

STATE OF RHODE ISLAND  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

████████████████████

v.

DOCKET No. 24-2200

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-entitled matter was conducted by an Appeals Officer on July 1, 2024, with the Executive Office of Health and Human Services (“EOHHS”), the Managed Care Organization (“MCO”) Neighborhood Health Plan of Rhode Island (“NHPRI”), and Authorized Representative ██████████ (“AR ██████████”) on behalf of ██████████ ██████████ (“Appellant”). The Appellant initiated this matter to appeal an action taken by NHPRI. This matter arose due to a prior authorization received from the Appellant’s provider requesting additional massage therapy services. The request was subsequently denied because the massage therapy services requested exceeds the benefit limit of six (6) visits per rolling year. The Appellant disagreed with NHPRI’s decision because massage therapy has been an indispensable part of his holistic healing that gives him significant relief from chronic pain. For the reasons discussed in more detail below, the decision has been decided against the Appellant.

## **II. JURISDICTION**

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to the actions taken by the Medicaid MCO.

Furthermore, under 210-RICR-10-05-2 §2.4.2, a member of a MCO is required to exhaust all appeal rights under the MCO before seeking an appeal with EOHHS. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq., and EOHHS regulation 210-RICR-10-05-2.

## **III. ISSUE**

The issue is whether the Appellant's request for additional massage therapy services were denied in accordance with the Federal and State regulations and the NHPRI Clinical Medical Policy for "In Lieu of Services".

## **IV. PARTIES AND EXHIBITS**

EOHHS Administrator of Medical Services, Nina Lennon, attended the telephonic hearing and presented the case relevant to the Appellant's request for additional massage therapy services. EOHHS did not offer any evidence at the hearing.

Attorney Mary Catala of Chace, Ruttenger & Freedman, LLP presented the case on behalf of NHPRI. NHPRI Senior Associate Medical Director, Doctor Michael Mitchell and Clinical Manager of the Grievance and Appeals Unit, Catherine Daignault provided testimony relevant to the Appellant's request for additional massage therapy services. NHPRI offered the following into evidence as full exhibits:

- Exhibit A: NHPRI Clinical Medical Policy for "In Lieu of Services-#073" dated December 6, 2023.

- Exhibit B: Provider's Prior Authorization Form dated January 22, 2024, and associated medical records.
- Exhibit C: NHPRI Care Enrollment Notes from January 22, 2024, through January 26, 2024, for review of the Provider's Prior Authorization Form.
- Exhibit D: NHPRI Notice of Denial of Medical Coverage dated January 25, 2024.
- Exhibit E: Provider initiated internal appeal dated January 29, 2024.
- Exhibit F: NHPRI Acknowledgement of Appeal dated January 30, 2024.
- Exhibit G: Internal Appeal Review notes dated February 2, 2024.
- Exhibit H: Notice of Level 1 Appeal Status dated February 16, 2024.

AR [REDACTED] attended the telephonic hearing and testified on the Appellant's behalf. The Appellant offered an appeal email and the following evidence as a full exhibit:

- Exhibit 1: Recommendation and medical records from [REDACTED] [REDACTED] and additional medical records from [REDACTED] and [REDACTED].

## V. RELEVANT LAW

The Rhode Island Code of Regulations ("RICR") for the EOHHS in effect at the time of the action, 210-RICR-40-10-1, entitled "Managed Care Service Delivery Arrangements", §1.7 provides established guidance pertaining to the Medicare-Medicaid Plan ("MMP"). It is bound by a three (3) way agreement between EOHHS, the Federal Centers for Medicare and Medicaid Services ("CMS"), and the participating MCO. §1.7.8 provides the list of covered services for MMP. Based on the Medicaid Managed Care Policy the MCO requests approval from EOHHS to provide "In Lieu of Services" to enrollees if medically appropriate and it's a cost-effective

substitute for a covered service under the State plan as permitted by the Federal regulation for Medicaid 42 C.F.R. 438.3(e)(2).

NHPRI Clinical Medical Policy - In Lieu of Services #073 dated December 6, 2023, provides established guidance pertaining to the covered benefit for MMP Integrity members giving approval for massage therapy services. The policy states “In Lieu of Services” are alternative services that NHPRI may, but is not required to, provide as a medically appropriate therapy that is used as a substitute for other services. EOHHS has approved “Massage Therapy” with prior authorization, in lieu of medications or invasive procedures for chronic pain with a limit of six (6) visits per rolling year, as an effective treatment for pain, and to improve the members quality of life.

## **VI. FINDINGS OF FACT**

1. EOHHS has an approved a contract with NHPRI to provide services to MMP Integrity members. This contract includes that NHPRI may offer “In Lieu of Services” such as massage therapy for six (6) visits per rolling year.

2. The Appellant is enrolled in MMP Integrity, with NHPRI, and is requesting massage therapy as a treatment for his chronic low back pain.

3. Clinical Medical Policy – In Lieu of Services #073 is the policy relative to massage therapy services. NHPRI may offer, but is not required, to provide this service as a substitute for other approved services. The policy states there is a limit of six (6) visits per rolling year, with prior authorization.

4. NHPRI received a Provider’s Prior Authorization dated January 22, 2024, and supporting medical records requesting massage therapy in lieu of medications or invasive procedures for chronic low back pain.

5. NHPRI's reviewed the Provider's Prior Authorization and medical records. The Care Enrollment Notes states the Appellant has an active authorization with an end date of August 27, 2024, and has used the allowable six (6) visits per rolling year. The Appellant's Primary Care Physician confirmed the six (6) visits were used as a covered benefit under his plan.

6. A Notice of Denial of Medical Coverage dated January 25, 2024, was sent to the Appellant stating NPHRI denied the medical services requested for massage therapy because it exceeds the six (6) visits per rolling calendar year benefit limit covered under the plan.

7. The Appellant's provider initiated an internal appeal with NHPRI on January 29, 2024, based on the Appellant's denial for massage therapy. NHPRI acknowledged appeal on January 30, 2024, and completed an Internal Appeal Review on February 2, 2024. The internal review notes show the member was approved for massage therapy, used six (6) visits, and is requesting additional visits. The reviewer noted that the provider states the member has benefited from massage therapy and more visits would help manage his persistent pain. The reviewer determined that based on the information provided, six (6) additional massage therapy visits does not meet the Clinical Medical Policy for In Lieu of Services #073 and upheld their original denial.

8. A Notice of Level 1 Appeal Status was mailed to the Appellant on February 16, 2024, upholding the denial. The notice states in part that NHPRI's Clinical Medical Policy - In Lieu of Services #073 criteria have not been met because the member has used the limited six (6) visits per rolling year.

9. The Appellant again disagreed with NHPRI and filed a State Fair Hearing with EOHHS on March 27, 2024, requesting additional massage therapy visits. A telephonic hearing was scheduled for June 11, 2024, rescheduled to July 1, 2024, and held accordingly.

10. NHPRI Representative Daignault testified that the Appellant used his six (6) visits and the AR [REDACTED] agreed. Ms. Daignault agreed to provide the date when the Appellant can request the massage therapy services again.

11. Doctor Mitchell testified that the contract states NHPRI may offer massage therapy services, but they are not required to. NHPRI authorized the Appellant's initial request, and he used those six (6) visits. NHPRI may approve upon request continuing massage therapy services if medical records show the massage therapy is in lieu of another service or treatment. Attorney Catala also noted before any additional approval is granted NHPRI would be required to request a secondary approval from EOHHS prior to approving any continued treatment.

12. AR [REDACTED] argued that the documents provided show that the Appellant's specialists including his spine and trauma doctors recommend continued treatment because during his first six (6) visits he received some relief. Approval of continued massage therapy could avoid more invasive treatment or surgery on his neck, back, and legs.

13. Doctor Mitchell stated there is no clinical evidence of increasing pain or changing the Appellant's treatment plan. Currently, he is on a stable regimen, and there is no indication massage therapy would be in lieu of increasing his current treatments.

14. EOHHS reviewed the medical records and agrees with NHPRI's decision to deny additional massage therapy treatment at this time.

## **VII. DISCUSSION**

Attorney Catala maintains that NHPRI has a contract with EOHHS, who approved the Clinical Medical Policy #073 for “In Lieu of Services” which includes massage therapy as a treatment. The policy states that massage therapy may be used in lieu of medications or invasive procedures for chronic pain and limits visits to six (6) visits per rolling year. NHPRI has approved the Appellant’s initial prior authorization allowing the six (6) visits that are covered within the benefit plan. The Appellant’s provider submitted an additional prior authorization for continued massage therapy treatments, but NHPRI denied the request because the service exceeds the six (6) visits per rolling year that is covered under the plan. EOHHS testified that they agree with NHPRI’s decision to deny additional treatments.

Doctor Mitchell testified that they considered the Appellant’s request but currently there is no medical evidence to authorize additional massage therapy treatments. He explained to approve the additional service it must be in lieu of another treatment like home health services, no longer needing a medication, or eliminating pain injections due receiving massage therapy. In this case the Appellant is still receiving his prescribed medication, pain injections and has a home health aide to assist him, so there is nothing that continued massage therapy would be in lieu of. Additionally, the Appellant is not receiving any physical therapy treatments because he stated it wasn’t beneficial. He argued that studies show that physical therapy is extremely beneficial because teaches stretching and strengthening exercises that help with neuropathy and can be used throughout life.

AR [REDACTED] testified that the Appellant had some pain relief based on the massage therapy treatments. She spoke to a representative from NHPRI, and it was her understanding that they would permit additional massage therapy visits with prior authorization beyond six (6) visits, but

she must have been mistaken. She argued the notes from the Appellant's provider, trauma surgeon, and spinal doctor shows that massage therapy is recommended to avoid more invasive treatments or surgery. Currently, the doctors are discussing surgery to take out the pins and plates, a spinal fusion but due to his age it is not recommended. She also noted that Appellant has tried physical therapy periodically, but they only work one area at a time, and he had more discomfort instead of less. She appreciates that NHPRI takes care of members and offers other alternatives like massage therapy to avoid more invasive treatments but hoped continued services would be approved.

Doctor Mitchell concluded that at this time, there is no evidence to reconsider the denial of the Appellant's request for continued massage therapy. If the doctors are maximizing all other options and the treatments are still not working, then NHPRI may consider further massage therapy in lieu of increasing his other treatments or having surgery. Furthermore, although he has exhausted his six (6) visits, he may be eligible again in the future.

#### **VIII. CONCLUSIONS OF LAW**

In review of 210-RICR-40-10-1 there is a three (3) way contract between EOHHS, CMS and the associated MCO for MMP. NHPRI is the MCO approved to deliver MMP services to beneficiaries who choose to participate. §1.7.8 provides the list of covered services in the MMP benefit package, massage therapy is not listed as covered service. 42 C.F.R. 438.3(e)(2) allows for additional services that may be covered for beneficiaries if approved by the state. EOHHS determined that "In Lieu of Services" may be approved if it is medically appropriate and is a cost-effective substitute for a covered service under the state plan. EOHHS authorized NHPRI to allow "In Lieu of Services" specifically for massage therapy services which includes members of MMP Integrity. NHPRI's Clinical Medical Policy In Lieu of Services-#073 approved by EOHHS



clearly states that Massage Therapy may be approved in lieu of medications or invasive procedures for chronic pain but is limited to six (6) visits per rolling year.

In further review of the evidence and testimony, there is no dispute the Appellant completed his six (6) visits of massage therapy which was authorized under the contract with EOHHS. NHPRI received an additional prior authorization requesting massage therapy services, which was subsequently denied based on their Clinical Medical Policy. In further review of the medical records provided by the Appellant it is clear they do not support his request for additional massage therapy services. AR Brown testified that the Appellant had some pain relief, but the records do not show any changes to his current treatments or if massage therapy was substituted for another covered service under the benefit plan.

After careful and considerate review of the State and Federal Regulations, and NHPRI's Clinical Medical Policy for "In Lieu of Services" approved by EOHHS, as well as the evidence and testimony provided, this Appeals Officer concludes that NHPRI denied the Appellant's request for additional massage therapy appropriately.

#### **IX. DECISION**

Based on the foregoing Findings of Fact, Conclusions of Law, and by a preponderance of evidence it is found that a final order be entered that the Appellants request for relief is denied.

#### **APPEAL DENIED**

*/s/ Louanne Marcello*

Louanne Marcello  
Appeals Officer

**CERTIFICATION**

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED] and [REDACTED], and via email; [REDACTED]; copies were sent via email to EOHHS representatives John Neubauer and Nina Lennon, NHPRI representatives Mary Catala, Esq., Robert Fine, Esq., Amy Coleman, Esq., and Mary Eldridge on this 18<sup>th</sup> day of July, 2024.

Amanda Mitchell

**NOTICE OF APPELLATE RIGHTS**

**This Final Order constitutes a final order of the Executive Office of Health and Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.**