State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

September 1, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 22, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your prior authorization request for Medicaid payment of bariatric surgery.

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.

Eligibility for Medicaid services is based on current policy and regulations. These regulations provide that certain surgeries which require partial hospitalization require prior authorization. A Medical Necessity Review and Prior Authorization are required for coverage of bariatric surgical procedures. The patient's primary care physician or bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all required information, to the West Virginia Medical Institute (WVMI). WVMI will perform the medical necessity review and prior authorization and which is based on certain medical criteria. (Bureau for Medical Services Provider Manual Chapter 510.8.1 and Attachment 1).

The information which was submitted at your hearing revealed that clinical documentation submitted with your request for prior authorization failed to meet the established criteria required for approval.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your request for prior authorization of Medicaid payment for bariatric surgery.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Amy Workman, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: ----- ,

Claimant,

v. **ACTION NO.: 11-BOR-1524**

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 convened on a timely appeal, filed July 5, 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 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
-----, Claimant's witness
Nora McQuain, RN-Bureau for Medical Services (BMS)
Jenny Craft, RN-Nurse Reviewer West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny the prior authorization request for Medicaid payment of bariatric surgery.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual Chapter 510.8.1, Attachment 1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Bureau for Medical Services Provider Manual Chapter 510.8.1, Attachment 1
D-2 WVMI Medicaid Prior Authorization Form from [redacted] M.D. dated April 19, 2011
D-3 Notice of Denial for Inpatient Acute Care Admission Review

VII. FINDINGS OF FACT:

1) On April 19, 2011, the Claimant's physician submitted Exhibit D-2, WVMI Medicaid Prior Authorization Form with corresponding clinical information to the West Virginia Medical Institute, hereinafter WVMI, requesting prior authorization of the Claimant's Laparoscopic Gastric Bypass surgery for May 30, 2011. The exhibit documents a reason for admission as morbid obesity.

2) On April 26, 2011, WVMI issued Exhibit D-3, Notice of Denial for Inpatient Acute Care Admission Review to the Claimant and her physician. Exhibit D-3 documents in pertinent part:

> A request for prior authorization was submitted for inpatient acute care services. Based on the medical information provided, the request has been denied.
>
> Reason for Denial: Bariatric Surgery-Documentation provided does not indicate medical necessity-specifically:
>
> This is [sic] reference to your request for bariatric surgery. There are inadequate documented clinical indications for the invasive procedure requested, Laparoscopic Gastric Bypass, CPT code 43644. There was no documentation that the patient is incapacitated from obesity. There was also no documentation that the patient has the ability to comply with the dietary behavioral and lifestyle changes required. There was no documentation of failure and the reason for the failure of two attempts of physician supervised weight loss with each lasting six months or longer in the past two years. There was only one attempt documented and no reason for failure documented. There was no documentation in the past six months of a psychological or psychiatric evaluation that addressed issues

relative to the proposed surgery. The psychological evaluation was dated 6/25/2010.

Additionally, it should be noted that the Claimant's physician's Notice of Denial indicates that a reconsideration of the determination could be made if a written request and supporting documentation was submitted to WVMI within 60 days of the receipt of the notice. Ms. Jenny Craft, Nurse Reviewer, WVMI testified that the Claimant's physician did not submit a reconsideration request in the outlined timeframe.

3) Ms. Craft testified that she reviewed the information submitted from the Claimant's physician regarding the prior authorization request. Ms. Craft stated that the Claimant's information was forwarded to a Physician Reviewer, which denied the Claimant's request based on the outlined reasons in Exhibit D-3. Ms. Craft indicated that the key reasons for the denial consisted of no documentation that the Claimant was incapacitated with activities of daily living (ADL) or the Claimant walked with a walker or cane, no documentation of two attempts, in the past two years, of physician supervised weight loss lasting six months or longer, no documentation of a psychological evaluation in the last six months, and no documentation that the Claimant was able to comply with dietary and behavioral lifestyle changes with family support. Ms. Craft stated that the physician provided documentation of a failed attempted of weight loss from July, 2010 through March, 2011 and additional information from December, 2002. Ms. Craft stated that she could not utilize the information of the attempted weight loss from December, 2002 because policy requires that the attempt of weight loss be in the last two years. Ms. Craft indicated that policy requires the patient to have a psychological or psychiatric evaluation within six months prior to the surgery. The Claimant's physician submitted an evaluation from June, 2010, which was outside of the appropriate timeframe and could not be utilized in the determination of the Claimant's eligibility for prior authorization. Additionally, the documentation submitted did not include information that the Claimant had met with a dietitian prior to the procedure.

4) The Claimant indicated that she previously attempted to have the procedure completed with West Virginia University Hospitals, but her attempt failed when her physician resigned and the program was terminated. -----, Claimant's witness referred to information that was submitted in the Claimant's prior authorization request (Exhibit D-2). Included in the request was a letter from [redacted] P.A.-C dated February 11, 2011. This letter documents in pertinent part:

> -----is severely limited in her ability to do activities of daily living due to her Morbid Obesity. She cannot do general cleaning or even wash her own dishes due to leg/back pain and shortness of breath when ambulating. She has also not been able to participate in family and community activities which she had done in the past which is causing further anxiety and depression symptoms. Her condition of Morbid Obesity is directly causing her to be disabled to perform general ADL's or to seek any employment.

The Claimant indicated that she, "is not able to work and can barely walk around" and uses a cane to ambulate. The Claimant indicated that she is in need of the surgery due to her physical

inabilities. The Claimant states that she is on prescribed medications for high blood pressure, depression, and cancer medication.

5) A review of the information submitted with the request for prior authorization reveals that the Claimant was 51, years of age at the time of the request, with a documented Body Mass Index of 51.99, has been diagnosed with Type II-Diabetes Mellitus, and is tobacco free. The Claimant submitted a letter, which was included in Exhibit D-2, to [redacted] Medical Center Bariatric Program which documents in pertinent part:

> I, -----, understand and agree to comply with post surgical treatment and plans. I understand the dietary, behavioral, and lifestyle changes that I will be making in order to reach and maintain a healthy life. I have family support and they will aide me in achieving the necessary lifelong lifestyle changes.

6) Bureau for Medical Services Provider Manual Chapter 510.8.1, Prior Authorization Requirements for Outpatient Services documents in pertinent part:

> Medicaid covered outpatient services which require medical necessity review and prior authorization are:
>
> 1) Partial hospitalization

6) Bureau for Medical Services Provider Manual Chapter 510, Attachment 1, Special Coverage Considerations and Billing Instructions documents in pertinent part:

> The West Virginia Medicaid Program covers bariatric surgery procedures subject to the following conditions:
>
> Medical Necessity Review and Prior Authorization
>
> The patient's primary care physician or the bariatric surgeon may initiate the medical necessity review and prior authorization by submitting a request, along with all the required information, to the West Virginia Medical Institute (WVMI). The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon the following criteria.
>
> 1) A Body Mass Index (BMI) greater than 40 must be present and documented for at least the past 5 years. Submitted documentation must include height and weight.
>
> 2) The obesity has incapacitated the patient from normal activity, or rendered the individual disabled. Physician submitted documentation must substantiate inability to perform activities of daily living without considerable taxing effort, as evidenced by needing to use a walker or wheelchair to leave residence.

3) Must be between the ages of 18 and 65. (Special considerations apply if the individual is not in this age group. If the individual is below the age of 18, submitted documentation must substantiate completion of bone growth.

4) The patient must have a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification. The rationale for this criteria is taken from the Swedish Obese Subjects (SOS) study, *International Journal of Obesity and Related Metabolic Disorders, May, 2001.*

5) Patient must have documented failure at two attempts of physician supervised weight loss, attempts each lasting six months or longer. These attempts at weight loss must be within the past two years, as documented in the patient medical record, including a description of why the attempt failed.

6) Patient must have had a preoperative psychological and/or psychiatric evaluation within the six months prior to the surgery. This evaluation must be performed by a psychiatrist or psychologist, independent of any associations with the bariatric surgery facility, and must be specifically targeted to address issues relative to the proposed surgery. A diagnosis of active psychosis; hypochadriasis; obvious inability to comply with a post operative regimen; bulimia; and active alcoholism or chemical abuse will preclude approval.

7) The patient must demonstrate ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance of weight loss. Evidence of adequate family participation to support the patient with the necessary lifelong lifestyle changes is required.

8) Patient must be tobacco free for a minimum of six months prior to the request.

9) Contraindications: Three (3) or more prior abdominal surgeries; history of failed bariatric surgery; current cancer treatment; Crohn's disease; End Stage Renal Disease (ESRD); prior bowel resection; ulcerative colitis; history of cancer within prior 5 years that is not in remission; prior history of non-compliance with medical or surgical treatments.

10) Documentation of a current evaluation for medical clearance of this surgery performed by a cardiologist or pulmonologist must be submitted to ensure the patient can withstand the stress of the surgery from a medical standpoint.

VIII. CONCLUSIONS OF LAW:

1) Policy requires that prior authorization for Medicaid payment for outpatient services require medical necessity review and prior authorization when the procedure requires partial hospitalization.

2) Requirements for coverage of bariatric surgery procedures for Medicaid payment include the patient's Body Mass Index is greater than 40 for at least the past 5 years, the patient's obesity has incapacitated the individual from normal activity or rendered the individual disabled, the patient is between the ages of 18 and 65, the patient has a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification, the patient has two documented attempts of physician supervised weight loss within the last six months or longer within the past two years, the patient has completed a preoperative psychological or psychiatric evaluation within six months prior to surgery, the patient must demonstrate an ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate successful weight loss and maintenance of weight loss, and the patient has been tobacco free for a minimum of six months prior to the request.

3) The requirement of documentation that the patient's obesity has incapacitated the individual for normal activity or rendered the individual disabled was met. Submitted documentation with the Claimant's prior authorization request reveals that the Claimant's Morbid Obesity results in her being disabled and unable to perform daily living activities. However, a review of the total clinical evidence submitted in the request for prior authorization failed to establish that the Claimant met the criteria for prior authorization. Specifically, there was no documentation of two attempts of physician supervised weight loss in the last six months, a completed psychological evaluation within six months prior to the request for prior authorization, and documentation of the Claimant's ability to comply with dietary behavioral and lifestyle changes. Therefore, the Department was correct in its decision to deny the Claimant's request for prior authorization.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's decision to deny the Claimant's request for prior authorization of Medicaid payment for bariatric surgery procedures.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

ENTERED this _____ day of September, 2011.

Eric L. Phillips
State Hearing Officer