State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

February 27, 2020

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 20-BOR-1014

Dear Ms. [redacted]

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

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.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Harley Farrell, BMS
Anita Ferguson, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 20-BOR-1014**

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 [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on February 19, 2019, on an appeal filed January 3, 2020.

The matter before the Hearing Officer arises from the November 5, 2019 decision by the Respondent to deny Medicaid coverage for services at the [redacted].

At the hearing, the Respondent was represented by Anita Ferguson, Managed Care Specialist, Bureau for Medical Services. Appearing as witnesses for the Respondent were [redacted], Manager of Governmental Programs, [redacted]; Dr. [redacted], Medical Director, [redacted]; [redacted], Appeals Coordinator, [redacted]; [redacted], Medicaid Coordinator, [redacted]; [redacted], Senior Vice President for Medicaid Marketing, [redacted]; and [redacted]. Supervisor for Governmental Programs, [redacted]. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [redacted], the Appellant's significant other.

All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual Section 300.4.2
- D-2 Member Acknowledgement of Verbal Appeal dated October 9, 2019 and written information from Appellant
- D-3 Appellant's medical records
- D-4 Notice of Denial dated November 5, 2019 and Medical Pre-Authorization and Notification Form

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

1) In September 2019, the Appellant submitted a Medical Pre-Authorization and Notification Form to [redacted] requesting prior authorization of Medicaid coverage for treatment at the [redacted] in [redacted] (D-4).

2) The request was made for an office visit at the [redacted] based on the Appellant's "chronic pain with significant psychosocial dysfunction" (D-4).

3) The prior authorization request states that the "patient prefers to go out of state" for treatment (D-4).

4) The request for prior authorization was denied both in October 2019 and upon subsequent appeal to [redacted] in November 2019 because the [redacted] is an out-of-network provider (D-4).

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 300.4.2 (D-1) defines an out-of-network provider as any provider located outside of the state of West Virginia beyond the 30-aeronautical mile radius of the West Virginia border that has been approved for enrollment with West Virginia Medicaid. These providers can provide covered West Virginia Medicaid services. However, prior to rendering any service they must obtain prior authorization, except in medically necessary emergent situations as defined in WV State Code Section 33-1-21, or in cases where a foster child has been placed out of state and/or resides in an out-of-state Psychiatric Residential Treatment Facility. Out-of-network provider contracts require that all non-emergent services, per BMS policy, are only approved when an in-network provider is not available or appropriate to treat the member.

DISCUSSION

Medicaid policy states that non-emergent medical services at out-of-network providers are only approved when an in-network provider is not available or appropriate to treat a Medicaid member.

The Appellant testified that she has chronic pancreas divisum and, as a result, suffers from frequent, uncontrolled vomiting. She contended that she becomes dehydrated from daily vomiting, is in desperate need of pain control, and has a diminished quality of life as a result of her medical condition. The Appellant stated that she has a power port in her stomach, which is the fifth such device that she has had implanted in an effort to obtain relief. She indicated that she has no room

for additional implants and has too much scar tissue for some procedures to be effective. The Appellant testified that her previous physician, who has since retired, had prescribed fentanyl patches to control her pain. The Appellant's significant other, [redacted], testified that stent placements will not correct the Appellant's medical issue because her pancreatitis is chronic. The Appellant contended that no clinic in West Virginia wants to help her or has a clear understanding of her condition, and that no physicians will accept her as a patient because her condition is chronic. She testified that she wants to seek treatment at the [redacted] so that she can be prescribed fentanyl patches, as she cannot take pills without vomiting.

Dr. [redacted], Medical Director of [redacted], testified that an in-network pain clinic within the state of West Virginia could provide an opinion regarding further treatment for the Appellant. Therefore, the need to seek medical assistance out of network could not be justified. He purported that there are pain clinics within the state that would prescribe fentanyl patches if they were indicated.

The Appellant testified that she has gone to several pain clinics within the state and they have not helped her, although the Respondent's records indicate that she has only visited two of the state's pain clinics within the past two years. The Appellant and her witness testified that she had visited additional pain clinics in the state prior to that time.

The Medical Pre-Authorization and Notification Form submitted by the Appellant's medical practitioner does not indicate why the Appellant's condition requires out-of-network treatment or why the treatment could only be obtained at [redacted].

CONCLUSIONS OF LAW

1) Medicaid regulations state that non-emergent medical services at out-of-network providers are only approved when an in-network provider is not available or appropriate to treat a Medicaid member.

2) The [redacted] is considered an out-of-network provider for Medicaid purposes.

3) The Medical Pre-Authorization and Notification Form does not specify why the Appellant's chronic pain cannot be managed by an in-network Medicaid provider, but indicates that the Appellant prefers to go out of state for treatment.

4) The Respondent's decision to deny Medicaid authorization for treatment at the [redacted] is correct.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's denial of Medicaid authorization for treatment at the [redacted].

ENTERED this 27th Day of February 2020.

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Pamela L. Hinzman
State Hearing Officer