



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

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Cabinet Secretary

Board of Review  
State Capitol Complex  
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Jolynn Marra  
Inspector General

September 28, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-1910

Dear [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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: [REDACTED] Appellant Representative  
Anita Ferguson, Department Representative  
Lori Tyson, DHHR

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

████████████████████,

**Appellant,**

v.

**Action Number: 22-BOR-1910**

**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 ██████████. 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 September 14, 2022, on an appeal filed July 15, 2022.

The matter before the Hearing Officer arises from the March 29, 2022 decision by the Respondent to deny Medicaid payment for medication.

At the hearing, the Respondent appeared by Mary Snead. Appearing as witnesses for the Appellant were ██████████. The Appellant was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1            2021 – 2022 MHT Member Handbook (excerpt)
- D-2            Notice of decision dated March 29, 2022
- D-3            Notice of decision dated June 3, 2022
- D-4            Prolastin-C Liquid Prescription and Enrollment Form

- D-5 [REDACTED] Clinic Progress Notes
- D-6 [REDACTED] Clinical Labs Report
- D-7 Alpha 1 – Antitrypsin Deficiency (AATD) Summary
- D-8 Journal of Chronic Obstructive Pulmonary Disease Articles
- D-9 Dovepress Articles
- D-10 Prolastin-C Liquid Prescribing Information
- D-11 [REDACTED] Report for [REDACTED]
- D-12 MCG Health Guidelines for Ambulatory Care Proteinase Inhibitor (A-0468)

**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 Hearing Officer sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) The Appellant is a recipient of Medicaid benefits.
- 2) On March 22, 2022, the Appellant submitted a request to the Respondent for Medicaid payment for medication.
- 3) The Respondent maintains a contract relationship with Aetna Better Health of West Virginia (hereinafter, “Aetna”), to provide services related to the administration of Medicaid benefits, including prior authorizations and determinations of medical necessity for requests from Medicaid recipients.
- 4) Aetna issued a notice to the Appellant (Exhibit D-2), dated March 29, 2022, denying the Appellant’s request for medication, “...because it is not medically needed.”
- 5) This notice (Exhibit D-2) detailed the basis for denial as, “We see that you are still currently smoking. You must not have smoked for at least 6 months to approve this. We

also need to see that you have a normal protein in your blood that shows irritation (C-reactive protein). We do not see any of these things.”

- 6) The notice (Exhibit D-2) advised that two requested service codes – 99601 and S9346 – are non-covered codes.
- 7) The Appellant requested a second review of this initial decision.
- 8) Aetna mailed the Appellant a notice dated June 3, 2022 (Exhibit D-3), advising the Appellant that the second review was also denied.
- 9) This notice (Exhibit D-3) reads, in pertinent part, “You have lung disease (chronic obstructive pulmonary disease). You are not making enough of a special chemical. You have alpha-1-antitrypsin deficiency. Your gene marker for it is SZ. It is not the severe form (ZZ). You are still smoking. Your case was sent to an outside physician to review. That physician, an internal medicine specialist, agreed with our decision. You are still smoking. You must not have smoked for at least 6 months. We also need to see a normal protein in your blood indicating irritation (C-reactive protein). That result was not included.”
- 10) The notice (Exhibit D-3) additionally provided, “CPT 99601 and S9346 are non-covered codes by the state of West Virginia Medicaid’s procedure code list. Therefore, your request remains denied as non-covered.”
- 11) The notice (Exhibit D-3) indicated the decision was based on “...a national guideline MCG 25<sup>th</sup> edition Alpha-1-Proteinase Inhibitor ACG: A-0468 (AC)...”
- 12) The referenced guidelines (Exhibit D-12) provide clinical indications that state the Alpha-1-Proteinase Inhibitor “...may be indicated when **ALL** of the following are present...Alpha-1 antitrypsin deficiency with proteinase inhibitor **ZZ** phenotype...Current nonsmoker for 6 or more months...Normal C-reactive protein level...” (emphasis in original)
- 13) Aetna obtained an external report (Exhibit D-11) from [REDACTED], with MCMC, regarding the medical necessity of the Appellant’s requested services.
- 14) This report (Exhibit D-11) provides the reasons for the referral as, “...Does the treatment or service requested meet the current standard of care? ...and is it appropriate in this particular case?”
- 15) The report provided recommendations, concluding the requested testing did not meet the standard of care, and was not found appropriate in the Appellant’s case. (Exhibit D-11)
- 16) The report noted, in pertinent part, “...The MCG Guideline Alpha-1 Proteinase Inhibitor is not met because this member is an active smoker and does not have proteinase inhibitor ZZ phenotype...” (Exhibit D-11)

## APPLICABLE POLICY

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 527, addresses managed care. At §527.4.1, this policy reads, “General requirements include, but are not limited to: Services must be medically necessary and associated documentation must be maintained...”

## DISCUSSION

The Appellant has appealed the Respondent’s decision to deny Medicaid payment for medication based on a prior authorization finding that it was not medically necessary. The Respondent must show by a preponderance of the evidence that it properly denied the medication on this basis. The Appellant was not present for the hearing but was represented by [REDACTED].

The Appellant contracts with an insurance company to provide Medicaid services. The services administered by the insurance company include prior authorization determinations. The insurance company relied on national guidelines (Exhibit D-12) and unmet criteria on those guidelines.

The Respondent denied two payment codes – 99601 and S9346 – which are non-covered services by West Virginia Medicaid. The Board of Review does not have the authority to change existing policy, or to make policy exceptions. The Respondent was correct to deny these payment categories.

The Appellant needed to meet the required criterion, “Alpha-1 antitrypsin deficiency with proteinase inhibitor ZZ phenotype.” Documentation (Exhibits D-2, D-3, and D-11) from medical experts concluded that this was not met, and that the Appellant had an ‘SZ phenotype’ instead. There was no dispute from the Appellant’s representative on this criterion.

The Appellant was required to be a “Current nonsmoker for 6 or more months.” (Exhibit D-12) Testimony confirmed the Appellant is still smoking, although she has reduced the amount of smoking. The Appellant has not met this criterion.

Finally, the Appellant needed to present with a “Normal C-reactive protein level,” which was also not shown in the documents provided by medical experts (Exhibits D-2, D-3, and D-11). The national guidelines used by Aetna, as a MCO for the Respondent, required all criteria to be met. The national guidelines were not met for the Appellant’s requested medication, and this was confirmed on the initial determination (Exhibit D-2), a second review (Exhibit D-3), and an external review (Exhibit D-11).

Testimony and evidence showed the Respondent was correct to deny the Appellant’s requested medication as not medically necessary, through a determination by its contracted MCO.

**CONCLUSIONS OF LAW**

- 1) Because the Appellant requested medication requiring prior authorization, that request was subject to a determination of medical necessity by the Respondent's MCO.
- 2) Because the Appellant did not meet any of the required criteria in the national guidelines used by the Respondent's MCO, the Appellant failed to meet the prior authorization requirement for medical necessity.
- 3) Because medical necessity was not established, the Respondent was correct to deny payment for the Appellant's requested medication.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny Medicaid payment for medication.

**ENTERED this \_\_\_\_ Day of September 2022.**

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**Todd Thornton  
State Hearing Officer**