STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 352-0805 Fax: (304) 558-1992

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

September 15, 2022

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 22-BOR-1971

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: Anita Ferguson, DHHR
Lori Tyson, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 22-BOR-1971**

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 September 8, 2022, on an appeal filed August 5, 2022.

The matter before the Hearing Officer arises from the April 19, 2022 decision by the Respondent to deny Medicaid payment for psychological testing.

At the hearing, the Respondent appeared by Anita Ferguson. Appearing as witnesses for the Appellant were [redacted]. The Appellant was represented by her great aunt and guardian, [redacted]. Appearing as a witness for the Appellant was [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1	Notice to the Appellant, dated April 19, 2022
D-2	Notice to the Appellant, dated June 21, 2022
D-3	Letter from [redacted] and [redacted], dated May 11, 2022

D-4 MCMC Report, prepared by [redacted]
Referral date: June 10, 2022

D-5 Aetna Authorization Notes

D-6 Aetna Medical Clinical Policy Bulletin
Neuropsychological and Psychological Testing

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 April 13, 2022, the Appellant submitted a request to the Respondent for Medicaid payment for psychological testing. (Exhibit D-1)

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-1), dated April 19, 2022, denying the Appellant's request for psychological testing, "…because it is not medically needed."

5) This notice (Exhibit D-1) detailed the basis for denial as, "…testing is not needed before starting treatment…testing cannot give your child a clearer diagnosis…a psychiatric exam can answer the questions."

6) The notice (Exhibit D-1) additionally read, "We made this decision using a national guideline: MCG 26th Edition ORG: B-807-T Psychological Testing. Aetna Clinical Policy Bulletin (CPB) 0158 Neuropsychological and Psychological Testing."

7) The Appellant requested a second review of this initial decision.

8) Aetna mailed the Appellant a notice dated June 21, 2022 (Exhibit D-2), which reads in part, "Your appeal was decided on 06/15/2022. Based on the criteria used to review this

case [*sic*] specifically Milliman Care Guidelines (MCG) Health 26th Edition: Behavioral Health Care: Psychological Testing ORG: B-807-T (BHG), the proposed Pschological [*sic*] Testing, Current Procedural Terminology (CPT) codes 96130, 96131, 96136, and 96137 are not medically necessary."

9) Aetna obtained an external report (Exhibit D-4) from [redacted], with MCMC, regarding the medical necessity of the Appellant's requested services.

10) This report (Exhibit D-4) provides the reasons for the referral as, "…Does the treatment or service meet the current standard of care? …is it appropriate in this particular case?"

11) 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-4)

12) The report noted, in pertinent part, "…A clear rationale for the requested psychological testing was not provided. There was no indication that a diagnosis could not be made clinically with a comprehensive diagnostic psychiatric evaluation by a mental health provider. No information was provided on how the test results will be used to determine or modify treatment or evaluate response to treatment…" (Exhibit D-4)

13) The Appellant provided a letter from [redacted] (Exhibit D-3), for consideration with their requested second review.

14) The external report (Exhibit D-4) requested by Aetna, addressed the letter from the Appellant's doctors (Exhibit D-3), as follows, in pertinent part, "Psychological testing is needed when clear and specific rationale for testing is present, which leads to specific evidence-based treatments. Psychological testing was noted to have been requested for assisting with differential diagnosis. However, there was no indication that the patient had a comprehensive psychiatric evaluation including a complete mental status examination. A clear rationale for the requested psychological testing was not provided…Therefore, the requested psychological testing was not found to be medically necessary or appropriate in this case."

APPLICABLE POLICY

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 521, addresses Behavioral Health Outpatient Services. At §521.1, this policy provides that these services "…are available to all Medicaid members with a known or suspected behavioral health disorder. Each member's level of services will be determined when prior authorization for services is requested from the agency authorized by BMS to perform administrative review. The Prior Authorization process is explained in Section 521.16…"

At §521.16, this policy reads, "Prior authorization requirements governing the provision of all WV Medicaid services will apply pursuant to Chapter 300…"

Chapter 300 of the BMS Provider Manual reads, "Additional requirements such as those for prior authorization…can be found in Chapter 100…"

Chapter 100 of the BMS Provider Manual does not address prior authorization for psychological testing.

DISCUSSION

The Appellant has appealed the Respondent's decision to deny Medicaid payment for psychological testing based on a prior authorization finding that the testing was not medically necessary. The Respondent must show by a preponderance of the evidence that it properly denied the testing on this basis.

The Appellant contracts with an insurance company to provide Medicaid services. The services administered by the insurance company include prior authorization determinations. The psychological testing requested by the Appellant requires prior authorization, but Respondent policy fails to provide detail to this process. The Respondent contracted out this step, as well as the transparency of the process.

However, the prior authorization process set by the contracted insurance company appears to be reasonable. The information provided by the Appellant in their initial request was evaluated against national standards (Exhibit D-1), and a review by a second doctor (Exhibit D-2) and a third doctor not employed by the insurance company (Exhibit D-3) all come to the same conclusion: the Appellant's request for psychological testing was not medically necessary and could not be approved on that basis.

Testimony was provided from the Appellant's great aunt, [redacted] and [redacted]. [redacted] testified that the Appellant suffers from many mental health issues and needs the requested testing. [redacted] testified that his contact with the Appellant was limited to a one-hour intake interview, but he concluded he needed additional testing to direct his planned care for the Appellant. His assessment of the Appellant was provided in evidence (Exhibit D-3) and was addressed by the external report (Exhibit D-4) obtained by the Respondent's contracted insurance company.

Expert testimony was not provided to elaborate on the internal documents (Exhibit D-5) and policy bulletins (Exhibit D-6) used by the Respondent's contracted insurance company to make its prior authorization determination. However, despite the failure of the Respondent to provide a clear, complete argument in this case, the Respondent has met its burden purely by deference to the experts reviewing the information. The Appellant's doctor advocating on her behalf does not outweigh the decisions of three doctors queried by the Respondent – the initial doctor, the doctor providing the second opinion, and the external doctor from MCMC. Based on the reliable testimony and evidence provided at hearing, the Appellant did not establish medical necessity and the Respondent's contract agency was correct to deny prior authorization for psychological testing on this basis.

CONCLUSIONS OF LAW

1) Because the Appellant requested services requiring prior authorization, that request was subject to a determination of medical necessity.

2) Because the medical determination process used by the Respondent's contract agency appears to be reasonable, its standards must be applied in determining prior authorization for the Appellant's requested services.

3) Because the preponderance of evidence from medical experts indicated the Appellant's requested services were not medically necessary, those services must be denied.

DECISION

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

ENTERED this ____Day of September 2022.

_____

Todd Thornton
State Hearing Officer