeon
- Ms. \_\_\_\_\_ stated that her arthritis specialist submitted the medical documentation. Ms. Miller stated it was a simple statement and did not contain the required clinical information. Medical Documentation is still required.
- Both parties referred to documents that were not in the possession of the State Hearing Officer.
- Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_ said they were not allowed to be evaluated in Morgantown during 2003 and January 2004 for the surgery. A required seminar did not accept Medicaid at the WVU Center. Ms. Keeney stated Medicaid covers the bariatric surgery effective January 1, 2004.
- Mr. Cooper stated that, the only thing that has to be done is for the patient's Rheumatologist to refer her to the bariatric surgeon. The bariatric surgeon will then seek the necessary approvals.
- Ms. \_\_\_\_\_ stated her daughter meets 8 of the 9 requirements listed under Medicaid Program Instruction MA-03-64 dated November 7, 2003; Effective January 1, 2004 – *West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures*. She disagreed with the policy requiring that her daughter must also have Diabetes.
- According to Ms. \_\_\_\_\_, the State of West Virginia has paid \$238,637.12 during the 26 years her daughter has received Medicaid Benefits. This amount does not count hospital stays. The expenditures are a small amount compared to the \$25,000.00 for bariatric surgery.
- The decision was given at the conclusion of the hearing.

## **VIII. CONCLUSIONS OF LAW**

**Medicaid  
Program Instruction  
MA- 03-64  
Issue Date: November 7, 2003  
Effective Date: January 1, 2004**

**TO: All West Virginia Medicaid Program Participating Providers:  
Inpatient Hospital and Physician Services**

**FROM: Nancy V. Atkins, MSN, RNC, NP Commissioner**

**RE: West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures**

**MANUAL:**  
Hospital and Physician

**PURPOSE:**

This Program Instruction transmits West Virginia Medicaid Program policy for coverage and reimbursement of bariatric surgery procedures.

**BACKGROUND:**

The West Virginia Medicaid Program discontinued coverage and reimbursement for bariatric surgery procedures in 1995. Since that time the Medicaid Program has not paid medical practitioners or facilities for bariatric surgery procedures. Fairly recent surgical developments have necessitated re-examination of the non-covered status.

**POLICY PROVISION:**

Effective with services rendered on and after January 1, 2004, the West Virginia Medicaid Program will begin covering bariatric surgery procedures subject to the following conditions:

- Medical Necessity Review and Prior Authorization

The patient's primary care physician or the bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all the required information, to the West Virginia Medical Institute (WVMI), 3001 Chesterfield Place, Charleston, West Virginia 25304. The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon the following criteria:

1. 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.
2. 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.
3. 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.)
4. The patient must have a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification. The rationale for this criteria is taken from the Swedish Obese Subjects (SOS) study, *International Journal of Obesity and Related Metabolic Disorders*, May, 2001.
5. Patient must have documented failure at two attempts of physician supervised weight loss, attempts each 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 attempt failed.

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.
8. Contraindications: Three (3) or more prior abdominal surgeries; history of failed bariatric surgery; current cancer treatment; Crohn's disease; End Stage Renal Disease (ESRD); prior bowel resection; ulcerative colitis; history of cancer within prior 5 years that is not in remission; prior history of non-compliance with medical or surgical treatments.
9. 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.

#### **PHYSICIAN CREDENTIALING REQUIREMENTS**

In order to be eligible for reimbursement for bariatric surgery procedures, physicians must:

- Provide evidence of credentials at an accredited facility to perform gastrointestinal and biliary surgery.
- Provide documentation that the physician is working within an integrated program for the care of the morbidly obese that provides ancillary services such as specialized nursing care, dietary instruction, counseling, support groups, exercise training and psychological/psychiatric assistance as needed.
- Provide assurances that surgeons performing these procedures will follow the guidelines established by the American Society for Bariatric Surgery including:
  - Credentials to perform open and laparoscopic bariatric surgery
  - Document at least 25 open and/or laparoscopic bariatric surgeries within the last three years

#### **PHYSICIAN PROFESSIONAL SERVICES**

Professional services which will be required of the physician performing bariatric surgery

include the surgical procedure, the 90-day global post-operative follow-up, and a 12 month assessment period which includes the following: medical management of the patient's bariatric care, nutritional and personal lifestyle counseling, and a written report at the end of the 12 month period consisting of: an assessment of the patient's weight loss to date, current health status and prognosis, and recommendations for continuing treatment. That 12 month assessment report must be submitted to the patient's attending or primary care physician, as well as to the Bureau for Medical Services.

While the bariatric surgeon's association with the patient may end following the required 12 month follow-up, the patient's continuing care should be managed by the primary care or attending physician throughout the patient's lifetime.

## **REIMBURSEMENT:**

### Hospital

Participating hospitals will be reimbursed for approved admissions through the DRG reimbursement methodology.

The hospital must be a facility in which the procedures are performed on a regular basis, and that has the proper equipment and appropriately trained staff for this specialized surgery, as outlined by the American College of Surgeons for facilities performing bariatric surgery . WVMJ reserves the right to deny the request based on the appropriateness of the facility involved.

### Physicians

The physician performing the bariatric surgery procedure will be reimbursed through the existing RBRVS payment methodology for the surgical procedure. Reimbursement includes a postoperative follow-up for the global period of 90 days. For the remainder of the required 12 month follow-up period and assessment, the bariatric surgeon may submit claims using the appropriate evaluation and management procedure code. After completion of the required 12 month evaluation period, the patient may be followed-up and medically managed either by the surgeon or primary care physician utilizing appropriate E & M procedure codes.

### CPT Codes/Covered Procedures

43842	Gastric restrictive procedure, without gastric bypass, for morbid obesity; verticalbanded gastroplasty.
43843	Gastric restrictive procedure, without gastric bypass, for morbid obesity; other than 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 (separate procedure). (This is only for correction of serious complications caused by the procedure within the first 6 months postoperatively, and is not meant to indicate that a patient can have a second procedure due to failure to lose weight from a prior procedure.)

Only one procedure will be covered per lifetime. Those failing to lose weight from a prior procedure will not be approved for a second one.

**Non-Covered Procedures**

The following procedures will not be covered by West Virginia Medicaid Program:

- Mini-gastric bypass surgery
- Gastric balloon for treatment of obesity
- Laparoscopic adjustable gastric banding

**INQUIRIES:**

Inquiries related to the content of this Program Instruction should be directed to ACS, Provider Relations, Post Office Box 2002, Charleston, West Virginia 25327-2002. The telephone number is (304) 345-0101, and the toll free number is 1-800-433-3019 (in-state providers only).

**IX.     DECISION**

According to Medicaid Program Instruction MA-03-64 dated November 7, 2003; Effective January 1, 2004 – *West Virginia Medicaid Program Coverage for Bariatric Surgery Procedures* it states in part,

Effective with services rendered on or after January 1, 2004, the West Virginia Medicaid Program will begin covering bariatric surgery procedures subject to the following conditions:

The patient's primary care physician or the bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all the required information, to the West Virginia Medical Institute (WVMI), 3001 Chesterfield Place, Charleston, West Virginia 25304. The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon (established) criteria.

Ms. Liz Miller, RN with the West Virginia Medical Institute stated,

The case was not based on the denial of medical necessity but, the lack of information to determine medical necessity. The patient did not submit documentation about having Diabetes; Diet failure and whether she has tried any types of diets; The need for a psychiatric evaluation; Ability to deal with the dietary and lifestyle changes; Questions relating to abdominal surgery and; An evaluation by a bariatric surgeon. The patient submitted a pulmonary clearance after the case had been denied for lack of information.

Mr. Auburn Cooper summarized what is needed by stating, "The only thing that has to be done is for the patient's Rheumatologist to refer her to the bariatric surgeon. The bariatric surgeon will then seek the necessary approvals."

It is the decision of this State Hearing Officer to UPHOLD the action of the Department in this particular matter. Ms. \_\_\_\_\_ did not submit the required documentation to determine her eligibility for bariatric surgery.

The Department's action was proper and correct in this particular matter.

#### **X. RIGHT OF APPEAL**

See Attachment.

#### **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.