



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 28, 2011

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----'s hearing held March 24, 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, including the requested bath chair and accessories. The medical documentation submitted for this review must not be more than six months old at the time the provider's prescription is written. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.4(5))

Information submitted at your hearing revealed that the clinical documentation submitted with the DME request was greater than six months old, and could not be considered in support of medical necessity.

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: 11-BOR-332

**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 28, 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 March 24, 2011 on a timely appeal, filed December 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's representative
-----, Claimant's witness
Virginia Evans, Department representative
Barb Reed, 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, §506.2.2; §506.3
- D-2 WVMI Medicaid DME/Medical Supplies Authorization Request Form; Letter from Wells Fargo Third Party Administrators, Inc., dated September 16, 2010; Product information; Adaptive Equipment Evaluation, dated January 20, 2010; Price quote
- D-3 Notices of Denial for Durable Medical Services (3), dated October 1, 2010

Claimant's exhibits:

- C-1 Snug Seat Flamingo Bath/Shower Chair product information
- C-2 Aquatec Bath Lift product information
- C-3 Snug Seat Manatee Bath Seat product information
- C-4 Rifton Blue Wave Bath Chair product information
- C-5 Minnow Bath Support product information

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-2) for Durable Medical Equipment (DME) for the Claimant – specifically, a bath chair with accessories – denial notices were issued on or about October 1, 2010, to the Claimant, his prescribing practitioner, and his servicing provider (Exhibit D-3). The notice explained the reason for denial as follows, in pertinent part:

Exceeds policy for most economical equipment to meet the member's basic health care needs [*sic*]

The request for E0240 Snug Seat Flamingo Bath Chair with accessories cannot be approved.

WV Medicaid policy 506.2.2 (12) states the provider “must provide the most economical items/services that meets the member's basic health care needs. Expensive items are not covered when less costly items/services are available”.

Submitting a request for a less costly item would allow for reconsideration of this request.

- 2) Barb Reed, RN, the reviewing nurse employed by West Virginia Medical Institute (WVMI), testified that there was no InterQual criteria for the requested DME – the criteria she uses to evaluate medical necessity – and, as a result, the request was forwarded to a physician for review, and denied at that level.
- 3) -----, the Claimant's mother, testified regarding trials of several types of bath chairs by the Claimant. -----accompanied her son, a nine-year old boy with a diagnosis of cerebral palsy, to an adaptive equipment evaluation completed on January 20, 2010. The report from this evaluation was submitted by the Department as part of the information (Exhibit D-2) they received to establish medical necessity. -----reviewed this document, as well as product summaries (Exhibits C-1, C-2, C-3, C-4, and C-5) of the bath chairs that were evaluated by the Claimant. -----testified regarding the advantages of the selected chair and the disadvantages of the chairs that were not chosen.
- 4) Ms. Evans testified that there is a policy requirement that documentation supporting the medical necessity of requested DME items must not be greater than six months old.
- 5) The request for DME is dated September 7, 2010, and the adaptive equipment evaluation is dated January 20, 2010 (Exhibit D-2).
- 6) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.4(5) states, in pertinent part:
 - (5) The prescriber's medical documentation submitted for review must not be more than six (6) months old at the time the prescription is written.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that a prior authorization review is required to determine medical necessity for the requested DME. The criteria required timely documentation to support a finding of medical necessity. The evaluation comparing different types of the requested DME was more than six months old at the time the prescribing physician submitted the DME request to the Department. This documentation cannot be considered, and without it, there is nothing to support medical necessity of the requested DME.

- 2) Although arguments were made regarding the relative ability of the assessed equipment to meet the dual requirements of basic healthcare needs and minimized cost, and the Department failed to include either the requirement of documentation timeliness in its denial notice or its presentation of applicable policy, this timeliness requirement was unmet, and must preclude approval of the requested DME. The Department was correct to deny prior authorization of the requested bath chair with accessories.

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.

Todd Thornton
State Hearing Officer