



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

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General

November 5, 2019



RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 19-BOR-2261

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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.

You will find attached an explanation of possible actions that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Keith King, Bureau for Medical Services
Lori Tyson, Bureau for Medical Services

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

█, A MINOR,

Appellant,

v.

ACTION NO.: 19-BOR-2261

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for █, a minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on September 19, 2019 an appeal filed August 23, 2019.

The matter before the Hearing Officer arises from the August 12, 2019 determination by the Respondent to deny the Appellant medical eligibility for Psychiatric Residential Treatment Facility (PRTF) services.

At the hearing, the Respondent appeared by Keith King, Program Manager, Bureau for Medical Services. Appearing as witnesses on behalf of the Respondent were Caroline Duckworth, Director of Children's Services, KEPRO; and Sue Easter, Case Manager, KEPRO. The Appellant was represented by Jason Prettyman, Social Services Supervisor, DHHR. Appearing as witness on behalf of the Respondent was Chelsey Fehoko, Social Service Worker, DHHR. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 DHHR Evidence List and Scheduling Order
- D-2 Bureau for Medical Services (BMS) §§ 510.4.2.3 – 510.6 and §§ 531.3 – 531.6.1
- D-3 DHHR Determination of Medical Necessity for Inpatient/Residential Services for Individuals Under 21
- D-4 Appellant's medical documentation
- D-5 KEPRO Notices of Denial, dated August 6 and August 12, 2019

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was admitted to [REDACTED] ([REDACTED]) –a psychiatric residential treatment facility (PRTF).
- 2) Sue Easter (Ms. Easter) conducted the review of the Appellant's PRTF medical necessity.
- 3) On August 2, 2019, [REDACTED] submitted additional documentation to KEPRO.
- 4) On August 6, 2019, KERPO completed a level 1 review of the Appellant's PRTF medical eligibility and determined that the Appellant was medically ineligible (Exhibits D-4 and D-5).
- 5) The August 6, 2019 KEPRO denial notice stated that the MCM-1, "provided Bipolar disorder as a diagnosis without any rationale" (Exhibit D-5).
- 6) The August 6, 2019 PRTF eligibility denial was based on WV Medicaid PRTF Manual Chapters: 531.3, 531.4-531.4.2, and 531.6 (Exhibit D-5).
- 7) On August 12, 2019, KEPRO issued a notice advising the Appellant that his reconsideration of denial of PRTF services was denied. The notice stated, "nothing in documentation ... which supports any diagnosis of Mood Disorder" (Exhibit D-5).
- 8) The August 12, 2019 denial was based on WV Medicaid Hospital Manual Chapter 510 (Exhibit D-5).
- 9) On May 9, 2019, [REDACTED] doctor, [REDACTED] (Dr. [REDACTED]), conducted a Psychiatric Evaluation with the Appellant (Exhibit D-4).
- 10) The May 9, 2019 Psychiatric Evaluation reflected that the Appellant had diagnoses including PTSD; Bipolar Disorder, Not Otherwise Specified (NOS); Oppositional defiance disorder (ODD); Disruptive Mood Dysregulation Disorder; and Anxiety Disorder, NOS (Exhibit D-4).
- 11) On July 3, 2019, the Appellant's physician, [REDACTED] (Dr. [REDACTED]), completed a face-to-face evaluation with the Appellant. (Exhibit D-3).

- 12) On July 3, 2019, Dr. [REDACTED] signed the West Virginia Title XIX Medicaid Program Determination of Medical Necessity for Inpatient/ Residential Services for Individuals Under 21 (MCM-1) physician's certification acknowledging that the Appellant required residential treatment services (Exhibit D-3).
- 13) The MCM-1 reflected that the Appellant had diagnoses including of Bipolar Disorder, NOS; ODD; Disruptive Mood Dysregulation Disorder, and Anxiety Disorder, NOS (Exhibit D-3).
- 14) At the time of the August 6 and August 12, 2019 PRTF eligibility denial, the Appellant was taking medication related to his diagnoses (Exhibit D-4).
- 15) In May and June 2019, the Appellant displayed physical and verbal aggression, irritability, impulsivity, problems with mood, and periods of suicidal ideation (Exhibit D-4)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 530 Definitions provides in part:

MCM-1: General requirements, inpatient psychiatric services for individuals under age 21 must be certified in writing to be necessary in the setting in which the services will be provided. Eligibility for the West Virginia Medicaid Program must be determined pursuant to the MCM-1. The MCM-1 must be certified by an independent team that includes a physician/psychiatrist, has competence in diagnosis and treatment of mental illness, and has knowledge of the individual's situation.

BMS Manual § 531.2 Medical Eligibility/ Medical Necessity provides in part:

The referring physician/psychiatrist, not affiliated with the receiving facility, must provide documentation of treatment and/or lack of response to treatment. The referring physician must certify the need for this level of service and complete, sign, and date the MCM-1. The child must meet all other admission criteria set forth for PRTF level of care also.

BMS Manual § 531.3.1 Admission provides in part:

For each WV Medicaid member admitted to a PRTF facility, a MCM-1 must be completed by the referring physician/psychiatrist, with no affiliation to the receiving facility, certifying the need for this level of care.

The UMC reviews [emphasis added] all requests for admission to PRTF's. The role of the UMC is to determine the medical necessity of PRTF services [emphasis added] for child/adolescent members with psychiatric diagnoses, the

appropriateness of a particular PRTF setting, and the number of days reasonably required to treat a child/adolescent's condition.

BMS Manual § 531.3.2 Admission Criteria provides in part:

To be medically eligible for PRTF, the member must:

1. Be a WV Medicaid member under age 21 with a diagnosed DSM-IV-TR mental health or co-occurring mental health and substance abuse condition, and
2. Have severe to acute psychiatric symptoms manifested from the qualifying diagnosis or condition that cannot be addressed safely at a lower level of care, and
3. Have documented severe functioning impairment due to psychiatric diagnosis in three or more major life domains as compared to same age peers, and
4. Have failed in less restrictive levels of care within the past six months ... and
5. Have demonstrated the capacity to positively respond to treatment services

DISCUSSION

To be eligible for PRTF, policy requires that the member have a DSM-IV-TR mental health condition, severe to acute psychiatric symptoms manifested from the qualifying diagnoses, severe functional impairments due to psychiatric diagnoses, and failure in less restrictive treatment within the past six months. The Respondent's Utilization Management Contractor (UMC), KEPRO, conducted the Appellant's PRTF eligibility review. The August 6 and August 12, 2019 PRTF eligibility denial letters advised that the Appellant failed to meet PRTF medical eligibility pursuant to his lack of eligible diagnosis and documentation supporting an eligible diagnosis.

The Respondent bears the burden of proof. Pursuant to the Respondent's denial notices, the Respondent had to prove by a preponderance of evidence that the Appellant lacked a qualifying DSM-IV-TR mental health or co-occurring mental health and substance abuse condition. The Respondent argued that although a Bipolar diagnosis was reflected on the MCM-1, that supporting documentation did not corroborate a Bipolar diagnosis and that the Appellant's other diagnoses did not qualify for admission.

Diagnosis

During eligibility review, the Respondent considered the MCM-1 and the Appellant's May 2019 Psychological Evaluation. The Respondent argued that the documentation provided failed to support that the Appellant had a diagnosis of Bipolar Disorder. The Respondent's witness, Ms. Easter, testified that the Appellant's diagnosis on admission to [REDACTED] was not an eligible diagnosis for psychiatric residential admission. Ms. Easter testified that the Appellant's application was denied because medical necessity was not established for the type of service requested.

The Respondent testified that the diagnosis of Bipolar would qualify for eligibility if the diagnoses were severe enough to cause functional impairment; however, the denial of the Appellant's eligibility was based on the lack of an eligible diagnosis, not whether the diagnosis's symptoms were severe enough to meet policy criteria for functional impairment. Even if the basis for denial had been the lack of symptom severity, no evidence was entered to demonstrate what severe to acute psychiatric symptoms or functioning impairment should have been present to demonstrate PRTF eligibility. The evidence demonstrated that the Appellant presented with physical and verbal aggression, irritability, mood issues, and impulsivity between May and June 2019. Without clarifying evidence, this Hearing Officer could not rule out the Appellant's argument that documentation presented by the Appellant reflected a history of diagnosis-related symptoms that met PRTF eligibility criteria.

The August 6, 2019 denial notice explanation reflected conflicting physician comments. The comments initially stated that no information indicated the presence of Bipolar Disorder, that only Bipolar Disorder might qualify the Appellant, then later stated that a Bipolar diagnosis was provided without rationale. The notice further advised that the Appellant's other diagnoses were excluded for residential admission pursuant to KEPRO criteria. The BMS manual provides that the Appellant was required to have a diagnosed DMS-IV-TR mental health condition and does not specifically list qualifying diagnoses.

The August 12, 2019 denial notice uses an entirely separate set of policy sections than the initial August 6, 2019 denial notice. The cited BMS Chapter 510 policy sections spoke to hospital inpatient services including acute care hospital and psychiatric inpatient facilities. These policy regulations contained content regarding what is required for Medicaid billing in those settings, not clarification of the medical eligibility criteria used to determine whether the Appellant had an PRTF eligible diagnosis. The second denial doesn't mention the Appellant's failure to establish a Bipolar diagnosis but, instead, states that the Appellant failed to establish presence of Mood Disorder. As DSM-IV-TR mental health conditions and KEPRO policy clarifying eligible diagnoses was not submitted as evidence, this Hearing Officer could not corroborate that the Appellant's submitted MCM-1 failed to establish the Appellant's diagnostic PRTF medical eligibility.

The Respondent's witness, Ms. Easter, testified that the KEPRO physician who conducted the Appellant's eligibility review did not feel that the documentation evidenced symptoms of Bipolar Disorder at the time of the August 6 and August 12, 2019 eligibility denials. The Respondent's witness testified that the reviewing physician felt that the Appellant had symptoms that qualified him for a diagnosis of Disruptive Mood Dysregulation Disorder, ADHD, and Reaction to Severe Stress. During the hearing, the Appellant inquired as to what symptoms would meet the criteria for Bipolar that would qualify for eligibility. Ms. Easter advised that KEPRO followed the most current DSM diagnostic criteria. The Appellant argued that the May 2019 psychological evaluation and MCM-1 physician assessment was certified pursuant to a face-to-face exam with the Appellant, whereas, the KEPRO physician did not conduct an exam with the Appellant. The Appellant disputed the KEPRO physician's disagreement with the diagnostic opinion of the Appellant's physicians during completion of the May 2019 psychological evaluation and MCM-1.

The Respondent has policy-granted authority to use a Utilization Management Contractor (UMC) to conduct PRTF medical eligibility reviews; however, policy does not grant the UMC authority to veto the applicant's physician's diagnosis. BMS Manual § 531.3.1 provides that the role of the UMC is to determine medical necessity, the appropriateness of a particular PRTF setting, and the number of days reasonably required to treat the child's condition –not to determine if the MCM-1 physician-established diagnosis is correct.

There was no argument or evidence presented to demonstrate that the Appellant's diagnosing physician lacked credibility or failed to meet physician-specific policy criteria to establish the diagnosis. As such, the MCM-1 was found to be credible by this Hearing Officer. Policy permits the UMC to deny PRTF eligibility when the Appellant fails to demonstrate a DSM-IV-TR diagnosis, severe to acute psychiatric symptoms, or severe functional impairments, however, the Respondent's notice only cited failure to establish diagnosis. As the preponderance of evidence failed to demonstrate that the Appellant lacked a qualifying DSM-IV-TR diagnosis, this Hearing Officer cannot confirm the Respondent's action to deny the Appellant PRTF medical eligibility.

CONCLUSIONS OF LAW

- 1) To be eligible for PRTF, the Appellant was required to have a diagnosed DSM-IV-TR mental health or co-occurring mental health and substance abuse condition.
- 2) At the time of the Respondent's PRTF medical eligibility denial, the Appellant was diagnosed with Bipolar Disorder, Not Otherwise Specified; Oppositional Defiant Disorder; Disruptive Mood Dysregulation Disorder; and Anxiety Disorder, Not Otherwise Specified.
- 3) The evidence failed to demonstrate that the Appellant lacked a DSM-IV-TR mental health diagnosis.
- 4) The Respondent incorrectly denied the Appellant's PRTF medical eligibility based on lack of a DSM-IV-TR mental health diagnosis.

DECISION

It is the decision of this State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant medial eligibility for PRTF due to lack of an eligible diagnosis. The matter is **REMANDED** for further evaluation of the Appellant's medical eligibility pursuant to the Bureau for Medical Services Manual §531.3.2 Admission Criteria. Subsequent PRTF medical eligibility notices are subject to appeal by the Appellant.

ENTERED this 5th day of November 2019.

Tara B. Thompson
State Hearing Officer