



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

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

October 6, 2010

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Dear -----

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 29, 2010. Your hearing request was based on the Department of Health and Human Resources' discontinuation of Medicaid authorization for a Bi-level Positive Airway Pressure (BiPAP) machine.

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 of durable medical equipment such as a BiPAP machine. 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. The determination of medical necessity utilizes the InterQual General Durable Medical Equipment Criteria for noninvasive airway assist devices. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.3, §506.5)

The information presented at your hearing reveals that the Department was correct in denying prior authorization for continued payment of a BiPAP machine as you failed to meet medical necessity criteria.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying continued Medicaid payment for the BiPAP machine.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Amy Workman, WV Bureau of Medical Services

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

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**Claimant**

v.

**Action Number: 10-BOR-1631**

**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 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 originally scheduled to convene on September 10, 2010 but was rescheduled upon a good cause determination for failure to appear without notice and convened on September 29, 2010 on a timely appeal filed July 19, 2010. This hearing was conducted with all participants appearing by telephone conference call.

**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)

Karen Keaton, RN, WV Medical Institute (WVMI), Department's Witness

Presiding at the hearing was Thomas E. Arnett, 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 continued Medicaid payment for a Bi-level Positive Airway Pressure (E0470 BiPAP) machine.

#### **V. APPLICABLE POLICY:**

WVDHHR Medicaid Policy Manual, Chapter 506, and InterQual SmartSheets (2009), Durable Medical Equipment Criteria

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- A-1 WV DHHR Medicaid Hospital Services Provider Manual Chapter 506.5
- A-2 InterQual SmartSheets – Noninvasive Airway Assist Devices
- B Information received from [REDACTED] MD and [REDACTED]
- C Notice of Denial for Durable Medical Services from WVMi – July 12, 2010
- D Reconsideration information received from [REDACTED]
- E Physician Notice of Preadmission Reconsideration Determination West Virginia Medicaid, from WVMi – August 2, 2010

#### **VII. FINDINGS OF FACT:**

- 1) The Department presented evidence to indicate the Claimant met medical necessity for Medicaid payment of the BiPAP (E0470) unit in his home. The initial authorization for this device covers a 90-day period and at the end of that 90-day period, the Claimant's physician and the medical equipment supplier are required to submit clinical documentation to meet medical necessity criteria for continued Medicaid payment of the BiPAP machine. Documentation found in Exhibit B was submitted for continued Medicaid payment of the BiPAP unit on July 8, 2010.
- 2) On or about July 9, 2010, the Claimant was notified (Exhibit C) that the documentation provided does not indicate medical necessity for continued Medicaid payment of the E0470 BiPAP. This notice goes on to state, in pertinent part:

The information submitted did not meet the clinical indications for the requested item. Specifically, documentation provided indicated non-compliance with usage of the BiPAP.

This notice goes on to state that – “Submitting this information will allow for reconsideration if requested.”

- 3) Additional documentation was submitted for reconsideration by [REDACTED] (Exhibit D) on July 22, 2010 and the Claimant was notified via a Physician Notice of Preadmission Reconsidered Determination, West Virginia Medicaid, dated August 2, 2010 that the initial denial was upheld. This notice states, in pertinent part:

After reviewing all additional information via the reconsideration process, WVMI has upheld the initial denial. The documentation provided indicates that the patient is non-compliant with the prescribed [sic] treatment with BiPAP therapy.

- 4) The Department's representative cited applicable policy and called upon Karen Keaton, Register Nurse (RN), from West Virginia Medical Institute (WVMI) to explain why the Claimant failed to meet medical necessity criteria. RN Keaton testified that as a condition of continued eligibility for Medicaid payment of the BiPAP device, InterQual criteria (Exhibit A-2, Section 220, 221 and 222) requires that the individual adhere to the prescribed treatment for 3 months and that the documentation show improvement in symptoms of daytime sleepiness/nocturnal hypoventilation or improvement in physiologic parameters. RN Keaton testified that BiPAP device generates a report that records usage and this information revealed that the Claimant was not compliant with the prescribed treatment of the BiPAP device. RN Keaton further indicated that compliance is met when the individual uses the device 70% of the time. In this case, there are actually three different compliance reports (3 different time frames) included in Exhibits B and D, however, none of these reports, together or individually, demonstrate compliance.
- 5) The Claimant acknowledged that the compliance reports are correct. He indicated that he has been trying to use the BiPAP device as directed but he has been unable to meet compliance requirements due to night fears and claustrophobia. The Claimant indicated that he was not able to begin using the machine until January 18, 2010 due to a surgery and he has erratic sleep patterns. He purported that he is using the BiPAP more but he not sure if he is currently using it at the level required by the compliance standards.
- 6) The Department noted that there are no policy exceptions to the InterQual criteria, however, RN Keaton purported that every denial completed by a WVMI nurse reviewer must undergo a review by a WVMI physician. RN Keaton indicated that the physician reviewer considers all of the information submitted and that they have more discretion than a nurse reviewer for approving medical necessity. RN Keaton acknowledged that the medical documentation reviewed indicates the Claimant reported feeling like he was suffocating and having anxiety attacks, however, there were also notes from the respiratory therapist indicating non-compliance. The physician reviewer considered all of the information during the reconsideration and made the determination that the Claimant did not meet medical necessity criteria due to noncompliance. According to RN Keaton, this case has been reviewed by two separate physician reviewers as a result of the reconsideration process.

- 7) WV DHHR Medicaid Hospital Services Provider Manual Chapter 506.5 (Exhibit A-1) states in part:

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, 2<sup>nd</sup> paragraph, (2) for clarification) and any other relevant information.

This policy goes on to state:

Effective March 15, 2006, InterQual General Durable Medical Equipment Criteria, will be utilized by WVMi for determining medical necessity for DME items.

Among the DME items listed is the Noninvasive Airway Assist Devices (E0470).

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid regulations state that InterQual General Durable Medical Equipment Criteria is used by WVMi to determine medical necessity for DME items requiring prior authorization. As a condition of continued eligibility for Medicaid payment of the BiPAP (E0470), the individual must be in compliance with the prescribed treatment for the first three (3) months.
- 2) Evidence submitted at the hearing confirms that the Claimant has failed to meet medical necessity compliance requirements. While the Claimant contends that he has had extenuating circumstances that justify non-compliance with the prescribed treatment, two different WVMi physician reviewers were unable to determine compliance. In addition, the Claimant testified he could not say with certainty that his recent increased use of the BiPAP device would meet compliance requirements.
- 3) Based on the evidence, the Department was correct in its decision to deny the Claimant's request for continued Medicaid payment of the BiPAP machine.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Claimant's request for continued Medicaid payment of the BiPAP machine.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of October 2010.**

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**Thomas E. Arnett  
State Hearing Officer**