



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

April 30, 2010

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 14, 2010. 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.

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 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,

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

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

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

-----,

Claimant,

v.

Action Number: 10-BOR-589

**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 fair hearing was originally scheduled to convene on April 1, 2010 but was rescheduled at the request of the Respondent and convened on April 14, 2010 on a timely appeal filed January 8, 2010.

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 Mother/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 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 or not the Department was correct to deny Medicaid payment of durable medical equipment – specifically, an augmentative communication device (Vantage Lite E2510) – for 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:

Exhibit A-1 West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §§506.3 – 506.5

Exhibit A-2 InterQual Smart Sheets, 2009 – Durable Medical Equipment Criteria, Augmentative and Alternative Communication Devices: General

Exhibit-B Information received from [REDACTED] MD, [REDACTED] Company and -----, M.S., CCC-SLP

Exhibit-C Notice of Denial Determination by WVMi

Claimant's Exhibits:

Claimant's-1 Speech Therapy Re-Evaluation (March 4, 2010)

Claimant's-2 Pediatric Augmentative Communication Evaluation (April 14, 2009)

Claimant's-3 Speech Therapy Progress Report (Update July 22, 2009)

Claimant's-4 Patient Progress Note (August 13, 2009 through March 8, 2010)

Claimant's-5 [REDACTED] Language Lab – picture of device and features

VII. FINDINGS OF FACT:

- 1) On or about December 11, 2009, the Claimant was notified that his prior authorization request for Medicaid payment of Durable Medical Equipment, hereinafter DME, was denied. This notice (Exhibit C) states, in pertinent part:

Reason for Denial: Documentation provided does not indicate medical necessity – specifically:

No new information submitted, provider has not responded to earlier requests for information.

- 2) The Respondent's representative, Virginia Evans, reviewed the applicable policy, introduced evidence and called upon her witness, Shirley Starkey, a Speech Pathologist and consultant to the Bureau for Medical Services, to explain why prior authorization could not be granted in the Claimant's case. Ms. Starkey indicated that she originally received the request for the Vantage Lite (E2510) communication device in April 2009. Ms. Starkey testified that she reviewed all of the information provided and while she agrees that the Claimant requires an augmentative communication device, she believes the requested Vantage Lite device is not appropriate. Ms. Starkey contends that InterQual criteria has not been met, specifically, the Claimant's cognitive status does not indicate he is capable of using the device. Ms. Starkey further testified that the Claimant is an Autistic child who has not been successfully taught to communicate through sign language, PECS (Picture Exchange Communication System) or speech. Ms. Starkey purported that she does not have any documentation to show that the child has demonstrated the ability to use the Vantage Lite for a four-week period.

It should be noted that the Respondent's representative was asked whether or not this matter was ripe for appeal when Ms. Starkey indicated she was unfamiliar with the Pediatric Augmentative Communication Evaluation dated September 1, 2009 that accompanied Respondent's Exhibit B. The Respondent indicated that the matter was ripe for appeal and that the hearing should proceed.

- 3) ----- testified that Ms. Starkey informed her that the unmet criterion was specific to the Claimant's cognitive ability and the need for extensive fringe vocabulary. In response to the Respondent's position, -----noted that the Pediatric Augmentative Communication Evaluation dated September 1, 2009 provides verification that the SpringBoard Lite, the Vantage and Vantage Lite were utilized during the evaluation. Page 4 of this evaluation includes some of the following pertinent statements –

It was felt that the SpringBoard Lite and regular Vantage would not be as appropriate because it may limit his language growth as there are only up to 36 location display [sic]. It was felt that ----- would quickly outgrow the SpringBoard Lite device linguistically and cognitively, as he has also showed great skills with the trial of this device (using up to six word utterances). The SpringBoard Lite would not accommodate a higher vocabulary because it lacks the morphology commensurate with -----'s language abilities (again see above section related to Brown's Stages). Vantage meets the requirements for -----, but is heavier and bulkier than the Vantage Lite, which is a more appropriate choice since he will be carrying the device with him to communicate in all settings.

-----noted that the September 1, 2009 evaluation also provides verification that the Claimant has had a trial of more than four weeks with the Vantage Lite and that he has demonstrated the ability to effectively use the device. On Page 5, -----noted – “----- clearly demonstrates that [sic] understood the purpose of the device and smiled and was very eager to use it to communicate his wants and needs. ----- showed decreased frustration when he was [sic] his wants and needs were immediately met with the device.” -----explained how the Claimant was able to communicate his wants and needs using up to five hits with minimal cueing and he has demonstrated the ability to request items using up to seven hits. -----submitted Exhibit C-1 (Speech Therapy Re-Evaluation dated 3/4/10) to show the amount of progress in the Claimant's language skills since the initial Pediatric Augmentative Communication Evaluation was completed in December 2008 (C-2). When compared, these documents demonstrate growth in the Claimant's expressive and receptive language skills.

According to -----, these findings further support that the Claimant has the cognitive ability to use the Vantage Lite and that a “fringe vocabulary” - words specific to different settings (at the park, church or grocery store) as opposed to core words (want, go, need) that are typically used daily – is a realistic expectation for the Claimant. A lower device does not provide the opportunity for the use of a “fringe vocabulary” and restricts the Claimant's ability to communicate in the community. Exhibit C-4 was submitted in response to the reason noted in the denial notice as -----testified she has attempted to stay in contact with Ms. Starkey and provide requested information.

- 4) -----, a Speech Pathologist and vendor for the Vantage Lite, testified that because everyone agrees that an augmentative communication device is needed, at issue is the most appropriate. -----testified that -----'s evaluation demonstrates that the Claimant is putting together messages one word at a time and showing skills at a level higher than tested (3 years, 5 months). -----testified that the lesser devices considered peak at a 36-month language level and cost at or about the same as the Vantage Lite.

- 5) 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

- 6) 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.

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 medical necessity. The requested device must be medically necessary to meet the basic health care needs and an expensive device will not be covered when a less costly device is available.

- 2) Pursuant to the reason noted in the Respondent's denial notice – there was no evidence submitted by the Respondent to indicate the provider failed to respond to requested information. However, according to testimony provided at the hearing, the primary reason for the Respondent's denial was concern about the Claimant's cognitive ability to effectively use the requested Vantage Lite. The evidence submitted in this case indicates that the Claimant has the cognitive ability to use the requested device, as demonstrated by the documented success. While the area of fringe vocabulary was not vigorously contested by the Respondent, there are multiple settings in which the Claimant's communication needs could only be met with an extensive vocabulary.
- 3) The Claimant has demonstrated the ability to communicate his wants and needs with the requested device and this supports the conclusion that the device will assist the Claimant with meeting his basic health care needs. Testimony presented on the Claimant's behalf established that there is no less costly device that would meet the Claimant's needs as the Claimant is already demonstrating language skills that exceed the capability of the lesser devices.

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 April, 2010.

**Thomas E. Arnett
State Hearing Officer**