



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

**Earl Ray Tomblin**  
**Governor**

**Michael J. Lewis, M.D., Ph.D.**  
**Cabinet Secretary**

August 12, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 11, 2011. Your appeal was based on the Department of Health and Human Resources' denial of your request for Medicaid payment of a nebulizer.

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.

The West Virginia (WV) Medicaid Program offers a comprehensive scope of Durable Medical Equipment (DME)/Medical Supply services to Medicaid members, subject to medical necessity, appropriateness criteria and prior authorization requirements. When requesting 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 and any other relevant information (West Virginia Bureau for Medical Services Provider Manual, Chapter 506).

Information submitted at the hearing reveals that you failed to meet the DME medical necessity criteria required for prior authorization of Medicaid payment for the nebulizer requested (E0570).

It is the decision of the State Hearing Officer to **uphold** the action of the Department in its decision to deny your request for Medicaid payment (prior authorization) of a nebulizer.

Sincerely,

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

cc: Chairman, Board of Review  
Amy Workman, BMS

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

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**CLAIMANT,**

**v.**

**Action Number: 11-BOR-1386**

**West Virginia Department of  
Health and Human Resources,**

**RESPONDENT.**

**DECISION OF THE 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 convened on August 11, 2011 on a timely appeal filed June 21, 2011.

**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 & Human Resources processes claims for reimbursements to providers participating in the program.

**III. PARTICIPANTS:**

-----, Claimant

Virginia Evans, Bureau for Medical Services (BMS), Department Representative  
Kerry Frame, RN, WVMI – Department’s witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

It should be noted that this hearing was held via telephone conference call.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in denying the Claimant's request for prior authorization (Medicaid payment) of a nebulizer.

**V. APPLICABLE POLICY:**

West Virginia Bureau for Medical Services Provider Manual, Chapter 506

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

**Department's Exhibits:**

- D-1 West Virginia Bureau for Medical Services Provider Manual, Chapter 506 DME/Medical Supplies, Section 506.5 – PRIOR AUTHORIZATION
- D-2 InterQual 2010 Durable Medical Equipment Criteria – Aerosol Delivery Devices – Small volume nebulizer (E0570)
- D-3 WVMI Medicaid DME / Medical Supplies Authorization Request Form, completed by [REDACTED] M.D. and submitted by [REDACTED] on May 25, 2011
- D-4 Notice of Denial Determination by West Virginia Medical Institute (WVMI) – dated 5/26/11

**VII. FINDINGS OF FACT:**

- 1) On or about May 26, 2011, West Virginia Medical Institute (WVMI) notified the Claimant via a Notice of Denial for Durable Medical Services (D-4) that her request for prior authorization (Medicaid payment) of a nebulizer was denied. This notice states, in pertinent part:

Reason for Denial:

Documentation provided does not indicate medical necessity – specifically:

The request for E0570 Nebulizer cannot be approved, as medical necessity is not established.

According to WV Medicaid/InterQual criteria, symptoms must have failed to improve using a metered dose inhaler/dry powder inhaler with spacer/holding chamber. Information provided did not indicate use of spacer/holding chamber. Therefore, WV Medicaid/InterQual criteria has not been met.

- 2) Virgin Evans, the Department's representative, introduced Exhibits D-1 through D-4 and testified that Medicaid payment for Durable Medical Equipment (DME) and medical supplies can only be approved after the individual receives prior authorization by meeting

medical necessity criteria.

- 3) In response to the Claimant's contention that Medicaid paid for her last nebulizer in 2004, Ms. Evans purported she was unable to verify Medicaid payment for a nebulizer in 2004 but noted that the current medical necessity criteria [West Virginia Bureau for Medical Services Provider Manual § 506.5] became effective in March 2006. Any request for prior authorization of a nebulizer made after that date is required to meet the current medical necessity criteria.
- 4) The Department's witness, Kerry Frame, RN, West Virginia Medical Institute (WVMI), reviewed the WVMI Medicaid DME / Medical Supplies Authorization Request Form (D-3) submitted for review and explained the medical necessity criteria. RN Frame noted that the Claimant meets the diagnostic criteria of obstructive pulmonary disease, however, her physician did not indicate if her symptoms failed to improve using a dry powder inhaler with a spacer/holding chamber. Because it is unclear if the Claimant's symptoms can be managed using an inhaler, medical necessity requirements for prior authorization of a nebulizer were not met.
- 5) The Claimant reported that she has used a dry inhaler with a spacer since June 2011 and that her symptoms have failed to improve. The Claimant, however, acknowledged that the WVMI Medicaid DME / Medical Supplies Authorization Request Form (D-3) completed by her physician in May 2011 did not include the results of her trial with the dry inhaler.
- 6) West Virginia Bureau for Medical Services Provider Manual § 506.5 (PRIOR AUTHORIZATION) states that for DME services and items requiring prior authorization (PA) 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.

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 included this list is the Aerosol Delivery Devices (E0565, E0570).

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

- 1) Medicaid policy provides that DME and medical supplies require a prior authorization (PA) review for medical necessity by WVMI before Medicaid payment is approved. 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 included this list is the Aerosol Delivery Devices (E0565, E0570) - nebulizer.
- 2) The Claimant's physician completed an authorization request form for Medicaid payment of a nebulizer (E0570). Pursuant to the InterQual 2010 DME criteria, medical necessity could not be established for a nebulizer as the authorization request form did not indicate the

Claimant's symptoms of asthma/obstructive pulmonary disease failed to improve using a dry powder inhaler with a spacer/holding chamber.

- 3) In accordance with WV Medicaid policy, the Department acted within policy guidelines in denying Medicaid payment for a nebulizer (E0570).

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny prior authorization for Medicaid payment for a nebulizer as medical necessity criteria was not met.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of August, 2011.**

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**Thomas E. Arnett**  
**State Hearing Officer**