



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313
304-746-2360, Extension 2227

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 2, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 29, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of Medicaid payment 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 for Medicaid services is based on current policy and regulations. Some of these regulations state that prior authorization (PA) is required on all bariatric surgery procedures. The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based on numerous specific criteria including, but not limited to, that the patient must have a documented diagnosis of diabetes and must have completed a recent psychological and/or psychiatric evaluation. 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. The obesity must be incapacitating to the patient precluding normal activity, or the patient must be disabled. (WVDHHR Hospital Services Manual, Chapter 519.9.3)

The information presented at your hearing reveals that the Department requested a second psychological evaluation be completed. You completed the evaluation; however, the Department never received the report. In addition, you do not have a diagnosis of diabetes, and your obesity is not incapacitating. The Department correctly denied your request for prior authorization of bariatric surgery due to inadequate documented clinical indications.

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

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lorna Harris, BMS

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

-----,

Claimant,

v.

Action Number: 09-BOR-1285

**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 September 29, 2009 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 convened on September 29, 2009 on a timely appeal filed May 28, 2009.

II. PROGRAM PURPOSE:

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, representing herself

-----, Claimant's witness

-----, Claimant's witness

Nora McQuain, BMS, Department Representative

Jenny Craft, RN, WVMI, Department's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that the hearing was conducted by videoconference. The Department participated by conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to deny prior authorization (PA) for Medicaid payment of bariatric surgery.

V. APPLICABLE POLICY:

WVDHHR Medicaid Policy Manual, Chapter 519.9.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WVDHHR Medicaid Manual Chapter 519.9.3, 4 pages
- D-2 Physician's Letter of Medical Necessity and medical documentation, 69 pages
- D-3 Claimant's request for hearing and Notice of Denial dated May 14, 2009, 3 pages

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On or about May 14, 2009 the Department notified the Claimant via a Notice of Denial (Exhibit D-3) that her request for prior authorization (PA) for Medicaid payment of bariatric surgery was denied. The notice included the following pertinent information:

Reason for Denial: Bariatric Surgery – Documentation provided does not indicate medical necessity – specifically:

There are inadequate documented clinical indications for the invasive procedure requested. This is in reference to your request for bariatric surgery. The documentation provided did not support medical necessity of this procedure due to the patient's psychiatric history and concern that the patient would not be able to adapt to the lifestyle changes required after this surgery.

- 2) Evidence presented by the Department (D-1) reveals that PA is required for Medicaid payment of bariatric surgery. West Virginia Medical Institute (WVMI) is the agency contracted to review PA requests and determine eligibility. The WVMI representative testified that in reviewing the submitted information, WVMI determined that the documentation failed to show the Claimant met three (3) specific required criteria necessary for PA of the bariatric surgery. The three (3) specific criteria not met were as follows:

- 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.
- 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.
- 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.

Testimony -----, the Claimant's witness and friend, includes that the Claimant has in the past gone daily to [REDACTED] to walk in an attempt to lose weight. -----, the Claimant's witness and foster aunt, testified that the Claimant has low blood sugar, and the Claimant testified that diets have not worked for her. Testimony from both -----and -----, along with the Claimant's testimony, supports that the Claimant does not have a diagnosis of diabetes and does not use a walker or wheelchair to leave her residence. Their testimony also purports that although the Claimant has difficulty, she is not incapacitated or disabled from performing activities of daily living. In addition, their testimony affirms that she did submit to a second psychological evaluation at the Department's request.

- 3) The written evidence submitted by the Claimant's physician (D-2) corroborates that the Claimant does not have a diagnosis of diabetes. The physician lists her medical conditions as gastro esophageal reflux disease, hiatal hernia, sleep apnea, hypertension, hyperlipidemia and history of gastric ulcer.
- 4) WVDHHR Hospital Services Manual, Chapter 519.9.3 provides in pertinent part:

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:

- 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.
- 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.
- 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.)
- 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 [sic] is taken from the Swedish Obese Subjects (SOS) study, *International Journal of Obesity and Related Metabolic Disorders*, May 2001.
- 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 attempts failed.
- 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.
- 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.
- Patient must be tobacco free for a minimum of six months prior to the request.
- 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.

VIII. CONCLUSIONS OF LAW:

- 1) WVDHHR Hospital Services Manual provides that bariatric surgery procedures are covered subject to PA and based on numerous specific conditions. These conditions include that the individual must be incapacitated from normal activity or disabled, substantiated by an inability

to perform activities of daily living, evidenced by needing a walker or wheelchair to leave the residence. In addition, the individual must have a diagnosis of diabetes that is actively being treated with oral agents, insulin, or diet modification; the individual must also have submitted a preoperative psychological and/or psychiatric evaluation within the six months prior to the surgery.

- 2) The evidence reveals that the Department (through WVMI) received a request from the Claimant's physician for PA of Medicaid payment for bariatric surgery. This request failed to show the Claimant meets all the required criteria necessary for approval of PA for the procedure.
- 3) The Claimant clearly does not have a diagnosis of diabetes, and although the evidence shows she has some difficulties with activities of daily living, she is clearly not incapacitated or disabled by them. In addition, although the Claimant and her witnesses report she completed a more recent psychological evaluation, neither the Claimant nor her physician ever submitted the report to the Department for consideration.
- 4) The Department is correct in its decision to deny PA of Medicaid payment for bariatric surgery in this instance.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny prior authorization of Medicaid payment for bariatric surgery.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of October, 2009.

**Cheryl Henson
State Hearing Officer**