



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 E. 3<sup>rd</sup> Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

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

February 2, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 18, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid authorization for medication, testosterone injections.

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. Some of these regulations state that service limitations governing the provision of all West Virginia Medicaid pharmacy services apply for eligible members as follows: covered drugs are limited to their Food and Drug Administration (FDA) approved or medically acceptable indications; and some drugs may be limited in quantity, duration or based on gender. (WVDHHR Medicaid Policy Manual, Chapter 518.5)

The information presented at your hearing reveals that Medicaid payment for medications, specifically testosterone injections, was not approved because the stated clinical indications for prescribing testosterone for either a male or a female did not apply to your health situation.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny Medicaid authorization for testosterone injections.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Amy Workman, WV Bureau of Medical Service

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

-----,

**Claimant**

v.

**Action Number(s): 10-BOR-2169**

**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 February 2, 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 hearing was held by telephone conference call on January 18, 2011, on a timely appeal filed November 3, 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 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

Peggy King, Pharmacy Director, WV Bureau for Medical Services, Department's Representative

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer placed both participants under oath at the beginning of the hearing.

#### **IV. QUESTION TO BE DECIDED**

The question to be decided is whether the Department was correct in its decision to deny Claimant's request for Medicaid payment for medications, testosterone injections.

#### **V. APPLICABLE POLICY:**

WVDHHR Medicaid Policy Manual, Chapter 518.5

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

##### **Department's Exhibits:**

D-1 WV DHHR Medicaid Pharmacy Services Manual, Chapter 518.5

D-2 WV Health PAS Prescription Limitation Configuration

D-3 American Hospital Formulary Service (AHFS) Drug Information 2010, pages 3097-3098

D-4 Determination from Medical Director, WV Bureau for Medical Services, dated September 24, 2010

##### **Claimant's Exhibits:**

C-1 *Gender Identity Disorder*, from Wikipedia, date of retrieval unknown

C-2 Letter from [REDACTED] M.D., [REDACTED] WV, dated December 10, 2010

C-3 Letter from [REDACTED] M.D., [REDACTED] WV, dated January 6, 2011

C-4 Letter from [REDACTED] Psychiatric Nurse Practitioner, dated December 30, 2010

#### **VII. FINDINGS OF FACT:**

- 1) WV DHHR Medicaid Pharmacy Services Manual Chapter 518.5 (Exhibit D-1) states in part:

Service limitations governing the provision of all West Virginia Medicaid pharmacy services will apply for eligible members as follows:

- Covered drugs are limited to their Food and Drug Administration (FDA) approved or medically accepted indications and dosing limits.  
...
- [Some] drugs may be limited in quantity, duration or based on gender . . . Exceptions are considered on a case-by-case basis through the Rational Drug Therapy Program.

- 2) Department's representative testified that Claimant's physician, [REDACTED] M.D., requested testosterone injections for Claimant on July 28, 2010. She testified that the request was denied due to the diagnosis that was offered by the physician's office, which was for transgender treatment. She stated that on September 22, 2010, Dr. [REDACTED]

This appeal is denied since the patient is identified as a female in the demographic information submitted to the Medicaid program. Testosterone has an FDA indication limited to treatment for the male gender. Federal regulations require the Medicaid program to reimburse only for medications to be utilized in compliance with FDA guidelines.

- 3) Claimant testified that the Medicaid program is bound by Federal law as to what drug coverage indications are acceptable for a medication purchase to be covered using Federal funds. Those are the FDA-approved indications or indications that are listed in the official compendia. The official compendium the WV Bureau of Medical Services subscribes to is a publication of the American Society of Health-System Pharmacists, the American Hospital Formulary Service (AHFS) Drug Information Book.
- 4) The AHFS Drug Information Book, 2010 edition, lists on pages 3097 – 3098 the accepted indications for males and females to be prescribed testosterone injections. (Exhibit D-3.) For males, it lists four indications: hypogonadism, delayed puberty, corticosteroid-induced hypogonadism and osteoporosis, and erectile dysfunction. For females, it lists three indications: inoperable carcinoma of the breast, post-partum breast pain and engorgement, and menopause.
- 5) Claimant testified that he was being treated for a condition identified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) as gender-identity disorder. He submitted into evidence an article from Wikipedia, the internet encyclopedia service, entitled, “Gender identity disorder.” (Exhibit C-1.) The article indicates that gender identity disorder is a diagnosis identified in the DSM-IV, and that the two standard treatments for it are hormone-replacement therapy and sex reassignment surgery. Claimant testified that since this is a diagnosis identified in the DSM-IV and since the two standard treatments for it are hormone-replacement therapy and surgery, it is only fair that this medication should be covered in his case.

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

- 1) Claimant’s physician requested Medicaid payment for testosterone injections based on the clinical indication of transgender treatment.
- 2) The BMS Pharmacy Services accepts certain indications for testosterone therapy, which are found in the American Hospital Formulary Service Drug Information Book. The indication of transgender treatment is not an indication for testosterone therapy for either men or women.
- 3) The medical indication submitted by Claimant’s physician did not correspond to any of the indications listed as acceptable in the AHFS Drug Information Book; therefore, the

Department acted correctly in denying the Claimant's request for Medicaid payment testosterone injections.

**IX. DECISION:**

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny Medicaid payment for medications, testosterone injections, for Claimant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 2nd Day of February, 2011.**

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**Stephen M. Baisden**  
**State Hearing Officer**