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

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

February 11, 2010

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 15, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny a prior authorization request for an augmentative communication device for -----.

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 require a prior authorization review for medical necessity on durable medical equipment such as augmentative communication devices. Durable medical equipment requested by a prescribing practitioner may be considered for reimbursement by West Virginia Medicaid when determined medically necessary to meet an individual's basic health care needs. This determination of medical necessity utilizes the InterQual General Durable Medical Equipment Criteria for augmentative communication devices. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.3, §506.5)

Information submitted at your hearing revealed that the medical necessity for the requested device was met.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny the Claimant's prior authorization request for durable medical equipment; specifically, the Vantage Lite speech device and carrying case.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michael Bevers, Esq., Assistant Attorney General
Lorna Harris, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 09-BOR-1543**

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 February 11, 2010 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 15, 2009 on a timely appeal, filed August 17, 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 the 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's attorney
-----, Claimant's witness
Michael Bevers, Esq., Department's attorney
Virginia Evans, Department Representative, Bureau for Medical Services
Shirley Starkey, Speech-Language Pathologist, 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 was correct to deny durable medical equipment of an augmentative communication device and carrying case to the Claimant.

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, §§506.3 – 506.5
D-2 InterQual SmartSheets, 2008 – Durable Medical Equipment Criteria, Augmentative and Alternative Communication Devices: General
D-3 Medical records
D-4 Denial notices dated July 10, 2009

Claimant's Exhibits

C-1 Medical records

VII. FINDINGS OF FACT:

1) Virginia Evans, representative for the Department's Bureau for Medical Services, testified that, in response to a request (Exhibit D-3, page 2) for Durable Medical Equipment (DME) for the Claimant, denial notices were issued on or about July 10, 2009 to the Claimant, his prescribing practitioner, and the servicing provider (Exhibit D-4). The notice provided the reason for denial as follows, in pertinent part:

> Your request for SGD and carrying case cannot be authorized due to the lack of information required for review.
>
> Not convinced this level of technology, there are cognitive issues here, no other products were evaluated (i.e. from other manufactures [*sic*]). Patient has successes in his community but this level tech may not meet guidelines of most practical but least economical.

Ms. Evans testified under cross-examination that she did not have "any hand" in the decision of the Department.

2) Shirley Starkey, the reviewing Speech-Language Pathologist from the West Virginia Medical Institute (WVMI), testified that she received the Claimant's request for an augmentative communication device, and made the decision to deny. She testified that she only had "75%" of the information she needed. She identified four items that she requests for speech-language services: an initial diagnosis evaluation, a hearing assessment, a letter for school-age children, and, for augmentative communication devices, an augmentative communication evaluation. She testified that the information missing from the Claimant's request was a discussion with the clinician about the Claimant's daily life, prior occupation, daily needs, and relationships with others. She testified that this information was necessary to determine if the requested equipment was appropriate for the Claimant. Under cross-examination Ms. Starkey testified that these requirements were not in the regulations.

3) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5, states (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

In testimony, Ms. Starkey asserted that the information that she requires covers the same information as the InterQual SmartSheets. It should be noted that the Speech/Audiology Manual referred to above was neither entered into evidence nor available as part of the West Virginia Bureau for Medical Services Provider Manual.

4) Ms. Starkey additionally testified that she does not dispute the Claimant's need for an augmentative communication device, only the specific device requested. When questioned, she could not suggest an alternative device, although she did suggest that the Claimant use "something else now" and "possibly move up" in the future. -----, the Claimant's sister, testified that the Claimant tried several machines when he was evaluated at West Virginia University. She testified that the machine ultimately requested of the Department was the less expensive of the two recommended in the Claimant's evaluation.

5) The medical records (Exhibit D-3) submitted to the Department for prior authorization of the requested equipment includes a West Virginia Medicaid Speech/Language Evaluation. At page 4 of the evaluation (page 8 of the exhibit), trials and outcomes are presented for three devices: Springboard, Alpha Talker, and Vantage – the device requested for the Claimant. The outcome block for the Springboard device states, in pertinent part:

> Given pt.'s increased capabilities, such as ability to use a symbol based system such as Unity, as well as his ability to formulate novel utterances, the Springboard is not the optimal solution for this pt.

The outcome block for the Claimant's second device trial, with the Alpha Talker, states, in pertinent part:

> Due to increased capabilities, such as ability to use category links and a touch screen, this is not an optimal solution.

The outcome block for the Vantage – the device ultimately requested for the Claimant – states as follows:

> Pt. used the Vantage with accuracy and enthusiasm. He was able to identify icons by name and function in a field of 8, 15, 45 and 60 with 100% success. He was able to use category links with 100% success. The pt. was able to formulate sentences using Unity 45 two hit, and Unity 60 one hit with greater than 80% success following a short demonstration period only. Pt. appropriately answered personal information questions on the device with greater than 90% accuracy. Given pt.'s current abilities, it is judged that the Vantage Lite would be the most appropriate device for this pt., to allow him unlimited and novel communication.

6) The medical records presented on the Claimant's behalf (Exhibit C-1) include an addendum to the Augmentative and Alternative Communication Evaluation dated August 5, 2009, from -----, the Speech Pathologist who evaluated the Claimant. ----- stated in her addendum, in pertinent part:

> As the pt. displays the ability to utilize a high technology device with a symbol based system such as Unity, and as he has the need to express medical needs during doctor's appointments, to refill his prescriptions, or to gain assistance in a medical emergency, the Vantage is obviously the most appropriate choice. A lower technology device such as the Go Talk would significantly limit what the pt. would be able to say, giving him ONLY 4-16 phrases/sentences that he would be able to communicate. The pt. has a much higher cognitive level than what a device of this caliber could offer.

When questioned about this letter, Ms. Starkey testified that ----- did not submit enough evidence that the specific device requested for the Claimant is the device that the Claimant needs.

VIII. CONCLUSIONS OF LAW:

1) Policy provides that prior authorization is required for the proposed durable medical equipment, and dictates the use of InterQual SmartSheets to determine their medical necessity. Testimony from the Department revealed the use of a checklist – without policy to support it – in lieu of the InterQual SmartSheets. Although this checklist may or may not correspond with all the items in the InterQual SmartSheets, it created ambiguity with regard to what necessary information was lacking; testimony indicated that lifestyle details and personal history were necessary, and the denial notice cited "cognitive issues" and insufficient device trials. By substituting her own checklist for the one dictated by policy, the Department's Speech-Language Pathologist could only provide denial reasons that were either not specified by policy or contradicted by specific narrative from the Claimant's evaluating Speech Pathologist.

2) The denial notice to the Claimant expressed concern that the requested equipment was not the correct "level of technology" for the Claimant. The device trial outcomes in ----' Speech/Language Evaluation of the Claimant, and her Augmentative and Alternative Communication Evaluation Addendum, clearly show that the Claimant is capable of using the requested device, and that lower technology devices would not be appropriate.

3) The denial notice to the Claimant vaguely cited the "cognitive issues" of the Claimant as a reason for denial of the requested equipment. The device trials specifically demonstrated the Claimant's success using the requested equipment, in spite of cognitive issues.

4) The denial notice also stated that "no other products were evaluated," then indicated that products from multiple manufacturers were not considered. The device trials clearly showed the outcomes of three different devices, and any policy requirement that equipment from multiple manufacturers be considered was never identified.

5) The denial notice to the Claimant gave the final reason for denial as price, identifying the equipment as "least economical." Testimony from the Claimant's sister revealed that the equipment requested was the less expensive of the two devices recommended in the Claimant's evaluation at West Virginia University. The addendum submitted from ---- clearly identified the equipment as necessary to meet the basic health care needs of the Claimant, and the Department was unable to identify a specific device capable of this that was more "economical."

6) In the absence of any valid reason for denial, the Department was incorrect to deny the Claimant's request for prior authorization of durable medical equipment, specifically the Vantage Lite speech device and carrying case.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of prior authorization for the Vantage Lite augmentative communication device and carrying case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of February, 2010.

_____

Todd Thornton
State Hearing Officer