State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 12, 2007

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Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 2007. Your appeal was based on the Department of Health and Human Resources' decision to deny pre-authorization coverage approval for a Lysis of Adhesion.

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.

Current Medicaid regulations provide as follows: Certain surgeries performed in place of Out patient Hospital and Ambulatory Surgical Centers will require prior authorization, effective February 15, 2006. The selected surgeries that require prior authorization through the Bureau of Medical Services review contractor (West Virginia Medical Institute) are listed in Attachment 3. (West Virginia Bureau for Medical Services Provider Manual § 500)

The information submitted at the hearing reveals that the information provided by your physician in his letter dated February 7, 2007 was sufficient to meet the requirements for authorization for the laparoscopy requested.

It is the decision of the State Hearing Examiner to **reverse** the Department's action to deny coverage for the surgery.

Sincerely,

Melissa Hastings
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Evelyn Whidby, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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Claimant,

v. **Action Number 07-BOR-1334**

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 July 10, 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 July 10, 2007 on a timely appeal filed May 9, 2007.

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, (BMS), 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:

All appearing telephonically
_____, Claimant
Cindy Knighten, BMS Representative
Oretta Keeney RN, WV Medical Institute, (WVMI)
Kathy Honeycutt RN, WV Medical Institute, (WVMI)
Dr. John Brehm, Chief Medical Officer WV Medical Institute (WVMI)
Mary Beth Hamilton RN, BMS observing

Presiding at the hearing was Melissa Hastings, 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 denying a request for Medicaid coverage for a Lysis (Laparoscopy) of adhesions.

V. APPLICABLE POLICY:

West Virginia BMS Provider Manual Chapter 508.1
West Virginia BMS Provider Manual Chapter 508 attachment 3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1 BMS Provider Manual Chapter 508.1
D-2 BMS Provider Manual Chapter 508 Attachment 3 (2 pages)
D-3 WVMI Medicaid Outpatient Services Authorization Request Form with a requested procedure of Lysis of Adhesions dated January 10, 2007.
D-4 History and Physical exam report from [redacted] completed by [redacted] MD dated January 8, 2007 (2 pages)
D-5 Notice of Denial dated January 10, 2007 sent to _____
D-6 Notice of Denial dated January 10, 2007 sent to [redacted] dated January 10, 2007
D-7 WVMI Medicaid Out patient Service Authorization Request Form dated January 8, 2007 with notation to the Attention of the Reconsideration Unit.
D-8 Letter from [redacted] MD to WVMI dated February 7, 2007.
D-9 Notice of Denial dated January 10, 2007 to [redacted] with handwritten unsigned note on the bottom sent with the reconsideration request (D7)
D-10 History and Physical exam report from [redacted] completed by [redacted] MD dated January 8, 2007 with addendum dated January 11, 2007 (3pages) sent with reconsideration request.
D-11 Notice of Reconsidered Determination dated January 26, 2007 sent to [redacted] MD
D-12 Notice of Reconsidered Determination dated January 26, 2007 sent to _____.

VII. FINDINGS OF FACT:

1) On January 8, 2007, the claimant's physician [redacted] MD submitted a request to the Department for prior approval for coverage of a Lysis (Laparoscopy) of Adhesions (CPT code 58660) procedure for the claimant. (D3) Included with this request was a copy of a History and Physical report for the claimant dated January 8, 2007 indicating labs and ultrasounds consistent with a polycystic ovarian syndrome and persistent pelvic pain. (D4)

2) Testimony from WVMI representative Kathy Honeycutt indicates that this request was presented to a reviewing physician who reviewed the documents submitted and found that medical necessity and appropriateness were not supported. Particularly there was no documentation that GI and Urinary tract problems were not evaluated as the cause for the pelvic pain.

3) WVMI issued a denial notice to the claimant (D5) and physician (D6) on January 10, 2007 explaining that there was no documentation that GI and Urinary tract problems that may be causing the problems were evaluated.

4) The physician submitted a request for reconsideration (D7) along with additional medical information (D9 and D10) on January 11, 2007 to WVMI.

5) Testimony from WVMI representative Kathy Honeycutt indicates that the reconsideration information submitted was presented to a second reviewing physician for consideration. The additional medical information provided included an addendum dated January 11, 2007 to the original History and Physical report in which the claimant's physician makes note of claimant's normal urination and remedied constipation. A decision of denial was again reached and a second denial letter was issued to the claimant and physician by WVMI on January 26, 2007 (D11 and 12) stating that surgical intervention was not indicated.

6) Following the January 26, 2007 denial, the claimant's physician prepared and submitted a letter dated February 7, 2007 to WVMI (D8). In this letter the physician indicates that claimant has persistent pelvic pain. Constipation issues were resolved with fiber and laxatives and menstrual pain was treated with Depo Provera without resolution. He further indicates that claimant had a previous laparoscopic appendectomy with findings of pelvic adhesions which were left untreated. Once again he reiterates the need for a laparoscopic procedure to resolve the pelvic pain issue.

7) Testimony received from Dr. John Brehm, Chief Medical Officer of WVMI indicates that while he was not the reviewing physician on either the original denial or the reconsideration denial he would agree with these decisions based on the information provided at the time. However, Dr. Brehm's testimony also indicates that if the information provided by the claimant's physician in the February 7, 2007 had been available to the reviewing physicians there would have been a 50/50 chance the procedure would have been approved. Dr. Brehm's further testimony indicates that in a situation like this it is his opinion that the reviewing physicians should always defer to the referring physician when making a final decision.

8) West Virginia Bureau for Medical Services Provider Manual § 508 4:

> Certain surgeries performed in place of service 22 (Outpatient Hospital) and 24 (Ambulatory Surgical Center) will require prior authorization, effective February 15, 2006. The selected surgeries that require prior authorization through the BMS review contractor are listed in Attachment 3, along with the PA form that may be utilized.

9) West Virginia Bureau for Medical Services Provider Manual § 500: INTRO:

> The West Virginia (WV) Medicaid Program offers a comprehensive scope of medically necessary medical and mental health services to diagnose and treat eligible members. Covered and authorized services must be rendered by enrolled providers within the scope of their license and in accordance with all State and Federal requirements. Any service, procedure, item, or situation not discussed in the manual must be presumed non-covered unless informed otherwise in writing by the Bureau for Medical Services (BMS).

10) West Virginia Bureau for Medical Services Provider Manual § 320.3:

Obtain Prior Authorization:

It is the responsibility of the provider of the service to secure prior approval before rendering the service.

The provider must submit written documentation demonstrating the medical necessity and appropriateness of the proposed treatment.

11) West Virginia Bureau for Medical Services Provider Manual § 502:

Medical Necessity, All services must be medically necessary and appropriate to the member's needs in order to be eligible for payment. The medical records of all members receiving Practitioner Services must contain documentation that establishes the medical necessity of the service.

Important: The fact that a provider prescribes, recommends, or approves medical care does not in itself make the care medically necessary or a covered service. Nor does it mean that the patient is eligible for Medicaid benefits. It is the provider's responsibility to verify Medicaid eligibility and obtain appropriate authorizations before services are rendered.

VIII. CONCLUSIONS OF LAW:

1) Policy provides that prior authorization is required for proposed surgery and that necessity and appropriateness must be proven. The provider did issue a request for prior authorization, which was denied because all causes of claimant's pelvic pain i.e. GI and urinary tract issues were not evaluated. The provider then issued a request for reconsideration providing very limited information regarding the urinary tract and GI tract issues. This resulted in a second denial.

2) While the Department followed proper policy and procedures in their processing of the initial request and the reconsideration request, testimony and evidence submitted by WVMI representatives indicates that further information provided by the claimant's physician i.e. the February 7, 2007 letter would have been sufficient for the requested procedure to be approved.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of the request for payment authorization through the Medicaid Program for the Lysis of Adhesions (CPT Code 58660).

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

ENTERED this 12th Day of July 2007.

_____

Melissa Hastings
State Hearing Examiner