



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

February 14, 2012

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 13, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization for durable medical equipment – specifically, a speech generating device.

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 for the requested durable medical equipment require a prior authorization review to determine medical necessity. InterQual General Durable Medical Equipment Criteria is to be used in the medical necessity determination, and these criteria include a requirement for a trial with the selected device for at least four weeks. (West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5) Additionally, the documentation submitted for review by the prescriber must not be more than six months old at the time the 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 documentation submitted for your review was not current and did not include the results of an equipment trial lasting at least four weeks. The Department issued a flawed and incomplete denial notification that did not include these requirements; however, a determination of medical necessity could not have been made without the current and complete information required by policy.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny prior authorization for a speech generating device.

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 AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2108

**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 February 14, 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 on January 13, 2012, on a timely appeal, filed October 3, 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 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 witness
-----, Claimant's representative
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness
Virginia Evans, Department's representative
Shirley Starkey, Department's witness
Pat Woods, Department's 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, §§506.3 – 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, §§506.3 – 506.5
- D-2 InterQual 2011 Durable Medical Equipment Criteria – Augmentative and Alternative Communication Devices: General
- D-3 Information received from [REDACTED] MD, and [REDACTED] Company
- D-4 Denial notices dated September 12, 2011

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 services for the Claimant, denial notices were issued on or about September 12, 2011, to the Claimant, his prescribing practitioner, and the servicing provider (Exhibit D-4). This notice, titled "Notice of Denial for Durable Medical Services," states, in pertinent part (emphasis added):

Your request for speech therapy services cannot be authorized due to the lack of information required for review.

After review of the information provided for the request of E2510, E2512, and E2599, the consultant needs the following information:

1. Provider is asked to clarify the pro's and con's of school's chosen system and why the child would need something other.
- 2) Testimony on the Claimant's behalf included that from his mother, -----, and three expert witnesses – -----, -----, and ----- – speech therapists that have worked directly with the Claimant and have experience specific to augmentative communication. Expert testimony noted the Claimant's diagnosis of cerebral palsy, his fine motor skill issues, and, as a result, his need for a speech generating device that can be operating using "head pointing" – an option not available in the Claimant's school-provided equipment but included in the device proposed for the Claimant and denied by the Department. In her testimony regarding the school-provided equipment for her son, the Claimant's mother testified that "...it was something that they found back in a room that nobody was using at the time and it was the best they had to use with [REDACTED]"
- 3) Shirley Starkey, the Department's speech consultant, testified that she is a licensed speech language pathologist. She testified that she uses a comprehensive augmentative and alternative communication (AAC) evaluation, the InterQual criteria, the Bureau for Medical Services Provider Manual, and nationally accredited research as part of her review for medical necessity for requested speech generated devices, such as the device requested for the Claimant. She testified that in her review of the AAC evaluation (Exhibit D-3, pp. 7 – 18) she determined that there was not enough information and sent the Claimant a "note" (Exhibit D-4) to request the "pros and cons" of the system the Claimant uses in school. She testified that when she did not receive additional information, the Claimant's request was denied.
- 4) The AAC evaluation (Exhibit D-3, p. 9) notes the Claimant's decreased fine motor skills, his success using a device that allows for "head pointing," and his inability to successfully target and activate the device he uses at school because it does not allow for "head pointing."

- 5) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.3, provides the prior authorization requirement for a determination of medical necessity as follows, in pertinent part:

Durable Medical Equipment/medical supplies and other related services/items provided through DME are considered for reimbursement by WV Medicaid when requested by a prescribing practitioner and determined medically necessary to meet the basic health care needs of the member.

- 6) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.4(5), describes the requirement for current documentation as follows, 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.

Ms. Evans testified that the documentation submitted by the Claimant for review did not meet this requirement. The prior authorization request form (Exhibit D-3, p. 6) lists a request date of April 22, 2011 and is signed by the prescribing practitioner on April 20, 2011. The AAC evaluation (Exhibit D-3, pp. 7 – 18) lists an evaluation date of January 28, 2010.

- 7) Policy from the West Virginia Bureau for Medical Services Provider Manual, Chapter 506: DME/Medical Supplies, §506.5, states, "...InterQual General Durable Medical Equipment Criteria, will be utilized by WVMI for determining medical necessity for DME items. These items include the following..." and includes augmentative and alternative communication devices in the subsequent list. The document outlining the InterQual criteria (Exhibit D-2) was provided by the Department, and these criteria required the following condition, regardless of the equipment/indication set selected: "Trial \geq 4 wks of a selected device that has been shown to meet communication needs." Testimony on the Claimant's behalf confirmed that although the Claimant has been using the proposed device on a trial basis, he had not completed a trial of at least four weeks at the time of the Department's denial.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that prior authorization is required for the proposed speech generating device, and that current and complete documentation must be provided for the Department to make a determination of medical necessity. The Department's speech consultant testified that she did not have enough information to make this determination, and the Claimant's request was denied. It should be noted that what Ms. Starkey characterized as a "note" does not match its intended use – it is intended to be a denial letter, clearly stating that the requested device was denied and offering a section for the denial reason; it does not suggest an ongoing eligibility determination process, but instead one that has been finalized. It is unsurprising that this confusing method of requesting additional information went unheeded. The denial reason offered simply confuses the issue further, asking for clarification of what the Claimant requires that is not satisfied by use of the school-provided device. Since the documentation and testimony clearly identified the advantage of the proposed device with "head pointing" over the school-provided device without this option, this basis for denial is incorrect.
- 2) Policy requires the documentation submitted for review to be current to allow for a correct determination of medical necessity. The age of the AAC evaluation submitted for review exceeds the six month limit set by policy. In light of this consideration, the requested equipment could not have been determined medically necessary for the Claimant.
- 3) Policy further requires the utilization of InterQual criteria, which, for the proposed equipment always requires a device trial of at least four weeks. A device trial had not been completed at the time of the prior authorization request. In light of this consideration, the requested equipment could not have been determined medically necessary for the Claimant.
- 4) The Department issued a flawed and incomplete denial notification to the Claimant, omitting the only policy requirements that actually preclude approval for the requested device; however, it is not possible for the Board of Review to make a favorable ruling for the Claimant when these two policy requirements are unmet. The Department's denial of prior authorization for a speech generating device – based on incomplete and outdated documentation – is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for durable medical equipment – specifically, a speech generating device – 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 February, 2012.

Todd Thornton
State Hearing Officer