



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. 3rd Avenue
Williamson, WV 25661

Joe Manchin III
Governor

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

December 2, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid authorization for outpatient surgery, a bunionectomy.

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 outpatient surgeries. Failure to obtain prior authorization will result in denial of the service. The 2008 – Procedures Criteria found on InterQual Smart Sheet is used to determine the medical appropriateness of health care services. If the individual fails to meet the clinical indications criteria during the nurse's review, the request is forwarded to a physician reviewer to determine medical appropriateness. (WVDHHR Medicaid Policy Manual, Chapter 519, & InterQual Smart Sheets 2008 – Procedures Criteria)

The information presented at your hearing reveals that prior authorization for payment of a bunionectomy was not approved because the information your physician submitted does not meet the InterQual initial clinical indications criteria and there was insufficient documentation for the physician reviewer to determine medical appropriateness.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny Medicaid authorization for the outpatient bunionectomy procedure.

Sincerely,

Stephen M. Baisden
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(s): 09-BOR-1679

**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 December 2, 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 hearing was held on September 22, 2009 on a timely appeal filed August 13, 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
Virginia Evans, DHHR Specialist, Bureau for Medical Services (BMS)
Sharon Lopez, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether the Department was correct in its decision to deny Medicaid payment for outpatient surgery (bunionectomy) for Claimant.

V. APPLICABLE POLICY:

WVDHHR Medicaid Policy Manual, Chapter 519 and InterQual Smart Sheets 2009 – Procedures Criteria.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV DHHR Medicaid Hospital Services Provider Manual Chapter 519 and Attachment 17.
- D-2 InterQual Smart Sheets – 2009 Procedures Criteria
- D-3 WVMi Medicaid Outpatient Services Authorization Request form from requesting physician, Dr. [REDACTED] DPM.
- D-4 Notices of Denial from WV Medical Institute (WVMI) dated July 24, 2009

VII. FINDINGS OF FACT:

- 1) Claimant's physician, [REDACTED] M.D., submitted a Medicaid Outpatient Services Authorization Request form to WVMi requesting authorization for procedure #28296, a bunionectomy, for Claimant on July 17, 2009. (Exhibit D-3.) On July 24, 2009, WVMi issued a denial to Claimant and her physician for this service. (Exhibit D-4.) Claimant requested a hearing on this denial on August 13, 2009.

- 2) WV DHHR Medicaid Hospital Services Provider Manual Chapter 519.20.1 (Exhibit D-1) states in part:

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 17, along with the PA form that may be utilized.

WV DHHR Medicaid Hospital Services Provider Manual Chapter 519, Attachment 17 lists the selected surgical procedures that require prior authorization. Procedure items #28290 through 28299 state "Correction of bunion."

- 3) Based on information taken from the physician's Medicaid Authorization Request Form, the WVMi request reviewer completed a procedures criteria screening form,

known as an InterQual Smart Sheet (Exhibit D-2). According to this sheet, a physician requesting this procedure must demonstrate all of the following: patient must experience pain at the first metatarsophalangeal (MTP) joint that interferes with activities of daily living; skin irritation at the medial MTP joint; the inability to wear closed shoes comfortably; a bunion; skin irritation or a medial callus; a hallux valgus deformity; x-rays which demonstrate a hallux valgus angle of at least fifteen degrees (15°) and an intermetatarsal articulation of between eleven degrees (11°) and eighteen degrees (18°) with no or mild arthritis; and continued pain after the use of well-fitted shoes with low heels for twelve (12) weeks and one of the following: non-steroidal anti-inflammatory (NSAID) medications for four (4) weeks unless NSAIDs are contraindicated or not tolerated; a bunion pad for twelve (12) weeks; an orthotic for twelve (12) weeks; or corticosteroid injections.

- 4) The referring physician's office submitted no medical records other than the Outpatient Services Authorization Request Form. The form indicated that the request was for removal of a bunion on claimant's left foot, and that the claimant experienced pain when she walked in shoes and swelling "when in shoes very long." The form didn't attempt to localize the pain at the first MTP joint, didn't mention skin irritations, medial calluses or hallux valgus deformities. There were no x-rays or x-ray reports included. At item "E" of the Request Form, labeled "Relative Diagnostic and Outpatient Studies," the person who completed the form entered "Ø" which indicated no x-rays were made. There were indications of changing shoe gear and padding, but no mention of the durations or outcomes of these treatments. There were no indications of treatments with non-steroidal anti-inflammatory (NSAIDs), orthotics or corticosteroid injections.
- 5) Nurse reviewers at the WVMJ found that they could not make a determination on claimant's physician's request, so they submitted the request for physician review. The WVMJ physician reviewers determined that the request was insufficient and denied the pre-authorization.
- 6) Claimant testified that she had x-rays completed, and had them with her in the hearing. She stated that the referring physician had given her injections, but did not elaborate as to the type of injections she received.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires pre-authorization of Medicaid coverage for an outpatient procedure such as a bunionectomy.
- 2) The Claimant's physician requested pre-authorization for a bunionectomy on July 17, 2009.
- 3) Based on the physician's pre-authorization request, nursing staff at the WVMJ completed InterQual Smart Sheets to evaluate the merits of the request.
- 4) The physician's request form failed to meet the InterQual Smart Sheets' requirements for a bunionectomy. The request form did not indicate pain at the first MTP joint, did not report irritation or a medial callus, did not indicate a hallux valgus deformity, did

not include any x-rays or x-ray reports, and did not report the durations or outcomes of conservative treatments such as wearing low-heeled shoes and using bunion pads and orthotics. The form did not indicate the use of any NSAIDS or corticosteroid injections.

- 5) Nursing staff at the WVMJ could not make a determination as to Claimant's physicians request, and submitted the request to their physician reviewer. He or she denied the request because Claimant's physician did not submit a sufficient medical justification for the procedure.
- 6) The medical evidence submitted by Claimant's physician failed to meet prior authorization criteria; therefore, the Department acted correctly in denying Claimant's request of payment for a bunionectomy.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny Claimant's physician's request for a bunionectomy.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of December 2009.

Stephen M. Baisden
State Hearing Officer