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

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

Christopher G. Nelson
Interim Inspector General

December 28, 2023

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 23-BOR-3426

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: Recourse to Hearing Decision
Form IG-BR-29

cc: Anita Ferguson, DHHR / Lori Tyson, DHHR
[redacted], Appellant Representative

BEFORE THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES BOARD OF REVIEW

IN THE MATTER OF: **ACTION NO.: 23-BOR-3426**

[redacted],

Appellant,

v.

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 December 5, 2023, on a timely appeal filed on October 27, 2023.

The matter before the Hearing Officer arises from the September 20, 2023 decision by the Respondent to deny Medicaid prior authorization for a medical procedure (identified as CPT Code 62648) to treat chronic vertebrogenic pain.

At the hearing, the Respondent appeared by Anita Ferguson. Appearing as witnesses for the Respondent were Paige Devault, Heather Jones, and Dr. Robert Cross. The Appellant was self-represented. 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	Second denial notice, dated September 20, 2023
D-2	Appeal request to The Health Plan, dated August 7, 2023
D-3	Neurosurgical Progress Note, dated July 20, 2023

D-4 Medical journal excerpt
D-5* Additional medical journal excerpts
*Additional evidence was excluded as untimely or undelivered to all parties

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 is The Health Plan, to provide services related to the administration of Medicaid benefits, including prior authorizations and determinations of medical necessity for requests from Medicaid recipients

3) The Appellant requested prior authorization for CPT Code 64628, described as, "…thermal destruction of intraosseous basivertebral nerve…" (Exhibit D-2)

4) The Health Plan denied the Appellant's prior authorization request. (Exhibit D-1)

5) The Appellant, through her representative, appealed the decision of The Health Plan. (Exhibit D-1)

6) The Health Plan denied the request as a 'non-covered' CPT code. (Exhibit D-1)

7) The Health Plan additionally denied the request as not meeting medical necessity. (Exhibit D-1)

8) The Health Plan utilized InterQual criteria to establish medical necessity. (Exhibit D-1)

9) The InterQual criteria for the Appellant's requested CPT code required six (6) months of non-surgical interventions, such as physical therapy, and "Modic changes (lesions seen on an MRI)" (Exhibit D-1)

10) The Appellant had modic changes, as required by the InterQual criteria.

11) The Appellant did not have six (6) months of physical therapy.

12) The Appellant testified that she would be starting physical therapy, and that she began pain shots in November, after her prior authorization request.

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, §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.

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to deny a medical procedure to address lower back pain. The Respondent must show, by a preponderance of the evidence, that its action – through a contracted agency – was correct.

The Appellant contracts with MCOs to make prior authorization determinations, and the MCO making the determination in the Appellant's case was The Health Plan. The Health Plan made an initial determination that the Appellant's prior authorization request was denied due to the code not being covered by WV Medicaid.

Upon internal appeal at The Health Plan, the MCO reviewed the request for medical necessity. Although neither the Respondent nor its MCO provided the criteria used, there was no dispute of the factors required by these criteria. Both the initial determination made by The Health Plan, and the second determination – made independently outside The Health Plan – concluded that medical necessity for the procedure was not established. The reasons given were: no documentation of six (6) months of non-surgical management attempted and failed, and no modic changes shown on an MRI. Testimony from the Appellant's nurse practitioner, [redacted], confirmed that there were modic changes shown on an MRI. There was no testimony on the Respondent's behalf to explain how it determined there were no modic changes, and [redacted] testimony was found more reliable on this fact for this reason. The Appellant herself testified that the non-surgical management requirement was not met; she explained that she started taking pain shots at the end of November 2023 and had a future appointment to start physical therapy.

Without InterQual criteria met for the requested procedure, its medical necessity was not established. The decision by the Respondent and its MCO to deny prior authorization for CPT Code 62648 is affirmed.

CONCLUSIONS OF LAW

1) Because the Respondent's MCO is a medical review organization under contract to the Respondent's Bureau for Medical Services, it is the final clinical authority.

2) Because the Respondent's MCO utilizes InterQual criteria for medical necessity determinations, these criteria must be met for prior authorization requests.

3) Because the Appellant's prior authorization request for CPT Code 62648 did not meet the InterQual criterion requiring at least six (6) months of unsuccessful non-surgical management, the Respondent and its MCO must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny Medicaid prior authorization for the medical procedure designated as CPT Code 62648.

ENTERED this _____ day of December 2023.

_____

Todd Thornton
State Hearing Officer