State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

June 29, 2012

Dear ------:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 27, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization for Medicaid payment of 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.

Medicaid regulations provide that 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. West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon the criteria provided in Attachment 1 of Chapter 510. (West Virginia Bureau for Medical Services Provider Manual, Chapter 510: Hospital Services, §510.5.1 and Attachment 1).

Information submitted at your hearing revealed that clinical justification for bariatric surgery was not provided. Because medical necessity could not be established, prior authorization was correctly denied.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for prior authorization/Medicaid payment of bariatric surgery.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Nora McQuain, RN, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: **------,**

Claimant,

v. **ACTION NO.: 12-BOR-1300**

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 June 28, 2012, 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 telephonically on June 27, 2012, on a timely appeal filed April 16, 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 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
------, Claimant's spouse/witness
------, RN, Claimant's friend/witness
Nora McQuain, RN, BMS, Department representative
Cynthia Engle, RN, BMS, Department representative
Jenny Craft, RN, WVMI, Department witness

Presiding at the Hearing was Thomas E. Arnett, 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 in its decision to deny the Claimant's request for prior authorization of Medicaid payment for bariatric surgery.

V. APPLICABLE POLICY:

West Virginia Bureau for Medical Services Provider Manual, Chapter 510: Hospital Services, §510.5.1; and Attachment 1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Documentation received from UPMC (pages 1-51)
D-2 Notice of Denial Determination (pages 52-55)
D-3 Not Entered
D-4 West Virginia Bureau for Medical Services Provider Manual, Chapter 510: Hospital Services, §510.5.1; and Attachment 1

VII. FINDINGS OF FACT:

1) In response to the Claimant's request for reconsideration - stemming from an initial denial dated April 2, 2012 - the Claimant was notified via a Notice of Appeal/Reconsideration Decision (D-2), on or about April 11, 2012, that his reconsideration request for prior authorization (PA) of Medicaid payment for bariatric surgery was denied. This notice states, in pertinent part:

> Upon physician review of the additional clinical information provided via the reconsideration process for bariatric surgery, it was noted that there are inadequate documented clinical indications for the invasive procedure requested. The documentation provided did not support the medical necessity of this procedure due to the fact that WV Medicaid criteria was [sic] not met. There was no documentation of failure and the reason for the failure of the 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 also no documentation that the patient has the ability to comply with the dietary behavioral and lifestyle changes required. There was no documentation of body mass index over 40 for the last five years. There was not documentation of a psychological evaluation in the past six months from a psychologist or psychiatrist independent of any association with the bariatric surgery facility.

The notice goes on to state – "At this time the initial denial cannot be overturned."

2) The Department, represented by Nora McQuain, RN, Bureau for Medical Services (BMS), introduced policy and called its witness, Jenny Craft, RN, West Virginia Medical Institute, to review the medical findings relevant to the Claimant denied request for PA. RN Craft testified that when a nurse reviewer at WVMI denies a PA request, it is automatically forwarded for physician review – only a physician can deny a request for PA. If information for reconsideration is received within 60 days of the initial denial, and a nurse reviewer again denies PA, a different physician reviewer who has not been previously involved with the case must review medical necessity before the request can be denied. RN Craft testified that this case has undergone medical necessity review by two different physicians - neither was able to approve prior authorization.

3) The Claimant and his witnesses proffered testimony to indicate bariatric surgery would provide the Claimant significant health and quality of life benefits. The Claimant reported that the process of obtaining PA has been very frustrating, as this process began for him in June 2010, and he believes that he has demonstrated medical necessity.

4) Specific to the reasons outlined in the denial notice, the evidence reveals the following findings:

- In Exhibit D-1, page 46, ------, a registered dietician noted – "Pt unprepared, stated he did not receive diet book or assessment. Went over quiz and book with pt. Pt did not bring food log." According to testimony proffered by RN Craft, this indicates the Claimant will be unable to comply with the dietary, behavioral and lifestyle changes that accompany bariatric surgery. The Claimant stated that when this comment was made by the dietician, he immediately went out and got the information requested. He stated that he just did not have the requested information with him when he arrived. The discretionary judgment of an individual's ability to comply with post-operative requirements should incorporate several instances of non-compliance, as opposed to a single incident that could have been an anomaly. The Department's evidence fails to demonstrate the Claimant is unable to comply with the dietary, behavioral and lifestyle changes required.

- Exhibit D-1, Page 47, is the psychological evaluation completed on the Claimant. This document was completed by the UPMC Health System - not a provider independent of any association with the bariatric surgery facility - and it was completed in November 2010 (not within the last 6 months, as required by policy). The Claimant noted that the psychological evaluation was outdated only because it was completed when he began the process of pursuing PA, and further argued that while the psychological evaluation was completed by a UPMC affiliate, they are independent from the bariatric surgery unit. The Claimant purported that he has had an independent psychological evaluation completed since the reconsideration denial, but acknowledged it was not submitted with the PA reconsideration request. The facts demonstrate that the psychological evaluation was not completed by a psychologist, or psychiatrist, who was independent of any association with the bariatric surgery facility and it was not completed within 6 months of the current PA request.

- Policy requires that the obesity has incapacitated the patient from normal activity, or rendered the individual disabled. Notation found on page 38 indicates that exercise goals achieved in January 2012 – Still doing 1 mile a day [walking], 5 days a week. The Claimant refuted this documentation by stating that this was just a goal and that he was not able to walk a full mile. The Claimant reported that while he does not require a walker or wheelchair to ambulate, he can only engage in limited physical activity due to discomfort and joint pain. The Claimant, according to his testimony, has been found disabled; however, this finding is related to his ability to perform gainful employment. Furthermore, there is no evidence to indicate that the Claimant's medical condition prevents him from performing activities of daily living without considerable taxing effort, and he is able to ambulate without an assistive device. Based on the evidence, the Department was correct to determine the Claimant does not meet this medical necessity requirement.

- Pages 37 to 41 in Exhibit D-1 include documentation generated by ------, M.D., that verifies the Claimant was participating in a physician supervised weight loss management program for 5 months. These documents, however, do not include the reason for failure or demonstrate 2 failed attempts of physician supervised weight loss lasting six months or longer with the last two years. The Claimant argued that he had tried several times to lose weight through various diet and exercise programs; however, there is simply no documentation to refute the Department's evidence.

- Exhibit D-1 includes verification by ------, M.D., that the Claimant's Body Mass Index (BMI) has been greater than 40, however, it has only been documented for 3 years, and policy requires that it be documented for the past 5 years. The Claimant indicated that he has only been seeing ------ for the last 3 years and that is why documentation verifying his BMI was greater than 40 for the last 5 years is unavailable. However, there are no provisions in policy that allow exceptions to this medical necessity requirement.

5) Department of Health and Human Resources, Bureau for Medical Services' Provider Manual, Chapter 510, §510.5.1 (Hospital Services) states, in pertinent part:

> **510.5.1 Prior Authorization Requirements For Inpatient Services**
>
> 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.

6) Department of Health and Human Resources, Bureau for Medical Services' Provider Manual, Chapter 510, (Hospital Services), Attachment 1, includes detailed criteria the Department's utilization management contractor, WVMI, must use to evaluate medical necessity for bariatric surgery requests. This policy states, in pertinent part:

> The West Virginia Medical Institute (WVMI) will perform medical necessity review and prior authorization based upon the following criteria:

1. 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.

2. 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.

3. Must be between the ages of 18 and 65. (Special considerations apply if the individual is not in this age group. If the individual is below the age of 18, submitted documentation must substantiate completion of bone growth.)

4. The patient must have a documented diagnosis of diabetes that is being actively treated with oral agents, insulin, or diet modification. The rationale for this criteria is taken from the Swedish Obese Subjects (SOS) study, *International Journal of Obesity and Related Metabolic Disorders*, May, 2001.

5. 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.

6. 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.

7. 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.

8. Patient must be tobacco free for a minimum of six months prior to the request.

9. 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.

10. 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.

VIII. CONCLUSIONS OF LAW:

1) Medicaid Policy provides that 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. Chapter 510, Attachment 1, includes detailed criteria the Department's Utilization Management Agency, WVMI, must use to evaluate medical necessity for bariatric surgery requests. There are ten (10) specific medical necessity criteria that must be met before prior authorization is granted – failure to meet any of the listed criteria results in the prior authorization request being denied.

2) Information submitted at the hearing reveals that the Department denied prior authorization because the Claimant failed to meet medical necessity criteria in 5 of the 10 specific criteria. A review of the evidence submitted at the hearing confirms that the Claimant failed to meet medical necessity in no fewer than four (4) of the required areas (The Department's evidence failed to demonstrate the Claimant is unable to comply with the dietary, behavioral and lifestyle changes required). Because all of the criteria must be met in order to establish medical necessity for prior authorization of Medicaid payment for bariatric surgery, the Department was correct in its decision to deny the Claimant's prior authorization request.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Claimant's request for prior authorization/Medicaid payment of bariatric surgery.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of June, 2012.

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Thomas E. Arnett
State Hearing Officer