STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Christopher G. Nelson
Interim Inspector General

August 16, 2023

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 23-BOR-1799

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: Recourse to Hearing Decision
Form IG-BR-29

cc: BMS, KEPRO

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WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **ACTION NO.: 23-BOR-1799**

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 originally scheduled for August 8, 2023, however, upon a timely motion by the Appellant, the fair hearing was convened on August 15, 2023, on an appeal filed May 23, 2023.

The matter before the Hearing Officer arises from the Respondent's March 17, 2023 decision to deny pre-authorization for a nerve stimulator (code 64582 open implantation of hypoglossal nerve neurostimulator array, pulse generator and distal respiratory sensor electrode or electrode array).

At the hearing, the Respondent appeared by Anita Ferguson, Bureau for Medical Services. Appearing as witnesses for the Respondent were Alva Page, Tonya Cyrus, and Marjorie Ramos, from Aetna. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were [redacted] the Appellant's mother [redacted] and the Appellant's sister, [redacted]. The witnesses were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Manual, Chapter 527, [redacted] (Managed Care)
- D-2 Denial Notice, dated March 17, 2023
- D-3 Request for Appeal of Denied Pre-Service Authorization, dated March 22, 2023
- D-4 Notice of Appeal Committee's decision to upholding the denial, dated April 21, 2023
- D-5 History and Physical, dated July 14, 2022

D-6 Anesthesia Post-Op Evaluation, date of service August 12, 2022
D-7 Interpretation Report & Final Diagnostic Study Report, dated February 27, 2023
D-8 MCMC, Case Report for Aetna Life Insurance Company, referral, dated April 13, 2023

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 WV Medicaid.

2) One of the Managed Care Organizations (MCOs) which the Respondent maintains a contractual relationship with Aetna Better Health of West Virginia (Aetna) to provide services related to the administration of Medicaid benefits, including prior authorizations and determinations of medical necessity for requests from Medicaid recipients.

3) On March 14, 2023, the Appellant submitted a request for pre-authorization for an open implantation of hypoglossal nerve neurostimulator array, pulse generator and distal respiratory sensor electrode or electrode array (nerve stimulator) (CPT Code 64582).

4) On March 17, 2023, the Appellant's request for pre-authorization for the nerve stimulator was denied as not medically necessary because it was determined that "not enough medical studies [to] show [that] this device is useful (investigational and experimental) for your condition …" (Exhibit D-2)

5) The Appellant requested a second review of this initial decision on March 22, 2023. (Exhibit D-3)

6) The reviewing physician, [redacted] with an additional review made by a neurologist and sleep medicine specialist, both concluded that the nerve stimulator could not be recommended. (Exhibit D-4)

7) On April 21, 2023, notification of Aetna's Appeal Committee (Committee) concurrence with the initial denial was sent to the Appellant, adding that the "treatment or service requested (CPT 64582) does not meet the current standard of care and is not appropriate in this particular case." (Exhibit D-4)

8) Aetna based its decision on the information sent by the Appellant's doctor, the Appellant's benefits, and on national guidelines: MCG 26th Edition Hypoglossal Nerve Stimulation, Implantable ACG: A-0973. (Exhibits D-2 and D-4)

APPLICABLE POLICY

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 100, §100.9, *Prior Authorization Of Services*, states in part: "The BMS, in its sole discretion, determines what information is necessary to approve a prior authorization request. Prior authorization does not, however, guarantee payment. All other requirements must be met for payment. Medical review organizations under contract to BMS are the final clinical authority."

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 527, *Mountain Health Trust (Managed Care),* in part*:*

Mountain Health Trust is the Bureau for Medical Services' (BMS) managed care program that has been in operation since 1996. The purpose of the program is to improve access to high-quality health care for Medicaid members. Since being in place, the program has expanded significantly with respect to the number and categories of members required to enroll, the covered services included under managed care, and the geographic area covered.

The managed care program is authorized under a 1915(b) waiver, the Mountain Health Trust program waiver, which is the BMS agreement with the Centers for Medicare and Medicaid Services (CMS) regarding the terms under which its managed care program is implemented. The BMS service provider agreement (contract) with the Managed Care Organizations (MCOs) contains clauses ensuring compliance with all state and federal mandates as well as state programmatic initiatives and links to the MCO websites where more information for members and providers can be found, including handbooks for both groups. The waiver and MCO service provider agreement govern implementation of the program and requirements the MCOs must meet.

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter 527, §527.4.1, *General Requirements for Covered Services*: General requirements include, but are not limited to:

- Services must be medically necessary and associated documentation must be maintained;
- The BMS Medicaid Provider Manual is the source of authority for defining minimum state plan covered services;
- Providers must obtain all necessary service authorizations as specified by the MCO; and
- Members must follow MCO requirements with respect to choice of providers and coordination of benefits.

West Virginia Bureau for Medical Services (BMS) Provider Manual, Chapter, 519, §519.16.3, *Non-Covered Services,* in pertinent part, states: Non-covered services also include, but are not limited to:

- Procedures considered investigational or experimental

DISCUSSION

The Appellant is a WV Medicaid benefit recipient who has had obstructive sleep apnea (OSA) for several years. After undergoing various treatments, including a fairly recent adenoidectomy, the Appellant's physician recommended he have a hypoglossal nerve stimulation implant. The Appellant's physician made the requisite pre-certification request to the Appellant's Medicaid health plan administrator, Aetna, on March 14, 2023. On March 17, 2023, the Appellant's request for pre-certification for the hypoglossal nerve stimulation implant was denied by Aetna as not medically necessary based on not having enough medical studies to show this device is useful (investigational and experimental) for the Appellant's condition. The Appellant requested a second review of the initial denial on March 22, 2023. On April 21, 2023, the initial denial was upheld. The Appellant brings this appeal.

The Respondent must show by a preponderance of evidence that it correctly followed policy in its determination that the Appellant's request for a hypoglossal nerve stimulation implant was not a covered service under BMS.

Per BMS policy, the Respondent contracts out to its MCO (Managed Care Organization) for determinations of medical need and pre-authorization findings. Aetna's reviewing physicians determined that there are not enough medical studies to prove the requested hypoglossal nerve stimulation implant is useful (investigational and experimental). Additionally, the Committee concluded that the requested treatment or service did not meet the current standard of care and thus is not appropriate in the Appellant's case. Their decision was based on national guidelines: MCG 26th Edition Hypoglossal Nerve Stimulation, Implantable ACG: A-0973. Thus, the Committee upheld the initial denial.

The Appellant's witness, [redacted], testified that the device known as Inspire, which is the hypoglossal nerve stimulation device he recommended the Appellant have inserted has undergone several trials and studies over the last 10 years. [redacted] stated that in his Ears, Nose and Throat (ENT) practice of two years, he has had success with the Inspire device in approximately 15 of his patients. Additionally, [redacted] testified that the Inspire device is FDA-approved, is widely accepted nationwide and covered by many other insurance companies, and has been proven to be an effective procedure for similar OSA patients.

The Respondent's witness, Alva Page, testified that because Aetna considers the hypoglossal nerve stimulation implant as an experimental procedure, it is not considered covered by policy. The Respondent's representative explained that a physician must submit a specific request for a code to be "opened" for inclusion as a covered service. Evidently, the request submitted for pre-authorization for the hypoglossal stimulation implant for the Appellant is not considered a request for CPT Code 64582 to be opened for inclusion as a covered service, according to the Respondent's representative.

The testimony provided by the Appellant's witness showed that the requested hypoglossal nerve stimulation implant, Inspire, is FDA-approved and is an accepted procedure in other states covered by other insurance companies. However, there was no evidence to show that it is a covered

procedure by BMS. Therefore, the Respondent's decision to deny pre-certification for the hypoglossal nerve stimulation implant is affirmed.

CONCLUSIONS OF LAW

1) Procedures considered investigational or experimental are not covered by BMS policy.

2) The requested hypoglossal nerve stimulation implant procedure (CPT Code 64582) is considered by BMS as experimental and investigational.

3) Because the requested procedure is not covered by BMS policy, the Respondent's decision to deny the Appellant's request is correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's pre-authorization request for a hypoglossal nerve stimulation implant.

ENTERED this 16th day of August 2023.

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Lori Woodward, Certified State Hearing Officer