STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

September 11, 2012

Dear ------:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 6, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny Medicaid prior authorization for durable medical equipment.

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 prior authorization on durable medical equipment such as the requested noninvasive airway assist device, specifically a continuous positive airway pressure (CPAP) device. The InterQual General Durable Medical Equipment Criteria is used to determine medical necessity for noninvasive airway assist devices. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5)

Information submitted at your hearing revealed that there was no dispute of the fact that the Department standard of adherence to prescribed treatment, required by InterQual criteria for the requested device, was not met.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny prior authorization for durable medical equipment.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Jennifer Dingess, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

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

Claimant,

v. **ACTION NO.: 12-BOR-1628**

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 the Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was convened on September 6, 2012, on a timely appeal filed May 22, 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
Virginia Evans, Department representative
Regina Adkins, 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 prior authorization for durable medical equipment to the Claimant.

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 2011 Durable Medical Equipment Criteria – Noninvasive Airway Assist Devices: General
D-3 Information from ------, MD, and ------ Home Medical Equipment
D-4 Notice of denial dated May 11, 2012

VII. FINDINGS OF FACT:

1) Virginia Evans, representative for the West Virginia Department of Health and Human Resources' (Department) Bureau for Medical Services (BMS), testified that, in response to a request (Exhibit D-3) for durable medical equipment for the Claimant, denial notices were issued on or about May 11, 2012, to the Claimant, his prescribing practitioner, and the servicing provider (Exhibit D-4). The notice explained the reason for denial as follows, in pertinent part:

> Documentation provided does not indicate medical necessity – specifically:
>
> The request for recertification of E0601 CPAP cannot be approved.
> WV Medicaid/InterQual criteria for ongoing CPAP requires documentation of adherence to prescribed treatment >= 3 months of use and improvement of symptoms documented by physician be submitted for review.
> The compliance report submitted for review indicated the patient's CPAP usage was less than 4 hours per night for 80% of the monitored time span, and 30% of nights the patient did not use the CPAP at all. Also the average usage for all days of the compliant summary was only 2 hrs 26 minutes and adherence to prescribed CPAP treatment is not documented.
> Therefore, WV Medicaid/InterQual criteria for ongoing CPAP authorization has not been met.

2) Ms. Evans presented the policy (Exhibit D-1) applicable to the Department's position. The West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5, states in pertinent part:

> 506.5 PRIOR AUTHORIZATION
>
> 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.

This section additionally notes that InterQual criteria (Exhibit D-2) must be used in the determination of medical necessity for the Claimant's requested type of equipment (emphasis added):

> 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:
>
> • Adaptive Strollers (E1232, E1236, E0950, E0966, E0978, E1029, E1030)
> • Aerosol Delivery Devices (E0565, E0570)
> • Augmentative and Alternative Communication Devices (E2508, E2510) - Refer
> to Speech/Audiology Manual for additional information
> • Bone Growth Stimulators, Noninvasive (E0747, E0748, E0760)
> • Continuous Passive Motion Device (CPM), Knee (E0935)
> • Home Oxygen Therapy (E0424, E0431, E0434, E0439).
> Effective March 15, 2006, any new oxygen system requested for medical necessity
> must follow InterQual criteria to include documentation of initial lab results. PA
> recertification review is required at the end of the prescription period specified or
> within one (1) year whichever comes first. Date of lab results must be within 6
> months of the oxygen request.
> • Hospital Beds (E0250, E0255, E0260, E0303, E0304, E0910, E0911, E0912)
> • Insulin Pump, Ambulatory (E0784)
> • Lymphedema Compression Devices (E0650, E0651, E0652)
> • Manual Wheelchairs (K0001, K0002, K0003, K0004, K0005 K0006, K0007)
> • Manual Wheelchairs, Recliner/Tilt (K0001 + E1226, E1161)
> • Negative Pressure Wound Therapy (NPWT) Pump (E2404, A6550)
> • **Noninvasive Airway Assist Devices (E0470, E0471, E0472, E0601)**

3) Regina Adkins, a registered nurse employed by West Virginia Medical Institute (WVMI), testified that she reviewed the Claimant's request (Exhibit D-3) for a CPAP device – coded by the Department as E0601, or a type of noninvasive airway assist device – and accompanying clinical documentation against the appropriate InterQual criteria (Exhibit D-2). The criteria include *121 – Adherence to prescribed treatment ≥ 3 mos of use*. Ms. Adkins testified that the Claimant's clinical documentation included a report of compliance statistics compiled during a trial period of CPAP usage by the Claimant. Over a thirty day period of usage, the Claimant was noted as using the device 70% of the nights, and 20% of the nights for greater than four hours. Average duration of usage for the nights the Claimant used the device was three hours and twenty-eight minutes. Average duration of usage for the full thirty-day period was two hours and twenty-six minutes. Ms. Adkins testified that this did not meet the required adherence standard of at least four hours of use for at least 70% of the nights during the trial period.

4) The Claimant did not dispute the compliance statistics compiled during his trial period of CPAP usage, but testified that the amount of time he used the device was sufficient for him to feel rested.

VIII. CONCLUSION OF LAW:

Policy requires a medical necessity determination utilizing InterQual criteria for the Claimant's requested durable medical equipment. The InterQual criteria require adherence the prescribed treatment, and undisputed evidence demonstrated the Claimant failed to meet this adherence standard. The Department was correct in its decision to deny prior authorization for the Claimant's requested CPAP device.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for durable medical equipment 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 September, 2012.

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Todd Thornton
State Hearing Officer