State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

March 2, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 17, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization for Durable Medical Equipment (DME).

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 to establish medical necessity for certain DME items, and the requested continuous positive airway pressure (CPAP) machine – a type of noninvasive airway assist device – is one of the DME items that require prior authorization review. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5)

Information submitted at your hearing revealed that clinical justification for the requested DME was not met, and prior authorization could not be given.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny prior authorization for the requested DME.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Amy Workman, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 10-BOR-2346**

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 March 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 fair hearing was convened on February 17, 2011 on a timely appeal, filed November 29, 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
Virginia Evans, Department representative
Vickie Phillips, RN, Department witness

Presiding at the Hearing was Todd Thornton, 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 the Claimant prior authorization for requested durable medical equipment.

V. APPLICABLE POLICY:

West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies; §506.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5

D-2 InterQual 2010 Durable Medical Equipment Criteria – Noninvasive Airway Assist Devices: General

D-3 WVMI Medicaid DME/Medical Supplies Authorization Request Form; Therapy Data Trend reports (2); Office note from [redacted] M.D.

D-4 Notices of Denial for Durable Medical Services (3), dated November 9, 2010

VII. FINDINGS OF FACT:

1) Virginia Evans, representative for the Department's Bureau for Medical Services, testified that, in response to a request (Exhibit D-3) for Durable Medical Equipment (DME) for the Claimant – specifically, a continuous positive airway pressure (CPAP) device – denial notices were issued on or about November 9, 2010, to the Claimant, her prescribing practitioner, and her servicing provider (Exhibit D-4). The notice explained the reason for denial as follows, in pertinent part:

> The information submitted did not meet the clinical indications for the requested item. Specifically, the compliance reports does [*sic*] not indicate compliance and consistent usage of the CPAP device. There was a lack of documentation indicating improvement of symptoms associated with the condition.

2) Vickie Phillips, RN, the reviewing nurse employed by West Virginia Medical Institute (WVMI), testified that she reviews CPAP requests by using the InterQual criteria presented by the Department (Exhibit D-2). This document lists the appropriate equipment/indication for the requested DME as *100 – Continuous positive airway pressure (CPAP) device (E0601)*. In the Claimant's case, Ms. Phillips reviewed the accompanying documentation submitted (Exhibit D-3) using subheading *120 – Ongoing Application*. The ongoing application subheading required the two things noted in the denial notification (Exhibit D-4): documented effectiveness and adherence to prescribed treatment for greater than or equal to three months of use.

3) Ms. Phillips testified that she reviewed the documentation submitted with the DME request (Exhibit D-3). The request is for a CPAP machine, and notes the Department's equipment code of E0601. The documentation includes two Therapy Data Trend reports: the first summarizes a period from April 23, 2010 through June 6, 2010, and the second a period from June 25, 2010 through July 25, 2010. Ms. Phillips testified that the information she uses to determine adherence to the prescribed treatment is listed in these documents as "Percent of Days with Usage >= 4 Hours," and the threshold guidelines for this data point is 70%. The actual usage amounts listed on the Claimant's reports are 2.2% and 0%.

Ms. Phillips testified that she reviewed the office note from [redacted] M.D., dated October 5, 2010, to assess documented effectiveness of the DME trial. The note states, in pertinent part:

> The compliance information in the chart suggests that she almost never sleeps with her CPAP on more than four hours. She admits removing the mask about half of the time in a given week but in reality, it is probably more often than that.

Ms. Phillips testified that because the InterQual criteria could not be met, she forwarded the DME request for physician review, and it was denied at that level.

4) The Claimant testified that she told her doctor that her sleep improved while using the machine on a trial basis. She testified that at times, the device's mask would come off while she was sleeping. She also testified that there was a period of time that she did not use the device because she had recent dental work.

5) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5 provides the prior authorization requirements for DME, and states, in pertinent part:

> 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.

The policy additionally states that the specific DME requested is subject to prior authorization review to determine medical necessity, as follows, in pertinent part:

> 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…

The list that follows includes "Noninvasive Airway Assist Devices (E0470, E0471, E0472, E0601)" as requiring prior authorization, with E0601 matching the equipment code on the DME request.

VIII. CONCLUSION OF LAW:

1) Policy provides that a prior authorization review is required to determine medical necessity for the requested DME, and that the InterQual criteria must be utilized for that purpose. The criteria required documentation that two standards were met: usage compliance and effectiveness after a trial usage period. Reports received by the reviewing nurse documented compliance of 0% and 2.2% during two usage periods – both far beneath the 70% guideline. The office note from the Claimant's physician does not document effectiveness of the requested DME, as required by the InterQual criteria. Testimony and evidence clearly showed that the clinical indications for the requested DME were not met. The Department was correct in its decision to deny the Claimant's request for a CPAP device.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for DME for the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of March, 2011.

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Todd Thornton
State Hearing Officer