State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

November 30, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 16, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of bariatric surgery.

In arriving at a decision, the State Hearings 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 the Medicaid program is based on current policy and regulations. These regulations specify that when medical documentation does not meet medical necessity criteria, the request for outpatient surgery is denied (Hospital Provider Manual § 510.8.1).

The information submitted at your hearing failed to meet the criteria required to establish medical necessity of bariatric surgery.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny prior authorization of bariatric surgery.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: -----,

Claimant,

v. **ACTION NO.: 11-BOR-1746**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 16, 2011 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 August 15, 2011.

II. PROGRAM PURPOSE:

The program entitled Medicaid is administered by the West Virginia Department of Health and Human Resources.

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
-----, RN, Witness for Claimant

Cindy Ingle, Bureau of Medical Services
Nora McQuain, Bureau of Medical Services
Barbara Reed, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny prior authorization of bariatric surgery was correct.

V. APPLICABLE POLICY:

Hospital Services Provider Manual § 510.8.1 and § 510 Attachment 1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Hospital Services Provider Manual § 510.8.1 and § 510 Attachment 1
D-2 Prior Authorization Request Form and Medical Documentation from [redacted] MD
D-3 Denial Notification Letters dated August 7, 2011
D-4 Correspondence from -----and -----

Claimants' Exhibits:

C-1 Correspondence from [redacted] Records from [redacted] Outpatient Center and [redacted] Memorial Hospital
C-2 Invasive Vascular Procedure Report dated October 6, 2011

VII. FINDINGS OF FACT:

1) A request for prior authorization for gastric bypass surgery for Claimant was submitted to the West Virginia Medical Institute (WVMI) on July 14, 2011 for approval by [redacted] MD (D-2). A denial notification letter was issued by WVMI on August 7, 2011 which reads (D-3):

> There are inadequate documented clinical indications for the invasive procedure requested. 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 the failure documented. There was no documentation of an evaluation from a cardiologist or pulmonologist that cleared the patient for the proposed surgery. There was no documentation of BMI over 40 for the last five years.

2) Barbara Reed, nurse reviewer with WVMI, testified to the reasons for the denial of bariatric surgery for Claimant. Ms. Reed stated Claimant failed to meet the medical criteria required by policy in order for the surgery to be approved. Ms. Reed referenced the Hospital Services Provider Manual § 510 Attachment 1 which lists the criteria used in determining medical necessity for bariatric surgery (D-1):

> 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 association with the bariatric surgery facility, and must be specifically targeted to address issues relative to the proposed surgery. A diagnosis of active psychosis; hypochondriasis; 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.

3) Ms. Reed stated Claimant met five (5) out of the ten (10) requirements according to the medical documentation submitted by her physician. Ms. Reed testified Claimant's body mass index was not documented for the previous five (5) years, there was only one (1) documented attempt at a physician supervised weight loss program, of which the reason for the failure was not included and there was no approval from a cardiologist or pulmonologist that Claimant would physically be able to withstand the stress of the surgery. Ms. Reed stated Claimant's psychological evaluation noted that Claimant had problems with binging and continued to drink soda. Ms. Reed stated this demonstrated Claimant may not be able to adhere to the dietary restrictions post surgery. Ms. Reed testified Claimant's obesity did not incapacitate her in that she was employed and did not utilize any walking aids to ambulate (D-2). Without meeting all ten (10) criterions, Ms. Reed stated medical necessity of bariatric surgery could not be established.

4) -----, Claimant's friend, testified that although Claimant's specific body mass index was not included in her medical records, Claimant's height and weight was documented with each doctors' visit. -----stated Claimant's body mass index could have been calculated using this information.

-----testified Claimant is only able to work part-time as her weight causes problems with her ability to stand and walk. Claimant experiences decreased productivity at her job as a result (D-4 and C-1). -----admitted Claimant does not use walking aids to ambulate because of her young age.

-----stated Claimant has been counseled regarding her weight and diet each time she visited a doctor and denied any binging on Claimant's part for 4-6 months prior to the psychological evaluation, which is documented. -----stated Claimant has a sister who has undergone gastric bypass surgery and demonstrating Claimant would have family support to follow through with lifestyle changes after the surgery.

-----stated Claimant was cleared for surgery by Dr. [redacted] after a heart catheterization was performed on October 6, 2011 (C-2).

5) Claimant testified she takes fifteen (15) pills a day for various medical conditions which would be alleviated by having the gastric bypass surgery. Claimant stated she has a medical card under the Medicaid Work Incentive program which requires her to be employed to qualify.

6) Hospital Services Provider Manual § 510.8.1 states:

> Medicaid covered outpatient services which require medical necessity review and prior authorization are:
>
> 1. Partial hospitalization
>
> 2. Physical therapy exceeding twenty (20) sessions or units per year.
>
> 3. Effective 10/01/05, prior authorization will be required on all outpatient radiological services that include Computerized Tomography (CT), Magnetic Resonance Angiography (MRA), Magnetic Resonance Imaging (MRI), Positron Emission Tomography Scans (PET), and Magnetic Resonance Cholangiopancreatography (MRCP). Prior authorization requirements governing the provisions of all West Virginia Medicaid services will apply pursuant to Chapter 300 General Provider Participation Requirements, provider manual. Diagnostic services required during an emergency room episode will not require prior authorization. It is the responsibility of the ordering provider to obtain the prior authorization. Failure to obtain prior authorization will result in denial of the service; the Medicaid member cannot be billed for failure to receive authorization for these services.
>
> Critical Access Hospitals (CAHs) who have chosen encounter, as well as those who bill Fee For Service, must obtain a prior authorization for certain diagnostic imaging testing. Reimbursement for diagnostic imaging services are considered part of the encounter and cannot be billed separately. CAHs will be required to obtain a PA from WVMI and document this information in the patient's medical record for audit purposes.

Prior authorization must be obtained from West Virginia Medical Institute (WVMI) prior to the provision of the service. Failure to obtain prior authorization will result in denial of the service; the Medicaid member cannot be billed for failure to receive authorization for these services.

Certain surgeries performed in place of service 22 (Outpatient Hospital) and 24 (Ambulatory Surgical Center) will require prior authorization, effective February 15, 2006.

VIII. CONCLUSIONS OF LAW:

1) Policy stipulates that the referring physician must submit sufficient documentation for clinical justification of outpatient surgical services requiring prior authorization for Medicaid payment.

2) Claimant was not cleared for surgery until October 2011, which was outside the 60 day reconsideration period to have the surgery approved. The documentation submitted failed to meet all of the criteria listed in policy for medical necessity to be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny prior authorization of bariatric surgery for Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th day of November 2011.

Kristi Logan
State Hearing Officer