



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25504

Joe Manchin III
Governor

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

April 6, 2010

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held for ----- on January 28, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny a prior authorization request for a power wheelchair 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 power wheelchairs. Durable medical equipment requested by a prescribing practitioner may be considered for reimbursement by West Virginia Medicaid when determined to be both medically necessary to meet an individual's basic health care needs, and the most economical choice to accomplish those needs. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.3)

Information submitted at your hearing revealed that medical necessity for the requested equipment was not established.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny the Claimant's prior authorization request for durable medical equipment, specifically a power wheelchair.

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-1934

**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 April 6, 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 January 28, 2010 on a timely appeal, filed September 11, 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 Physical Therapist

-----, Claimant's Occupational Therapist

-----, Claimant's witness

Michael Bevers, Esq., Assistant Attorney General

Virginia Evans, Department Representative, Bureau for Medical Services

Vicky Phillips, RN, West Virginia Medical Institute

All parties participated by videoconference or teleconference.

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, a power wheelchair – 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, §506.2.2; §506.3
- D-2 WVMI Medicaid DME/Medical Supplies Authorization Request Form and supporting documentation
- D-3 Denial notices dated August 4, 2009

VII. FINDINGS OF FACT:

- 1) A prior authorization request (Exhibit D-2) for Durable Medical Equipment (DME) was submitted to the Department on behalf of the Claimant, an eleven-year old child diagnosed with Cerebral Palsy. In response, denial notices (Exhibit D-3) were issued by the Department, on or about August 4, 2009, to the Claimant, his prescribing practitioner, and the servicing provider. The notice provided the reason for denial as follows, in pertinent part:

Exceeds policy for most economical equipment to meet the member's basic health care needs

The wheelchair and accessories could not be approved. Per the Medicaid manual:

Section 506.2.2 The DME/Medical Supply Provider must: (#12) provide most economical items/services that meet the member's basic health care needs. Expensive items are not covered when less costly items/services are available.

Section 506.3 paragraph 1 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 and paragraph 4 The most economical items/services will be provided. Expensive items are not covered when less costly items/services are available.

- 2) Virginia Evans, representative for the Department's Bureau for Medical Services, testified that the policy applicable to this case is from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies (Exhibit D-1). At §506.2.2, this policy states, in pertinent part (emphasis added):

506.2.2 Durable Medical Equipment/Medical Supply Provider
(Includes respective Pharmacies, Home IV Infusion Therapy and Home Health Agencies with DME and/or medical supply provider specialty)

The DME/Medical Supply Provider must:

- (1) be actively enrolled in Medicaid;
- (2) maintain a retail store open to the public at least forty (40) hours per week with a toll free telephone number and handicapped accessibilities. The store must be located within thirty (30) miles of the WV border;
- (3) post a visible sign indicating hours of operation. Hours of operation and availability of emergency coverage must be stated on the WV Medicaid enrollment form;
- (4) maintain inventory of equipment/supplies and display at least one of each item listed on an inventory and made readily available for delivery;
- (5) maintain adequate space to store inventory, business and member records;
- (6) obtain individual WV Medicaid provider numbers for each physical facility under the same ownership;
- (7) provide DME/Medical Supplies per treating practitioner's prescription;
- (8) assure the item/service provided is appropriate to the member's needs;
- (9) assure the item/service can be used by the member;
- (10) provide an appropriate replacement at no extra cost if the member is unable to use the equipment provided;
- (11) agree to accept Medicaid's reimbursement as payment in full for all covered items/services;
- (12) provide most economical items/services that meets the member's basic health care needs. Expensive items are not covered when less costly items/services are available;**

- 3) 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

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.

- 4) Vicky Phillips, a Registered Nurse (RN) with the West Virginia Medical Institute (WVMI), testified that she reviewed the DME request and accompanying documentation (Exhibit D-2). She testified that all wheelchair requests exceeding a basic wheelchair request had to be reviewed by a DME consultant. She testified that if a request can be approved by her and the DME consultant, with the information they have, they approve the request; if not, as in the Claimant's case, it is forwarded for physician review. Upon physician review, this request was denied. She testified that she has reviewed power wheelchair requests from individuals diagnosed with severe Cerebral Palsy – such as the Claimant's diagnosis – and that 16 accessories would be typical, and more than 20 would be excessive.
- 5) -----, a self-employed Physical Therapist for the Claimant, testified that she has worked with the Claimant since he was three years old, and that he had outgrown his current wheelchair. She testified that the requested power wheelchair would make the Claimant functional in activities of daily living, and would address his respiratory, circulatory, and transfer needs. She testified that the requested accessories were matched to the individual needs of the Claimant, and that there is an increase in price with the complexity of the equipment. She testified that she was aware that two requested items – transport brackets and a motion elevating set module – were non-covered items by Medicaid.

- 6) A letter from [REDACTED] M.D., and his prescription for a power wheelchair were included in the documentation accompanying the Claimant's request (Exhibit D-2). This letter states, in pertinent part:

In summary, ----- has outgrown his current wheelchair. A wheelchair with head control (NOT A JOYSTICK) and multiple power options (tilt/recline/leg lift) will be necessary to allow ----- to continue to function at his existing functional level. This type of wheelchair will also allow ----- to prevent skin breakdown, improve his circulation, improve his tone and spasticity. All of which will become increasingly more medically pertinent issues as he grows and develops.

- 7) A letter dated April 8, 2009, titled "Powered Mobility and Positioning Evaluation" was included with the documentation in the DME request (Exhibit D-2). In this letter or the letter from [REDACTED] M.D., various levels of justification for the power wheelchair itself (coded as K0861 on the DME request) and 38 of the 55 requested accessories are provided.

No attempt at written justification whatsoever could be found for 15 of the requested accessories: Invacare harness for expandable electronics (coded as E2313), ASL flip down mounting bracket (E1028), Invacare clamp assbly [sic] adj. stealth (K0108), Wheel locks (E2206), 24 gel batteries (E2263), ASL Auxiliary Interface Cable (K0108), dynaform chest strap (E0960), Supracor Stimulite Sport Cushion (E2603), Motion M16 switch adaptor assembly (E2399), Stealth Comfort Plus Headrest (E0955), Stealth Headrest flip-down mount (E1028), Stealth Lateral thoracic supports (E0956), Stealth swing away hardware for lateral supports (E1028), Stealth swing away display mount for Invacare (E1028), and ASL Adjustable/removable hardware (E1028).

Two requested accessories – transport brackets (K0108) and motion elevating set module (E2300) – are non-covered items by Medicaid.

- 8) -----, Occupational Therapist for the Claimant, testified that she and ----- worked with the Claimant's physician to decide what was needed for the Claimant's wheelchair. She testified that Department did not offer an alternative to the proposed wheelchair requested by the Claimant.
- 9) -----, the Claimant's mother, testified that the Claimant is dependent on his parents, and would continue to be without the requested wheelchair.

VIII. CONCLUSIONS OF LAW:

- 1) Policy for DME requires both that the provider maximizes cost-effectiveness without compromising the member's basic health care needs, and that the Department only consider reimbursement for requested items when both conditions are met. Undisputed testimony showed that the Claimant's current wheelchair does not meet his basic health care needs.
- 2) Documentation provided with the Claimant's DME request included narrative on some, but not all, of the requested accessories. Two requested accessories were submitted despite the understanding that the items are not covered, by policy. Contrary to questioning suggesting that the Department is responsible to provide alternatives to DME requests, it is instead the responsibility of the Claimant to support his own DME request by demonstrating how the absence of any requested accessory would fail a test of basic health care needs. Without explicit justification for each of the requested accessories, the Claimant has failed to demonstrate that basic health care needs could not be met with a less expensive alternative. The Department was correct to deny the request for prior authorization for a power wheelchair with 55 accessories.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for the requested power wheelchair.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2010.

Todd Thornton
State Hearing Officer