



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

October 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 22, 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; must have completed a recent evaluation for medical clearance of the surgery by a cardiologist or pulmonologist; and, the patient must have documented failure at two attempts of physician supervised weight loss, with the attempts lasting six months or longer. The attempts must have occurred within the past two years and be documented in the patient medical record, including a description of why the attempts failed. (WVDHHR Hospital Services Manual, Chapter 519.9.3)

The information presented at your hearing reveals that you do not have a diagnosis of diabetes; you had not completed a recent evaluation for medical clearance of the surgery from a cardiologist or pulmonologist; and, you have not provided evidence of two failed attempts at physician supervised weight loss lasting six months or longer, having occurred within the last two years. 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-1645

**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 October 21, 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 October 21, 2009 on a timely appeal filed August 3, 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
Nora McQuain, BMS, representing the Department
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 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, 20 pages
- D-3 Claimant's request for hearing IG-BR-29 form – 3 pages
- D-4 Notice of Denial letter dated June 10, 2009 – 4 pages

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On or about June 10, 2009 the Department notified the Claimant via a Notice of Denial (D-4) 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:

This is reference to your request for bariatric surgery. There are inadequate documented clinical indications for the invasive procedure requested. The documentation provided did not support the medical necessity of this procedure due to the fact that the patient is not a diabetic, has not had an evaluation from a cardiologist or pulmonologist in the past 6 months, and there was no documentation of two attempts of six months of physician supervised weight loss.

- 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:

- 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.
- 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.
- 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.

Testimony from the Claimant provides that she disagrees with the Department's decision and feels she should be eligible for the surgery based on her medical condition. She states she has pain constantly and has no quality of life. She states she must be pushed in a wheelchair, and when exiting her home she must sit on her buttocks and scoot down eight steps to get to her yard. The Claimant made some attempts after the denial to comply with some of the areas specified above; however, she admits that she has not been diagnosed with diabetes. She states that she has never been "checked" for the disease.

- 3) The written evidence submitted by the Claimant's physician (D-2) shows that the Claimant has a body mass index (BMI) of 50.6, and has trouble walking, severe arthritis and shortness of breath. A letter from her physician acknowledges that the Claimant does not have a diagnosis of diabetes; however, he submits that her obesity is clearly disabling and expresses that the Claimant desperately needs the surgery.
- 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 a 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*, May2001.
- 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 prior authorization and based on numerous specific conditions. 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 documented failure at two attempts of physician supervised weight loss, attempts each lasting six months or longer, within the past two years as documented in the patient medical record, including a description of why the attempts failed; and the patient must have documentation of a current evaluation for medical clearance of the surgery performed by a cardiologist or pulmonologist to ensure the patient can withstand the stress of the surgery from a medical standpoint.

- 2) The evidence reveals that the Department (through WVMI) received a request from the Claimant's physician for prior authorization of Medicaid payment for bariatric surgery. This request failed to show the Claimant meets all the required criteria necessary for approval of prior approval for the procedure.
- 3) The Claimant clearly does not have a diagnosis of diabetes, and the Claimant did not provide documentation of a current evaluation by a cardiologist or pulmonologist relative to this procedure. In addition, there is insufficient evidence to show two failed attempts of physician supervised weight loss, lasting six months or longer, within the past two years as documented in the patient medical record, including a description of why the attempts failed.
- 4) The Department is correct in its decision to deny prior authorization 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 22nd Day of October, 2009.

**Cheryl Henson
State Hearing Officer**