



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
433 MidAtlantic Parkway
Martinsburg, WV 25404**

**Bill Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

August 25, 2021

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-1838

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Anita Ferguson, BMS

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

██████████ ██████████,

Appellant,

v.

ACTION NO: 21-BOR-1838

**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 August 19, 2021, on an appeal filed December 30, 2020, which was received by the Board of Review on July 28, 2021.

The matter before the Hearing Officer arises from the Respondent's October 8, 2020 denial for pre-authorization of Durable Medical Equipment (DME) rental beyond the time limit allowed by policy.

At the hearing, the Respondent appeared by Anita Ferguson, Program Manager with Bureau for Medical Services. Appearing as witnesses for the Respondent were Drs. Hillary Whonder-Genus and Sanjoy Mukherjee, both with UniCare, Amber Nary, Compliance Manager for UniCare, and Dorothy Gray with Anthem. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████ with Novocure. All witnesses were sworn, and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Request (IG-BOR-29) dated December 30, 2020
- D-2 UniCare Initial denial dated October 8, 2020
- D-3 Review of Denied Treatment Request dated November 17, 2020
- D-4 Appeal acknowledgement letter dated November 19, 2020
- D-5 Notice of Action About Your Appeal Request dated December 7, 2020
- D-6 WVU Medicine medical review request dated December 22, 2020
- D-7 Medical records
- D-8 Novocure Invoice dated November 19, 2019

- D-9 Optune Prescription Form
- D-10 UniCare Records
- D-11 Optune approval
- D-12 Optune Clinical Dossier
- D-13 Bureau for Medical Services (BMS), Appendix 506A, EO766; UniCare Health Plan of West Virginia, Inc. Member Handbook photocopy of cover; UniCare Durable Medical Equipment, Supplies and Prosthetic Devices excerpt page 37.

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 was diagnosed with Glioblastoma in September 2019. As part of her treatment plan, she was prescribed Optune, an electrical stimulation device. (Exhibit D-3)
- 2) The Appellant received pre-authorization from her West Virginia Medicaid provider, UniCare, for rental of Optune and began its use on November 19, 2019. (Exhibits D-8 and D-9)
- 3) UniCare considers Optune as Durable Medical Equipment (DME, HCPCS Code E0766) and limits rental to a total of ten units (months). (Exhibit D-13)
- 4) On October 8, 2020, UniCare denied coverage of Optune over the ten month rental cap. (Exhibit D-2)
- 5) On November 17, 2020, the Appellant appealed the October 8, 2020 denial to UniCare. (Exhibit D-3)
- 6) On November 18, 2020, the Respondent upheld the initial denial for pre-authorization of the rental of Optune over the rental cap of ten months as set by policy. (Exhibit 5)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Policy, Appendix 506A: Covered DME Supplies, EO766, requires pre-authorization of Electrical Stimulation Device Used for Cancer Treatment (includes all accessories), any type, and limits rental to ten months.

DISCUSSION

In September 2019, the Appellant was diagnosed with glioblastoma. As part of her treatment, she was prescribed the use of Optune, a type of electrical stimulation device. The Appellant's West Virginia Medicaid provider, UniCare, pre-approved the rental of this device, and she began its use in November 2019. On October 8, 2020, Unicare denied authorization for the rental of Optune over the ten month limit set by policy. The Appellant appealed the denial to UniCare, who upheld its denial on November 18, 2020. Subsequently, the Appellant requested a fair hearing on UniCare's denial.

Optune is considered an electrical stimulation device used for cancer treatment, HCPCS Code E0766. Under BMS policy, pre-authorization for this equipment rental is required and is limited to a total of ten months. The Respondent's witness Dr. Mukherjee explained that after ten months policy considers the DME to be owned. The Appellant's witness, [REDACTED], Clinical Appeals Specialist with Novocure, testified that Optune is considered a Class III DME and is not available for purchase. Ms. [REDACTED] testified that there are limited treatment options for the Appellant and requested that an exception to policy be made.

The Board of Review lacks the authority to change or make exceptions to policy. Instead, the Hearing Officer must decide whether the Respondent followed policy in rendering its decision. There was no evidence or testimony presented to show that there are any policy exceptions which would allow the rental of this DME beyond the policy cap of ten months. Policy clearly states that this type of DME is limited to a ten month cap.

Because the Appellant has reached the ten month rental limit for Optune as set by policy, the Respondent correctly denied the Appellant's request for continued Optune rental beyond the policy limit.

CONCLUSIONS OF LAW

- 1) Per policy, Optune, an Electrical Stimulation Device used for cancer (HCPCS Code E0766), must be pre-authorized and cannot exceed ten months rental.
- 2) The Appellant received pre-authorization for Optune and began renting it in November 2019.
- 3) The Appellant has met the policy cap of ten months for Optune rental.
- 4) The Respondent correctly denied pre-authorization beyond the policy limit of ten months for this type of DME.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to deny the Appellant's request for pre-authorization for the rental of Optune beyond the policy limit of ten months.

ENTERED this 25th day of August 2021.

Lori Woodward, Certified State Hearing Officer