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

[redacted]

V.

DOCKET No. 24-4415

NEIGHBORHOOD HEALTH PLAN

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was held on August 21, 2024, at 10:00 AM with the Executive Office of Health and Human Services (EOHHS), the Managed Care Organization (MCO) Neighborhood Health Plan of Rhode Island (NHPRI), and [redacted], on behalf of minor child [redacted] (Appellant). The Appellant initiated this matter to appeal the payment reimbursement denial by NHPRI. The Appellant is seeking reimbursement for a frenectomy from an out-of-network provider for her son. For the reasons discussed in more details below, the Appellant's appeal is denied.

II. JURISDICTION

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 state level appeals and hearings regarding Medicaid MCO's denials of coverage. 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.

Under 210-RICR-10-05-2.4.2, a member of a MCO is required to exhaust all appeal rights under the MCO before seeking an appeal with EOHHS.

III. ISSUE

The issue is whether the Appellant's request for reimbursement was denied in accordance with Federal and State regulations and NHPRI's Clinical Medical Policy.

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. (2 Richard J. Pierce, Administrative Law Treaties § 10.7 (2002) & see Lyons v. Rhode Island Pub. Employees Council 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases)). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. (Narragansett Electric Co. vs. Carbone, 898 A.2d 87 (R.I. 2006)).

V. PARTIES AND EXHIBITS

Nina Lennon, EOHHS administrator of medical services, provided testimony regarding the case. Lennon explained that EOHHS has a contract with NHPRI; she did not submit any evidence at the hearing.

Attorney Mary Catala, from Chace Ruttenberg & 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 reimbursement of the frenectomy. NHPRI offered the following into evidence as exhibits:

Exhibit #1: NHPRI Clinical Medical Policy for Out of Network/Out of Area services

Exhibit #2: December 26, 2023, Initial Notice of Adverse Determination – Full DENIAL

Exhibit #3: Member appeal form for Appellant

Exhibit #4: June 20, 2024, Appeal Dismissal for lack of timeliness

The Appellant testified and presented the following exhibits as evidence:

Exhibit #1: Bill dated September 15, 2023, from [redacted], for $875

VI. RELEVANT LAW/REGULATIONS

EOHHS is responsible for administering the state's Medicaid program, which provides health care services and supports to a significant number of Rhode Islanders on an annual basis. See 210-RICR-10-00-1.1(B). Enrollment in an MCO is mandatory for all individuals and families covered by the RI Medicaid program who do not require long-term services and supports; the goal of the policy is to ensure that all Rhode Islanders enrolled in Medicaid have access to an organized system of primary care and prevention services. See 210-RICR-30-05-2.34(A). The MCO must maintain provider networks in locations that are geographically accessible to the populations to be served. See 210-RIC-30-05-2.12 (A).

The NHPRI Clinical Medical Policy for Out of Network/Out of Area services states that covered emergent and urgent care services rendered in emergency rooms or urgent care centers are authorized without review. It states requests for non-emergency care from out-of-network practitioners or providers require authorization, and are considered only when all of three of the following criteria are met: the primary care practitioner and/or in-network provider refers the member to an out-of-network provider; the out-of-network provider agrees to communicate findings and treatment plan with the member's referring practitioner; and if one of the following criteria are met: if the referral to the out-of-network specialist is being made by an in-network specialist due to clinical, complexity or inability to provide adequate service and services are not available in the anticipating provider network, member is temporarily outside the

service area and the service cannot be delayed, and ongoing treatment is required for an acute medical condition, or if the member is undergoing active treatment for a medical condition.

VII. FINDINGS OF FACT

1. NHPRI Representative Daignault testified the date of service for the frenectomy procedure was September 15, 2023, and there was no prior authorization obtained for the out-of-network procedure.
2. The procedure was scheduled with [redacted], at the [redacted] in [redacted] Massachusetts, an out-of-network provider.
3. For services to be provided out of network, there needs to be a prior authorization, Doctor Mitchell testified.
4. If there is no prior authorization, the out-of-network service performed has to be due to an emergency, Doctor Mitchell testified.
5. Attorney Catala testified that NHPRI did not receive any documentation indicating that the procedure performed was an emergency.
6. Doctor Mitchell testified if a prior authorization reqnest were submitted, it would have been denied, as multiple providers within NHPRI's network are able to provide the service the Appellant needed.
7. NHPRI Representative Daignault testified the Appellant called Member Services on September 11, 2023, to ask if certain procedure codes were covered.
8. NHPRI Representative Daignault testified the Appellant called Member Services again on September 15, 2023, about getting reimbursement for a frenectomy performed that day, and was supposed to send a fax, with the diagnosis and proof of payment, but NHPRI does not have any record of that being sent or received.
9. NHPRI Representative Daignault testified the Appellant requested reimbursement for the procedure from Member Services on December 14, 2023.

10. NHPRI denied the request for reimbursement, stating in the December 26, 2023, Initial Notice of Adverse Determination – Full DENIAL letter to the Appellant that the procedure does not meet the medical necessity criteria according to NHPRI's Clinical Medical Policy for Out of Network & Out of Area services. The letter states the information in the request from the provider does not show that the services were for an emergency, or could not be provided by physicians or providers in NHPRI's network. It included the number for Member Services for assistance in finding a doctor who is in the NHPRI network.
11. On June 17, 2024, an appeal request from the Appellant was submitted to NHPRI's Member Services, which then was sent to the Grievance and Appeals Unit.
12. On June 20, 2024, an appeal dismissal letter for timely filing was sent to the Appellant. It stated a member is eligible to appeal an adverse decision within 60 calendar days of the date of the denial letter, and that the Appellant was notified that her request for Out of Network Service was denied on December 26, 2023, which was more than 60 calendar days ago, and the request, therefore, was not eligible for appeal.
13. NHPRI Representative Daignault testified the June 20, 2024, appeal dismissal letter and the December 26, 2023, denial letter were both sent to the Appellant's address of record, [redacted].
14. The Appellant testified her baby was having difficulty with latching on, so she went to a lactation specialist, who told her that the baby had a "tongue tie." The baby had several physical therapy (PT) and occupational therapy (OT) sessions, she testified.
15. The Appellant testified she called dentists and specialists in Rhode Island that took NHPRI and either could not find anyone to perform the procedure, or they would not perform it due to her baby's age.

16. The Appellant testified she was told by PT and OT that [redacted], at the [redacted] in [redacted] Massachusetts, performed frenectomies, so she reached out to his office.
17. The Appellant testified she never received the December letter about the denial for the out-of-network procedure.
18. The Appellant testified that she assumed that when she went to [redacted] it was in-network, because PT/OT referred her. She testified that [redacted] office advised her to seek reimbursement from NHPRI.
19. The Appellant testified that as a first-time mother, she wanted to do anything she could to help her baby feed, so she decided to have the procedure done; she did not know she needed a prior authorization. She testified the doctor told her the procedure was medically necessary.
20. The Appellant testified that she eventually called NHPRI, as she never heard anything about the request for reimbursement, and was told it was denied, so she filed the appeal with NHPRI in June 2024.

VIII. DISCUSSION

NHPRI's position is that prior authorizations are needed for out-of-network services, unless it is an emergency, as stated in its Clinical Medical Policy for Out of Network/Out of Area services. Doctor Mitchell also testified that frenectomies are common procedures and NHPRI has a network of providers available to perform them, and that if a prior authorization had been sought, the Appellant would have been denied, and received information to call Member Services to help her find a NHPRI provider who could do the procedure.

While it is understandable that the Appellant, as a new mother, wanted to get the frenectomy done as soon as possible to help her baby, it is unclear why she did not call NHPRI directly if she was having difficulty finding a provider who would perform the procedure. It appears from her testimony that the

doctor's office who performed the frenectomy led her to believe that she just had to request reimbursement for the procedure from NHPRI. NHPRI Representative Daignault testified the Appellant called Member Services on September 11, 2023, but it is unclear what exactly was discussed about the procedure codes, and if reimbursement/prior authorization issues and the Out of Network policy were explained to the Appellant.

NHPRI, in its Clinical Medical Policy for Out of Network/Out of Area services, clearly outlines the criteria needed to allow procedures to be performed out of network. The frenectomy was not considered an emergency by NHPRI, and no referral was made to an out-of-network provider. Though the Appellant testified she did not receive the December denial notice regarding reimbursement for the procedure, and that's why she filed her appeal after the sixty (60) day appeal deadline, that argument carries little weight to the matter under appeal. While the Appellant's June appeal of the reimbursement denial was dismissed for timeliness, Doctor Mitchell testified that regardless, the procedure was not covered by the Clinical Medical Policy for Out of Network/Out of Area services.

IX. CONCLUSION OF LAW

After careful review of the testimony and evidence present at the Administrative Hearing, this Appeals Officer concludes:

1. No prior authorization was obtained for the frenectomy by the Appellant, despite that being a requirement for out-of-network services that are not emergencies, according to NHPRI's Clinical Medical Policy for Out of Network/Out of Area services.
2. The frenectomy could have been performed by providers within NHPRI's network, according to Doctor Mitchell.
3. The procedure did not meet medical necessity criteria as outlined in NHPRI's Clinical Medical Policy for Out of Network/Out of Area services.

X. DECISION

Based on the foregoing Findings of Fact, Conclusions of Law, evidence, and testimony, it is found that a final order be entered that the Appellant's request for relief is denied.

APPEAL DENIED

/s/ Lori Stabile

Lori Stabile

Appeals Officer

NOTICE OF APPELLATE RIGHTS

This final order constitutes a final order of the Executive Office of Health and Human Services pursuant to R.I.G.L. § 42-35-12. Pursuant to R.I.G.L. § 42-35-15, a final order may he 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.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [redacted]; copies were sent, via email, to [redacted], OHHS Representatives Nina Lennon, John Neubauer, and Jane Morgan Esq., and Neighborhood representatives Robert Fine Esq., Mary Eldridge, Amy Coleman Esq., Catherine Daignault, Mary Catala Esq., and Dr. Michael Mitchell, on this 11th day of October, 2024.

Diane M Furtado