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

May 22, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 28, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization for inpatient acute care services, specifically 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 require a review of medical necessity for all inpatient admissions with the exception of those related to labor and delivery. For the requested bariatric surgery, the criteria on which medical necessity review and prior authorization is based includes documentation of: 1) a Body Mass Index ("BMI") greater than 40 for the past five years; 2) incapacity or disability from normal activity as a result of obesity; 3) two failed attempts – including descriptions of why the attempts failed – at physician-supervised weight loss lasting at least six months and occurring within the last two years; and 4) a demonstrated ability to comply with dietary, behavioral and lifestyle changes necessary to facilitate and maintain weight loss (West Virginia Bureau for Medical Services Provider Manual, Chapter 510: Hospital Services, §510.5.1; Attachment 1).

Information submitted at your hearing revealed that the necessary information for clinical justification for the requested surgery was not provided, and prior authorization could not be given.

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

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Alva Page, III, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

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

Claimant,

v. **ACTION NO.: 12-BOR-550**

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 May 22, 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 March 28, 2012, on a timely appeal filed January 19, 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 witness
Nora McQuain, Department representative
Jenny Craft, 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 inpatient acute care services, specifically bariatric surgery, for the Claimant.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Bureau for Medical Services Provider Manual, Chapter 510: Hospital Services, §510.5.1; Attachment 1
D-2 Information received from ------, MD
D-3 Denial notices dated October 25, 2011
D-4 Reconsideration denial notices dated February 6, 2012

VII. FINDINGS OF FACT:

1) Jenny Craft, a reviewing nurse employed by West Virginia Medical Institute ("WVMI") – the Department's utilization management contractor – testified that, in response to a request for inpatient surgery for the Claimant, she reviewed clinical documentation (Exhibit D-2) in support of the request but was unable to approve it. The Department issued denial notices on or about October 25, 2011, to the Claimant, her prescribing practitioner, and her servicing provider (Exhibit D-3). This notice explained the reasons for denial as follows, in pertinent part:

> Bariatric Surgery – Documentation provided does not indicate medical necessity – specifically:
>
> This is in reference to your request for bariatric surgery. 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 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 [*sic*] behavioral and lifestyle changes required. There was no documentation of BMI of over 40 for the last five years.

Reconsideration denial notices (Exhibit D-4) were sent on or about February 6, 2012, advising the Claimant that her reconsideration request was not processed because it was not timely, as it was not received within 60 days of the initial date of denial.

2) Nora McQuain, representative for the Department's Bureau for Medical Services, testified that the applicable policy for the Department's decision to deny the requested surgery is found in the Bureau for Medical Services' Provider Manual, Chapter 510, §510.5.1 (Exhibit D-1). This policy 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.

3) This policy (Exhibit D-1) includes an attachment detailing the criteria the Department's utilization management contractor – West Virginia Medical Institute (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…
>
> 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…
>
> 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.

4) Ms. Craft testified that she reviewed the documentation submitted (Exhibit D-2) on the Claimant's behalf to establish medical necessity for the requested surgery. She testified that, based on her review, she could not approve the procedure. She testified that reviewing nurses do not deny procedures, so she submitted the request for further review by a physician, and that the request was denied after physician review.

5) Testimony on the Claimant's behalf referred to documentation submitted (Exhibit D-2, pp. 15 – 27 of 95, and pp. 29 – 31 of 95) listing historical height and weight values for the Claimant, for purposes of meeting the requirements for physician-supervised weight loss attempts and BMI history. Within the five year period preceding the October 2011 request from the Claimant, there were no monthly values provided for 2006, one from 2007, one from 2008, one from 2009, nine from 2010, and four from 2011. Ms. Craft noted that this was not regular, monthly documentation of height and weight.

Within the two year period preceding the Claimant's request, there were eight consecutive monthly reports of height and weight (August 2010 through March 2011). Ms. Craft noted that these reports were signed by a nurse practitioner and do not appear to have been weight loss attempts that were physician-supervised; additionally, she found no descriptions of reasons for failure on two separate attempts.

The Centers for Disease Control and Prevention provides an online formula for the calculation of BMI using English measurement units, as follows:

> Formula: weight (lb) / [height (in)]^2 x 703
>
> Calculate BMI by dividing weight in pounds (lbs) by height in inches (in) squared and multiplying by a conversion factor of 703.

(About BMI for Adults. (2011). Retrieved May 21, 2012, from http://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/index.html)

Using this formula, there was no period documented in which the Claimant's BMI did not exceed 40.

6) Regarding incapacitation from regular daily activities as a result of obesity, the Claimant testified that she has a cane and a walker, and that she alternates between them. A letter from --------, CFNP, states, in pertinent part:

> Arthritis in her legs and low back interfere somewhat with her activities of daily living, interfering with her ability to sit, stand or walk for excessively prolonged periods of time. However, I did recommend walking as part of her exercise treatment, and she was able to walk indoors while shopping over the course of the winter.

7) Regarding the Claimant's ability to comply with dietary, behavioral and lifestyle changes, the Claimant testified that she saw a psychologist and knows what she needs to do to comply with the necessary changes. The psychological evaluation (Exhibit D-2, pp. 33 – 38 of 95) from ---------, MA, states, in pertinent part:

> Information about her adherence to medical regimens was not available today; however, ----- did report a successful weight loss of 30 pounds through exercise many years ago.
>
> ----- does not appear to have any significant mental health issues which would exclude her from consideration for surgery.

VIII. CONCLUSIONS OF LAW:

1) Policy provides that prior authorization is required for the proposed surgery, and that documentation must be provided for prior authorization approval. The Department identified four unmet areas required by specific policy instructions. The first area that the Department asserted was unmet was the requirement for documentation of a five-year history of excessive BMI. Policy does not explicitly require monthly documentation, and the Claimant's height and weight values from the last five years indicate a BMI of greater than 40. The Claimant has met this requirement criterion.

2) The second area that the Department asserted as unmet is the requirement to document that the Claimant's obesity has incapacitated her from normal activity, including the necessity of a walker or wheelchair to leave her residence. The Claimant testified that she sometimes uses a walker and sometimes uses a cane to walk. Documentation on the Claimant's behalf (not from a physician) states that the Claimant's obesity-related symptoms "interfere somewhat" with her activities of daily living – characterization that falls short of the "considerable taxing effort" in policy. The Department is correct that this criterion is unmet.

3) The third area that the Department asserted as unmet is the requirement to document failure at two attempts of physician-supervised weight loss, each lasting at least six months and occurring in the last two years and including descriptions of the reasons for failure. Again, policy does not explicitly require that the physician supervision occur at a monthly interval; however, the documentation does not appear to have been supervised by a physician and there are no reasons provided for the failure of the attempts. The Department is correct that this criterion is unmet.

4) The final area that the Department asserted as unmet is the requirement to demonstrate an ability to comply with the dietary, behavioral and lifestyle changes necessary to facilitate and maintain weight loss after the procedure. The Claimant referred to her psychological evaluation as documentation. This evaluation, however, stated that "[i]nformation about her adherence to medical regimens was not available." The Department is correct that this criterion is unmet.

5) With a favorable finding in only one of the four criteria on which the Department based its prior authorization denial, the Claimant has failed to establish medical necessity for the requested surgery. The Department was correct to deny prior authorization for this request.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for inpatient acute care services, specifically bariatric surgery, 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 May, 2012.

_____

Todd Thornton
State Hearing Officer