



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

May 10, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny prior authorization of a BiPAP machine.

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 the Medicaid program is based on current policy and regulations. These regulations provide that for durable medical equipment 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 (Durable Medical Equipment/Medical Supply Manual § 506.5).

The information submitted at your hearing failed to establish medical necessity of a BiPAP machine.

It is the decision of the State Hearing Officer to **Uphold** the action of the Department to deny prior authorization of a BiPAP machine.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Medical Services

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-795**

**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 Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This Fair Hearing was convened on a timely appeal, filed February 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 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, Bureau of Medical Services  
Barbara Reed, West Virginia Medical Institute

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

All participants testified by phone.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's decision to deny prior authorization of a BiPAP machine for Claimant was correct.

**V. APPLICABLE POLICY:**

Durable Medical Equipment/Medical Supply Manual § 506.5

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Durable Medical Equipment/Medical Supply Manual § 506.5
- D-2 InterQual Criteria – Durable Medical Equipment: Noninvasive Airway Assist Devices
- D-3 Prior Authorization Request Form dated December 7, 2011 and Medical Records
- D-4 Denial Notification Letters dated December 8, 2011

**Claimants' Exhibits:**

- C-1 Medical Records

**VII. FINDINGS OF FACT:**

- 1) A request for prior authorization for a BiPAP machine was submitted to the West Virginia Medical Institute (WVMI) on December 7, 2011 by -----, MD (D-3). A denial letter was issued by the Department which reads in pertinent part (D-4):

The request for recertification of E0470 BiPAP cannot be approved, as medical necessity is not established.

WV Medicaid/InterQual criteria for ongoing BiPAP requires documentation of adherence to prescribed treatment. Adherence refers to no less than 4 hours use of BiPAP per night on 70% of a consecutive 30 to 90 day time period.

The compliance report submitted for review indicated the patient's BiPAP usage was an average of less than 4 hrs per day, therefore, adherence to prescribed BiPAP treatment is not documented, and criteria not met.

- 2) Barbara Reed, nurse reviewer with WVMI testified to the denial of the BiPAP machine for Claimant. Ms. Reed stated the request received from Claimant's physician was a recertification request for an additional seven (7) months payment for a BiPAP machine, Claimant having already received three (3) months usage of the BiPAP machine trial period. Ms. Reed stated InterQual criteria, which is used to determine medical necessity of the BiPAP machine, requires 70% usage rate in a 30-90 day period, with more than four (4) hours usage per night (D-2). Ms. Reed stated according to the adherence report submitted from Claimant's physician, Claimant was using the BiPAP machine three (3) hours a night (D-3).

Ms. Reed stated the request for additional month's payment for the BiPAP machine was denied as Claimant was not using the BiPAP machine for more than four (4) hours nightly.

- 3) Claimant testified that she has not slept for more than four (4) hours a night in the past twenty (20) years. Claimant stated she has severe asthma and incontinence problems, which wake her from sleep every few minutes. Claimant stated when she would get up at night to use the bathroom, she would turn the machine off. Claimant stated she is also claustrophobic and the mask of the BiPAP machine was uncomfortable. Claimant stated her quality of life is not as good without the BiPAP machine.
- 4) Durable Medical Equipment/Medical Supply Manual § 506.5 states:

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, 2<sup>nd</sup> paragraph, (2) for clarification) 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 [durable medical equipment] items. These include the following: Noninvasive Airway Assist Devices (E0470).

## **VIII. CONCLUSIONS OF LAW:**

- 1) West Virginia Medicaid policy states that it is the responsibility of the prescribing practitioner to submit the appropriate clinical documentation and any other relevant information for durable medical equipment/medical supplies requiring prior authorization review for medical necessity by WVMI.
- 2) Claimant did not use the BiPAP machine for more than four (4) hours each night as required by InterQual criteria. Medical necessity could not be established without Claimant's compliance to the prescribed usage of the BiPAP machine.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny prior authorization of a BiPAP machine for Claimant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10<sup>th</sup> day of May 2012**

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**Kristi Logan**  
**State Hearing Officer**