State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 24, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization coverage approval for a Portable Oxygen unit.

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.

Medicaid regulations establish that some Durable Medical Equipment (DME) items require a prior authorization review to establish medical necessity. The clinical documentation submitted by the prescribing practitioner must demonstrate the medical necessity of the request in order for DME to be approved for the eligible member. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506 – DME/Medical Supplies)

Information submitted at your hearing revealed that the documentation submitted failed to justify medical necessity and appropriateness.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny coverage for the Portable Oxygen unit.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 09-BOR-520**

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 June 22, 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 March 24, 2009 on a timely appeal, filed January 22, 2009.

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:

-----, Claimant
Virginia Evans, Bureau for Medical Services
Vickie Phillips, RN, West Virginia Medical Institute

Presiding at the Hearing was Todd Thornton, 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 is correct in denying a request for a Portable Oxygen unit.

V. APPLICABLE POLICY:

West Virginia Bureau for Medical Services Provider Manual, Chapter 506 – DME/Medical Supplies

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Bureau for Medical Services Provider Manual, Chapter 506 – DME/Medical Supplies; InterQual Durable Medical Equipment Criteria – Home Oxygen
D-2 Information received from -------, D.O., and [redacted]HomePatient
D-3 Request for additional information by fax from West Virginia Medical Institute to [redacted]HomePatient
D-4 Additional information received from [redacted]HomePatient
D-5 Denial notice dated December 31, 2008

VII. FINDINGS OF FACT:

1) On December 29, 2008, the Department received a prior authorization request from the Claimant's physician for coverage of a Portable Oxygen unit – also coded as E0431 by the Department – for the Claimant (Exhibit D-2). A notice of denial (Exhibit D-5) was issued to the Claimant on or about December 31, 2008, which provided the reason for denial as follows, in pertinent part:

> Documentation provided does not indicate medical necessity – specifically:
>
> The request for portable oxygen cannot be approved. The documentation provided indicated the patient is not mobile within the home and this would not justify the need for portable oxygen. Also, a night [*sic*] time oxygen saturation was provided. Nighttime oxygen can be provided with the stationary oxygen concentrator which does not require prior authorization.

2) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506 – DME/Medical Supplies (Exhibit D-1), states, in pertinent part:

> **506.5 PRIOR AUTHORIZATION**
>
> For DME services and items requiring prior authorization review for medical necessity by WVMI, it is the responsibility of the prescribing practitioner to submit the appropriate clinical documentation i.e., ICD-9 code(s), all information required on the written prescription (see 506.4, 2nd paragraph, (2) for clarification) and any other relevant information.

The documentation requirements referenced in Chapter 506.4 state:

> (2) Effective May 1, 2006, a written prescription which must include the member's name, date of prescription, description of code, estimated length of need in months, quantity of item(s), frequency of use and prescribing practitioner's signature and given to the member by the prescribing practitioner. A copy of the hospital discharge plan and/or progress notes do not constitute a written prescription for DME/Medical Supplies.

Further policy from Chapter 506.5 explains the items subject to a review of medical necessity as follows (emphasis added):

> Effective March 15, 2006, InterQual General Durable Medical Equipment Criteria, will be utilized by WVMI for determining medical necessity for DME items. These items include the following:
>
> • Adaptive Strollers (E1232, E1236, E0950, E0966, E0978, E1029, E1030)
> • Aerosol Delivery Devices (E0565, E0570)
> • Augmentative and Alternative Communication Devices (E2508, E2510) - Refer to Speech/Audiology Manual for additional information
> • Bone Growth Stimulators, Noninvasive (E0747, E0748, E0760)
> • Continuous Passive Motion Device (CPM), Knee (E0935)
> • **Home Oxygen Therapy** (E0424, **E0431**, E0434, E0439).
> Effective March 15, 2006, any new oxygen system requested for medical Necessity must follow InterQual criteria to include documentation of initial lab results. PA recertification review is required at the end of the prescription period specified or within one (1) year whichever comes first. Date of lab results must be within 6 months of the oxygen request.
> • Hospital Beds (E0250, E0255, E0260, E0303, E0304, E0910, E0911, E0912)
> • Insulin Pump, Ambulatory (E0784)
> • Lymphedema Compression Devices (E0650, E0651, E0652)
> • Manual Wheelchairs (K0001, K0002, K0003, K0004, K0005 K0006, K0007)
> • Manual Wheelchairs, Recliner/Tilt (K0001 + E1226, E1161)
> • Negative Pressure Wound Therapy (NPWT) Pump (E2404, A6550)

• Noninvasive Airway Assist Devices (E0470, E0471, E0472, E0601)
• Pediatric Mobility Equipment (E1231, E1232, E1233, E1234, E1235, E1237, E1238, K0890, K0891)
• Power Operated Vehicles (POV) (K0800, K0801, K0802, K0806, K0807, K0808, K0812)
• Power Wheelchairs (K0813, K0814, K0815, K0826, K0820, K0821, K0822, K0823, K0824, K0825, K0826, K0827, K0828, K0829, K0830, K0831, K0835, K0836, K0837, K0838, K0839, K0840, K0841, K0842, K0843, K0848, K0849, K0850, K0851, K0852, K0853, K0854, K0855, K0856, K0857, K0858, K0859, K0860, K0861, K0862, K0863, K0864, K0868, K0869, K0870, K0871, K0877, K0878, K0879, K0880, K0884, K0885, K0886)
• Secretion Clearance Devices (E0480, E0483, E0484)
• Support Surfaces (E0181 E0182, E0184, E0185, E0186, E0187, E0196, E0197, E0199, E0277, E0371)
• Transcutaneous Electrical Nerve Stimulation (TENS) (E0720, E0730)
• Wheelchair Cushions/Seating System (E2603, E2604, E2605, E2606, E2607, E2608, E2609, E2611, E2612, E2617, K0734, K0735, K0736, K0737)

Items requiring PA not listed above will follow Palmetto, Region C, medical necessity criteria for covered services. When documentation fails to meet criteria, WVMI may request additional information to be submitted within seven (7) days. If information is not received by WVMI within seven (7) days, the request will be denied for lack of documentation to support medical necessity.

3) The West Virginia Medical Institute (WVMI) nurse testified that she reviewed the documentation submitted and required additional information. The request for additional information was delivered via fax to [redacted] HomePatient, the Durable Medical Equipment (DME) provider, on December 29, 2008 (Exhibit D-3). In the fax, the Department requested the following:

1. Need PO2 or O2 sat. [*sic*] (at rest or activity depending on if O2 is continuous or supplemental).
2. Need to know if the O2 is continuous or supplemental.
3. Any other relevant clinical information per Medicaid guidelines depending on if O2 is continuous, [*sic*] supplemental.

4) The Department received the additional information (Exhibit D-4) on December 29, 2008. The WVMI nurse noted that the documentation indicated, adjacent to "Statement of use," that the equipment was to be used by the Claimant eight (8) to ten (10) hours per day via nasal cannula. The WVMI nurse additionally noted that the Claimant's O_2 saturation test results of eighty-eight (88) percent in the documentation. The additional information stated that the Claimant was not mobile within the home. Finally, the WVMI nurse noted that the test results for the Claimant were obtained "during sleep."

5) The WVMI nurse testified that her review of the request referenced the InterQual SmartSheets Durable Medical Equipment Criteria for Home Oxygen Therapy (Exhibit D-1). She further testified that for the E0431 Portable Oxygen unit requested for the Claimant, mobility within the home was required. She explained that when there is clinical presentation during sleep, as with the Claimant, the InterQual criteria considers nocturnal oxygen needs, and that the need for nocturnal oxygen can be met with a stationary oxygen system not requiring prior approval. The WVMI nurse testified that because she could not establish medical necessity, she referred the request for physician review. This review resulted in the denial decision (Exhibit D-5) issued to the Claimant.

6) The Claimant testified that she cannot walk long distances without shortness of breath. She further testified that she needs the Portable Oxygen unit for her doctor's appointments, and that her present unit is too heavy to carry. She stated that her doctor told her that the oxygen was intended for continuous use, but the Department reiterated that the documentation from the prescribing practitioner stated eight (8) to ten (10) hours per day – which would be nocturnal use.

VIII. CONCLUSION OF LAW:

1) Policy provides that prior authorization is required for the proposed equipment and that necessity must be established. The Department clearly showed that neither the initial request nor the additional information submitted documented medical necessity. Because the additional information requested showed the Claimant as not mobile in the home, medical necessity for a portable unit could not be shown. The Department further demonstrated that – based on the information submitted for review – the Claimant's needs would be best met by a stationary oxygen system since her needs were documented as nocturnal only. The Department was correct in its decision to deny the request for a Portable Oxygen unit.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of the request for a Portable Oxygen unit.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of June, 2009.

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Todd Thornton
State Hearing Officer