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

March 19, 2010

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for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----' hearing held December 16, 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.

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-1853**

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 March 19, 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 December 16, 2009 on a timely appeal, filed September 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 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 Representative
-----, Claimant's Speech-Language Pathologist
-----, Claimant's witness
Virginia Evans, Department Representative, Bureau for Medical Services
Shirley Starkey, Speech-Language Pathologist, West Virginia Medical Institute

All parties participated by telephone conference.

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 or not the Department was correct to deny durable medical equipment – specifically, an augmentative communication device – 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, 2009 – Durable Medical Equipment Criteria, Augmentative and Alternative Communication Devices: General
D-3 Augmentative and Alternative Communication Diagnostic Evaluation, dated March 30, 2009 (revised date August 13, 2009), from [redacted] M.A. CCC-SLP
D-4 Denial notices dated August 19, 2009
D-5 Additional information: letter from [redacted] M.A. CCC-SLP; previous Augmentative and Alternative Communication Diagnostic Evaluation with notes
D-6 Denial notices dated September 9, 2009

VII. FINDINGS OF FACT:

1) Virginia Evans, representative for the Department's Bureau for Medical Services, testified that the Department received a request from the Claimant for durable medical equipment (DME). Shirley Starkey, the reviewing Speech Consultant from the West Virginia Medical Institute (WVMI), testified that the DME specifically requested was Vantage Lite, a speech-generating device coded by the Department as type E2510. Ms. Starkey received and reviewed information (Exhibit D-3) evaluating the Claimant's need for this equipment. The first denial notice (Exhibit D-4) was issued by the Department, on or about August 19, 2009, to the Claimant, her prescribing practitioner, and the servicing provider. The notice provided the reason for denial as follows, in pertinent part:

> Documentation provided does not indicate medical necessity – specifically:
>
> Provider gives no additional information on mid-level technology which is capable of meeting basic communication needs. Suggested earlier, a discussion of all issues pertinent to warrant this level of technology [*sic*] nothing has transpired. The details of the report are in some way contradictory.

2) Ms. Starkey received and reviewed additional information (Exhibit D-5), which included a letter from the Claimant's evaluating Speech-Language Pathologist and Exhibit D-3 with handwritten notes. A second denial notice (Exhibit D-6) was issued by the Department, on or about September 9, 2009, to the Claimant, her prescribing practitioner, and the servicing provider. The notice provided the reason for denial as follows, in pertinent part:

> Your request for speech generation device cannot be authorized due to the lack of information required for review.
>
> Resolution on technology is needed. Correspondence of 8/27/09 was reviewed and understood, however the need to communicate extensive fringe vocabulary and patient's abillites [*sic*] overall are questioned. There is no intent to deprive patient of access to SGD, rather to meet guidelines to communicate basic medical needs. Clarification on Downs [*sic*] Syndrome as a permanent progressive condition is needed.

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

> **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.** Additionally, a licensed physical therapist or licensed occupational therapist who is fiscally, administratively and contractually independent from the DME provider may also submit clinical documentation for review when requested by the prescribing practitioner. PA recertification review is required at the end of the prescription period specified or within one (1) year whichever comes first. It is strongly recommended that DME providers, in partnership with prescribing practitioners, assist in obtaining prior authorizations. Prescribing practitioners must provide clinical information and a written prescription while DME providers may submit the appropriate HCPCS code and billing information. If items and/or services provided before the PA is confirmed, the DME will not be reimbursed. PA does not guarantee payment. Refer to Attachment I for specific DME/medical supplies requiring PA and service limits for covered services.
>
> Effective, January 1, 2006, Medicaid covered services which currently require a PA will no longer require a PA if the primary insurance approves the service. The explanation of benefits (EOB) must accompany the claim. An EOB documenting the reasons for the denial of TPL for services requested must be provided to WVMI when requesting prior authorization review. If the service is not allowed or covered by the primary insurance, but is a covered service for Medicaid and the service requires a PA from WVMI, Medicaid policy will be enforced. If administrative denials are given by the primary payer, Medicaid will not reimburse for services. Please refer to Chapter 600 – Payment Methodologies for additional information.
>
> 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

4) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.3, states, in pertinent part (emphasis added):

> **506.3 COVERED DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES**
>
> **Durable Medical Equipment/medical supplies and other related services/items provided through DME are considered for reimbursement by WV Medicaid when requested by a prescribing practitioner and determined medically necessary to meet the basic health care needs of the member.**
>
> A complete list of covered and non-covered DME/medical supplies and other related services/items provided through DME are seen in Attachments I and II. Attachment I describes the DME/medical supplies through current HCPCS codes, description of each code, replacement code for closed codes (as appropriate), service limits, prior authorization requirements and special coverage instructions. Dispensing of medical supplies for more than a one (1) month time frame or shipping supplies on an unsolicited or automatic basis is prohibited. Attachment II describes DME/medical supply items, without HCPCS codes, that are non-covered by WV Medicaid
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> **Durable Medical Equipment/medical supply coverage is based on product category not specific item, brand or manufacturer.** Medical supplies are purchased items, while equipment may be initially purchased or reimbursed on a cap-rental basis. Following the established cap-rental timeframe, DME items are determined purchased and the provider that received the last cap-rental reimbursement maintains responsibility for the item and must provide repairs and/or modification as needed.
>
> **The most economical items/services will be provided. Expensive items are not covered when less costly items/services are available.**

5) Ms. Starkey testified to clarify the specific reasons for denial. She reviewed the InterQual SmartSheets, 2009 – Durable Medical Equipment Criteria, Augmentative and Alternative Communication Devices: General (Exhibit D-2), and listed the areas that were met and not met. She testified that the device is screened according to the criteria listed under heading 200, for a synthesized speech device such as type E2510. In reference to criteria 210, she testified that the Claimant's condition – Down Syndrome - is permanent. She testified that the areas not met were criteria 223 – *Cognitive status/role function*, and 224 – *Need for extensive fringe vocabulary documented*.

In response to questioning for clarification on fringe vocabulary, Ms. Starkey did not respond directly. -----, witness for the Claimant, testified, offering an explanation of fringe vocabulary as advanced or specific vocabulary, as opposed to core, or basic, generic vocabulary. This definition was not disputed in testimony.

Ms. Starkey was asked if the cognitive functioning component related to the ability to turn on the requested device and push the buttons to use the device, and she responded in the affirmative. When questioned for clarification on these unmet criteria, Ms. Starkey was evasive or provided unrelated testimony. Upon questioning, -----testified that the Claimant had the cognitive ability to execute these basic functions.

6) Ms. Starkey testified that in addition to unmet screening guidelines, the equipment request was denied due to a lack of communication between the Claimant's evaluating Speech-Language Pathologist and herself. She testified that she requested a phone conversation with the Claimant's Speech-Language Pathologist, and did not receive it. -----, the Claimant's evaluating Speech-Language Pathologist testified that she had phone conversations with Ms. Starkey related directly to this request, and provided the letter and evaluation with notes in Exhibit D-5. -----testified that she took notes documenting the phone conversations with Ms. Starkey. Ms. Starkey did not identify a policy requirement for a discussion prior to approving a speech device.

7) Ms. Starkey testified that she does not question the Claimant's need for a speech device; her assertion was that the requested speech device was not established as the best, or most appropriate, for the Claimant. Ms. Starkey did not identify an alternative.

-----, the Claimant's witness and employee of [redacted] – an assistive technology vendor – testified regarding the difference between the requested device and a device one level lower. He testified that the requested device is flexible enough to meet the Claimant's language ability, but move up if needed. He testified that a device one level lower, coded by the Department as type E2506, would limit the Claimant to a "subject-verb-object construct" without room for expansion.

-----testified that she was unaware of any device of type E2510, which would meet the Claimant's needs at a lower cost than the proposed device.

8) -----testified that the Claimant used numerous speech devices, on a trial basis, as part of the completed evaluation. The trial with the Vantage Lite was noted as successful (Exhibits D-3 and D-5). Three other devices were used by the Claimant. -----noted, in her evaluation report, that the 4-level Communication Builder limited the Claimant's vocabulary to 32 words. The Springboard lite was noted as "…lack[ing] the morphology commensurate with [the Claimant's] language abilities." The Mini-Message Mate was noted as limiting the Claimant's vocabulary to eight words.

-----and -----, the Claimant's mother, testified regarding the Claimant's communication needs, indicating that the Claimant goes to church, works in a day program, babysits with her mother, and attends doctor appointments.

The summary (Exhibits D-3 and D-5) of the trial use for the requested device noted that the Claimant was able to answer her physician's questions at a recent visit, and that the physician was able to understand the Claimant "for the first time."

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 two unmet criteria from the InterQual tool: undocumented executive level functioning or developing executive level functioning in the area of cognitive status/role function, and undocumented need for extensive fringe vocabulary. The documented device trials and testimony clearly demonstrated the Claimant's cognitive ability to use the requested device. Testimony clearly documented multiple settings in which the Claimant's communication needs could only be met with extensive vocabulary.

2) Policy requires that the requested device be determined medically necessary to meet the basic health care needs of the Claimant. Evidence clearly showed that, when using the requested device during a doctor's appointment, the Claimant was able to adequately communicate for the first time. The ability to convey medical information and answer a physician's questions is a critical health care need.

3) Policy dictates that an expensive device will not be covered when a less costly device is available. Testimony on the Claimant's behalf established that there is no less costly device that would meet the Claimant's needs; the Department was unable to present a single example to support their assertion to the contrary.

4) 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.

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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of March, 2010.

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Todd Thornton
State Hearing Officer