



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

Earl Ray Tomblin
Governor

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

April 6, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid authorization for inpatient 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. Some of these regulations state that prior authorization (PA) is required on all inpatient surgeries. Failure to obtain prior authorization will result in denial of the service. If the individual fails to meet the clinical indications criteria for the requested procedure during the nurse's review, the request is forwarded to a physician reviewer to determine medical appropriateness. (WVDHHR Medicaid Policy Manual, Chapter 510.)

The information presented at your hearing reveals that prior authorization of payment for inpatient surgery was not approved because the information your physician submitted does not meet the initial clinical indications criteria and there was insufficient documentation for the physician reviewer to determine medical appropriateness.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny Medicaid authorization for inpatient bariatric surgery.

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 Services

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

-----,
Claimant

v.

Action Number(s): 11-BOR-418

**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 April 6, 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 on March 17, 2011 on a timely appeal filed January 7, 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

-----, [REDACTED] Weight Loss Clinic, Claimant's Witness

Nora McQuain, RN, WV Bureau for Medical Services, Department's Representative
Jenny Craft, RN, West Virginia Medical Institute (WVMI), Department's Witness

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

The Hearing Officer placed all 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 Medicaid payment for inpatient bariatric surgery.

V. APPLICABLE POLICY:

WVDHHR Medicaid Policy Manual, Chapter 510

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV DHHR Medicaid Hospital Services Provider Manual, Section 510.4, Section 510.5.1 and Section 510, Attachment 1
- D-2 WVMi Medicaid Outpatient Services Authorization Request Form and additional documentation, dated October 18, 2010
- D-3 Notices of Denial from WV Medical Institute (WVMi) dated October 19, 2010.
- D-4 Notices of Redetermination Denial from WV Medical Institute, dated November 12, 2010.

VII. FINDINGS OF FACT:

- 1) Claimant's physician, -----, M.D., submitted a Medicaid Prior Authorization Request form to WVMi requesting authorization for gastric bypass surgery for Claimant on October 18, 2010. (Exhibit D-2.) On October 19, 2010, WVMi issued a denial to Claimant and her physician for this service. (Exhibit D-3.) Claimant's physician submitted a redetermination request and provided additional information; however, WVMi issued a denial on the redetermination on November 12, 2011. (Exhibit D-4.) The Claimant requested a hearing on this denial on January 7, 2011.
- 2) WV DHHR Medicaid Hospital Services Provider Manual Chapter 510.4 (Exhibit D-1) states in part:

Inpatient care is covered under the Medicaid Program when it is reasonable and medically necessary for the diagnosis or treatment of an illness or injury, or to improve the functioning of a malformed body part . . . Covered services are limited to those admissions which are certified by the Bureau's utilization management agency in accordance with the procedures and admission criteria utilized by the agency and approved by BMS.

WV DHHR Medicaid Hospital Services Provider Manual Chapter 510.5.1 states in part:

All inpatient admissions, with the exception of those related to labor and delivery, are subject to medical necessity review and certification of admission by the Bureau for Medical Services Utilization Management Agency.

WV DHHR Medicaid Hospital Services Provider Manual Chapter 510.5.2 states:

The following inpatient services are excluded from coverage by the WV Medicaid program:

- A. Admissions which are not authorized by the Bureau's utilization management contractor in accordance with Medicaid Program Policy in effect as of the date of service.
- B. Admissions other than emergency to out-of-state facilities for services which are available in-state or in border area facilities.
- C. Admissions for experimental or investigative procedures.
- D. Admissions and/or continued stays which are strictly for patient convenience and not related to the care and treatment of a patient.
- E. Inpatient psychiatric or medical rehabilitation facility admissions of individuals age 21 or over.
- F. Inpatient admission for services which could be performed in an outpatient setting.

WV DHHR Medicaid Hospital Services Provider Manual Chapter 510, Attachment 1 states in part:

The West Virginia Medicaid Program covers bariatric surgery procedures subject to the following conditions:

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). WVMI will perform medical necessity review and prior authorization based upon the following criteria:

- A. 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.
- B. 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.

- C. Must be between the ages of 18 and 65. (Special considerations apply if the individual is not in this age group.)
- D. The patient must have a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification.
- E. 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.
- F. 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.
- G. 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.
- H. Patient must be tobacco free for a minimum of six months prior to the request.
- I. 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.
- J. 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) According to the Notice of Denial for Outpatient Services (Exhibit D-3), the requested procedure was denied for the following reasons:

“There are inadequate documented clinical indications for the invasive procedure requested. There was no documentation of failure and the reasons 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 no documentation that the patient is incapacitated from obesity. There was no documentation that the patient has the ability to comply with the dietary behavioral and lifestyle changes required. There was no documentation of a cardiologist or pulmonologist evaluation that cleared the patient for this requested surgery.”

The requesting physician submitted a request for reconsideration of the denial. The WVMi sent a Denial of Reconsideration notice (Exhibit D-4) to Claimant and her physician, stating identical reasons for the denial.

- 4) Department's witness testified that WVMi did not receive a statement concerning Claimant's disability due to her obesity. She testified that the statements from Claimant's cardiologist and pulmonologist do not specifically clear her for the bariatric surgery. Claimant's witness testified that the cardiologist submitted his findings to Claimant's physician, who cleared Claimant for the surgery.
- 5) Claimant's witness, a preauthorization specialist from the requesting physician's office, testified that most, but not all, of the indications listed in item #3 above were met. She stated that the submission provided progress notes from office visits made during the last two years. She stated that the psychological assessment included a report from a registered dietician which indicates that Claimant has the ability to comply with the behavioral and lifestyle changes required after the surgery. She stated that the submission included reports from a cardiologist and a pulmonologist clearing Claimant for the surgery. Claimant's witness conceded that the submission did not include a statement of Claimant's disability as a result of her obesity.
- 6) In the Pre-Authorization Request and supporting documentation submitted by Claimant's physician (Exhibit D-2), clinical notes were included along with intakes to verify that at least two attempts at physician-supervised weight loss, of at least six months' duration, were made within two years of the procedure request. However, there was nothing to indicate the reason for failure of these attempts. Attached to the psychological evaluation was an evaluation from a clinical dietician. On the summary section of the evaluation, the following is noted:

This patient has attempted several weight loss programs/ medications/ diets with little to no weight loss maintenance followed by weight gain . . . however the patient appears to be well informed and motivated to improve her health for the long-term . . . Stressed to the patient this date that although additional weight loss is encouraged she must maintain her current weight documented in the office visit today. Patient voiced their [sic] understanding of this . . . the patient does not appear to exhibit any dietary habits that may interfere with her ability to follow the post-operative [sic] nutrition requirements for weight loss surgery.

The Pre-Authorization Request included statements from both a cardiologist and a pulmonologist indicating that Claimant had been evaluated by both of these specialists. However, neither of these reports included a summary or conclusion section which stated that Claimant was cleared for the surgery. There was no statement concerning Claimant's disability due to her obesity. Claimant testified during the hearing that she submitted such a statement along with her hearing request to the WV Bureau of Medical Services.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires pre-authorization of Medicaid coverage for inpatient procedures such as bariatric surgery. The claimant's physician requested pre-authorization for inpatient bariatric surgery on October 18, 2010. This request was denied. Claimant's physician requested a reconsideration, and this also was denied
- 2) Among the requirements that must be established in order for bariatric surgery to be approved are documented failure of two attempts at physician supervised weight loss of at least six months' duration and the reason for the failure. Claimant's preauthorization request did include two years of clinical documentation, but there were no indications as to why the attempts failed. Another requirement is a statement of Claimant's disability due to obesity. No such statement was included in the submission. A third requirement is a report from a cardiologist or a pulmonologist that 'clears' or approves Claimant for the procedure. The Pre-Authorization submission includes evaluations from both a cardiologist and a pulmonologist, but neither evaluation directly states that Claimant is 'cleared' for the surgery.
- 3) The requirement that a request for bariatric surgery must include a statement of Claimant's ability to comply with the dietary behavioral and lifestyle changes due to obesity was met. The report by a registered dietician attached to the psychological assessment indicated that the dietician believed Claimant to be well-informed and motivated to make the necessary behavioral and lifestyle changes.
- 6) Although the Pre-Authorization submission did meet the requirement that it document the ability of Claimant to make the dietary behavioral and lifestyle changes required by the surgery, the other three requirements listed in item #2 above were not met. The medical evidence submitted by Claimant's physician failed to meet prior authorization criteria; therefore, the Department acted correctly in denying Claimant's request of payment for inpatient bariatric surgery.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny Claimant's physician's request for inpatient bariatric surgery.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of April, 2011.

**Stephen M. Baisden
State Hearing Officer**