



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

June 14, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 14, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization for an E0730 TENS Unit.

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 for DME (Durable Medical Equipment) services and items requiring prior authorization review for medical necessity by WVM (West Virginia Medical Institute), 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, and any other relevant information. The InterQual General Durable Medical Equipment Criteria, will be utilized by WVM for determining medical necessity for DME items – including Transcutaneous Electrical Nerve Stimulation (TENS) (E0720, E0730). (WVDHHR Medicaid Policy Manual, Chapter 506, Durable Medical Equipment Manual, Section 506.5)

The information presented at your hearing reveals that the information provided by the prescribing practitioner was not sufficient for prior approval of the requested E0730 TENS Unit.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for prior authorization for an E0730 TENS Unit.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Stacy Broce, BMS

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1181

**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 for -----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was convened on June 14, 2012.

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
-----, Claimant's son and representative
-----, Claimant's witness
-----, Claimant's witness

Virginia Evans, Department representative
Regina Adkins, Department witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to deny prior authorization (PA) for a E0730 TENS Unit.

V. APPLICABLE POLICY:

Chapter 506, Durable Medical Equipment/Medical Supply Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Excerpts from Chapter 506, Durable Medical Equipment/Medical Supply Manual
- D-2 InterQual Durable Medical Criteria – T.E.N.S.
- D-3 Information received from -----, MD and [REDACTED] Medical
- D-4 Notice of Denial Determination from WVMJ

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On or about April 5, 2012, the Claimant and her physician were notified (D-4) by the Department via a NOTICE OF DENIAL FOR DURABLE MEDICAL SERVICES (DME) that her request for prior authorization (PA) for Medicaid payment for an E0730 TENS Unit was denied. The denial letter included the following pertinent information:

Reason for Denial:

Documentation provided does not indicate medical necessity – specifically:

The request for E0730 TENS (Transcutaneous Electrical Nerve Stimulation) cannot be approved.

WV Medicaid/InterQual criteria requires information regarding if the patient's pain has been ≥ 3 months, what specific types of medications have been tried and failed to alleviate the specific pain (NSAID's) [sic], what non-pharmacological treatment has been tried and failed to alleviate the specific pain (ex: PT, Chiro) [physical therapy, chiropractic], and justification for 4 lead unit (ex: failed 2 lead treatment, treatment across a joint, large area of pain, adipose tissue interferes with condition, or treating two separate areas with two lead simultaneously). This information has not been provided, therefore, this equipment cannot be approved.

- 2) The Department's witness, Regina Adkins, is a Registered Nurse with West Virginia Medical Institute (WVMI), the company contracted by the Department to make the decision as to whether to approve a request for prior authorization for durable medical equipment. She stated that the Claimant's physician, -----, M.D., provided insufficient information (D-3) for consideration and that both she and WVMI's physician reviewer were unable to approve the Claimant's request for prior authorization of an E0730 TENS Unit. Specifically, she stated that the physician did not provide information regarding any failed trials of Non-Steroidal Anti-Inflammatory Drug (NSAID) treatments; information regarding failed pain relief management such as physical therapy or chiropractic treatment; or information regarding why a four (4) lead TENS Unit was needed instead of a two (2) lead Unit.
- 3) The Claimant's representative, -----, is her son and Medical Power-of-Attorney (POA). He stated that Dr. ----- treats the Claimant for one specific problem and that her regular physician has all the other information regarding previously tried treatment. He offered this in explanation as to why Dr. ----- did not submit the information. He stated that the Claimant has chronic uncontrolled pain and that the physician recommended this type of treatment for her because she is not a candidate for surgery.
- 4) The West Virginia Department of Health and Human Resources (WVDHHR) Durable Medical Equipment/Medical Supply Manual, Section 506 states in pertinent part:

For DME services and items requiring prior authorization review for medical necessity by WVMI (West Virginia Medical Institute), 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 and any other relevant information.

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: Transcutaneous Electrical Nerve Stimulation (TENS) (E0720, E0730).

VIII. CONCLUSIONS OF LAW:

- 1) WVDHHR Durable Medical Equipment/Medical Supplies Manual states that prior authorization is required for Medicaid payment of an E0730 TENS Unit. 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, and any other relevant information. This includes information regarding failed NSAID treatment, physical therapy and chiropractic trials, and an explanation as to why a four (4) lead TENS Unit is needed instead of a two (2) lead Unit.
- 2) The evidence shows that the prescribing practitioner did not supply adequate clinical documentation to allow WVMI to approve prior authorization for an E0730 TENS Unit.
- 3) Based on the above, the Department was correct in its decision to deny the Claimant's request for prior authorization of an E0730 TENS Unit.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny prior authorization of payment for an E0730 TENS Unit.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th day of June 2012.

**Cheryl Henson
State Hearing Officer**