

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

[REDACTED]

V. Docket #: 26-0535

Executive Office of Health and
Human Services

DECISION

INTRODUCTION

The Appellant [REDACTED], initiated this matter to appeal being denied by their Managed Care Organization (MCO) United HealthCare (UHC) from refilling their Zepbound prescription every 24 days. A Microsoft Teams hearing in this matter occurred on Monday, March 9, 2026, at 9:00 AM. The Appellant did not elect the option of a video hearing. For the reasons discussed in more detail below, the Appellant's appeal is denied.

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 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 210-RICR-10-05-2 and the Administrative Procedures Act (R.I.G.L. § 42-35-1 et. seq.).

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.

ISSUE

The issue is whether UHC properly denied the Appellant's Zepbound refill, despite it being 24 days since the last refill.

STANDARD OF PROOF

It is well settled that in adjudications modeled on the Federal Administrative Procedures Act a preponderance of the evidence is required to prevail. This means that for each element to be proven, the factfinder must believe that the facts asserted are more probably true than false. 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). 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).

PARTIES AND EXHIBITS

The Appellant, UHC Health Services Director Jerry Bonner, UHC's Director of Operations Lenae Picco, UHC's Pharmacy Director Kim Wong, UHC's Operations Specialist Kelly Earl, and EOHHS' Managed Care Oversight Team Project Manager Amanda Graziosi attended the hearing. The following exhibits were presented as evidence:

- Appellant's appeal & accompanying complaint letters
- Appellant's message to UHC of January 13, 2026
- Printout of UHC's website on coverage rules for Zepbound (2 versions)
- Appellant's pharmacy record for Zepbound
- Appellant's prior authorization approval letter from UHC
- UHC's response to the appeal
- Emails between the Appellant, UHC, and EOHHS
- Letter titled "Inconsistent Medicaid Adjudication of Zepbound – Sealed Package Conflict"

- UHC grievance received letter dated January 20, 2026
- Appellant's fax to UHC
- UHC grievance received letter dated February 18, 2026
- Appellant's letter titled "Repeat documentation of Expedited Appeal Mishandling – Timeline UHC Medicaid"
- UHC letter of January 30, 2026
- UHC letter of February 5, 2026
- UHC letter of March 2, 2026

RELEVANT LAW/REGULATIONS

MCOs are required to have appeal and grievance procedures. 42 C.F.R. § 438.400 defines an appeal as a request to review an adverse benefit determination. An adverse benefit determination includes 1) the denial or limiting authorization for requested services, 2) the reduction, suspension, or termination of a previously authorized service, 3) the denial, in whole or in part, of payment for a service, or 4) the failure to provide services in a timely manner. Conversely, a grievance is defined as an expression of dissatisfaction about any manner other than an adverse benefit determination. Grievances can include the quality of care, interpersonal relationships with providers or employees, or a failure to respect the member's rights.

42 C.F.R. § 438.402 (c)(1)(i) & 42 C.F.R. § 438.408 (f)(1) permits an appeal to the State Medicaid agency after exhausting the MCO's appeal process or when the MCO fails to issue a decision by the timeframe required. 42 C.F.R. § 438.408 (b) requires an expedited appeal to be resolved within 72 hours, a standard appeal resolved within 30 calendar days, and a grievance resolved within 90 calendar days.

Medicaid must provide each covered service in sufficient amount, duration, and scope to reasonably achieve its purpose. However, Medicaid can impose appropriate limits on services including

utilization control procedures, such as a drug surplus edit. 42 C.F.R. § 438.210 (a), see 42 C.F.R. § 440.230 (a-d), 42 C.F.R. § 438.206(c)(1), & 210-RICR-10-00-1.5 (A) & (C).

As part of the Medicaid drug coverage, Medicaid recipients can pick up their medications before they run out to ensure continuous supply is on hand and to avoid interruptions of therapy. UHC uses an 85% rule to determine when a member can refill their medications. This means when the member used 85% of the last fill, they can get the next refill processed. Likewise, UHC has a drug surplus edit that limits refilling too early to avoid abuse, misuse, and waste of the drugs. This is triggered when the member should have 20 or more days of medication on hand. For Zepbound, this would be when the patient still has 3 or more pens on hand.

OBJECTIONS AND MOTIONS

UHC moved that this case be dismissed. UHC cites two reasons. First, they claim that UHC has not made an adverse benefit determination that would grant appeal rights. Second, even if there was an adverse benefit determination, the Appellant has not exhausted their first level appeal rights and therefore they cannot appeal with EOHHS until they do so.

A denial of a prescription refill is considered an adverse benefit determination as this involves a denial or limitation on a requested service. As such the Appellant can appeal the determination. See 42 C.F.R. § 438.400 et. al.

UHC's second argument is based on a first level appeal not being completed in this case. While that is true, it is a result of UHC's misclassification of the Appellant's appeal as a grievance. However, it seems inefficient to have this matter return to UHC to now process as an appeal, for the same outcome that occurred in the grievance process to occur again, and for it to return to EOHHS for a hearing. Given that this issue was reviewed by UHC under the grievance process and the parties were sufficiently prepared to present, a hearing on the merits with EOHHS is prudent.

FINDINGS OF FACT

Zepbound is administered once a week. A Zepbound prescription is dispensed in a carton of 4 prefilled injection pens. Each pen contains one dose. Each carton covers 28 days of treatment. Patients on Zepbound are instructed to take the medication on the same day each week. The Appellant is on Zepbound and is currently taking 15mg per 0.5ml. The Appellant started taking Zepbound at this increased strength on Wednesday, September 17, 2025. The Appellant reports taking their Zepbound every Wednesday. The Appellant contends that they have not been able to consistently get their Zepbound refilled on the 24th day as they should be able to.

Details were provided by the parties as to when the Appellant was taking the Zepbound and when it was refilled. Based on a thorough review, the Appellant has consistently been able to get their Zepbound refilled when 24 days have passed from the previous refill and they had less than three pens on hand.

If one is consistent about refilling the prescription on the 24th day, they would accumulate a surplus. Specifically, every two refills would result in an extra pen (i.e., an extra week of medication). UHC lifted the surplus edit for the Appellant in February in response to the Appellant's complaint. Projecting the Appellant's usage and assuming they pick up their refills as soon as they are available, the Appellant will accumulate an 11-pen supply on July 16, 2026, when they pick up their last refill of the current prior authorization. This is a week shy of having 3 months of medication on hand.

DISCUSSION

The Appellant asserts that they should be able to get their Zepbound every 24 days after the previous refill. UHC does not deny that this is generally correct. However, UHC reports that there is also a drug surplus edit in place that is intended to prevent individuals from stockpiling drugs and to combat against fraud, abuse, and waste.

Under 42 C.F.R. § 438.210 (a)(3)(i), UHC is required to ensure that services, such as prescription filling, are sufficient in amount, duration, or scope to reasonably achieve the purpose it serves. UHC does this by allowing refills when 85% of the previous fill is used up. This allows the Appellant to refill their prescriptions before consuming their entire supply of a drug, allowing them to remain on the therapy continuously. However, 42 C.F.R. § 438.210 (a)(4)(ii) allows UHC to also put in appropriate limits on services, including utilization controls.

If the Appellant were to consistently pick up their Zepbound on the 24th day, they could easily accumulate a stockpile. Since each refill would be four days early, every two refills would accumulate an extra pen (i.e., an extra week of medication). UHC lifted the surplus edit for the Appellant in February. Projecting the Appellant's usage and assuming they pick up their refills as soon as they are available, the Appellant will accumulate an 11-pen supply on July 16, 2026. This is a week shy of having 3 months of medication on hand. The drug surplus edit is intended to curb such a surplus accumulating and prevent the drugs from being wasted (such as expiring) or being abused (by allowing a surplus to be accumulated that is later given away or sold instead of being used by the member).

As for the member's previous refills, a full review of the Appellant's usage and refills of the current 15mg/0.5ml strength show the refills comply with the 85% rule when the Appellant did not have a surplus of 3 or more pens on hand. There is insufficient evidence that the surplus edit, which is permitted under 42 C.F.R. § 438.210 (a)(4)(ii), is preventing the Appellant from getting their Zepbound when they need it if it is taken as prescribed.

Part of the Appellant's argument is that this not only affects them but all UHC Medicaid members on Zepbound. As such, they seek a system wide resolution to the issue. However, the Appellant failed to show that there was an issue with how the Zepbound was dispensed to them, let alone to all UHC members taking Zepbound.

CONCLUSION OF LAW

After careful review of the testimony and evidence present at the administrative hearing, this tribunal concludes:

1. A denial of a refill due to the surplus edit is an Adverse Benefit Determination.
2. The Appellant's 1st level appeal was incorrectly handled by UHC as a complaint. Judicial efficiency favors going forward on the merits instead of requiring a first level appeal.
3. UHC is permitted under 42 C.F.R. § 438.210 (a)(4)(ii) to put in place a utilization control on services.
4. The Appellant is allowed to refill their Zepbound prescription on the 24th day following the previous refill, unless utilization controls are warranted and implemented.
5. The 20-day surplus edit is a valid utilization control.
6. The 20-day surplus edit does not limit the Appellant's ability to get their medication before they run out if it is taken as prescribed.

DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that there is sufficient evidence to support UHC's denial of the Appellant's Zepbound prescription due to a surplus edit.

APPEAL DENIED

Shawn J. Masse

Shawn J. Masse - Appeals Officer

NOTICE OF APPELLATE RIGHTS

This decision is a final order under R.I.G.L. § 42-35-12. Under R.I.G.L. § 42-35-15, this Order may be appealed to court within thirty (30) days of the mailing of this decision. Such appeal, if taken,

must be completed by filing a complaint in 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.

Appeals are generally filed in the Providence County Superior Court. However, appeals affecting or concerning children under the age of eighteen (18) and/or appeals of a DCYF action may need to be filed in Providence Family Court. If you have any questions about which court a complaint for appeal should be made, you should seek the advice of an attorney, Rhode Island Legal Services, or the clerk of the court where you wish to file your appeal. The courts' contact information can be found on the judiciary's website (<https://www.courts.ri.gov>). Copies of the appeal must be served upon all parties in your case within ten (10) days of the filing of your appeal.

If you exercise any of these appellate rights, please inform the EOHHS appeals office of this so we can prepare a copy of the record for the court. You can contact the Appeals Office at OHHS.AppealsOffice@ohhs.ri.gov, 401.462.2132 (Phone), 401.462.0458 (Fax), or at 3 West Road, Virks Building, Cranston, RI 02908.

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], John Neubauer, Jane Morgan, Esq., Amanda Graziosi, Deborah Morales, Lenae Picco at [REDACTED], and UHC RI Compliance unit at RI_compliance@uhc.com on this 26th day of March, 2026.

Rebecca L. [Signature]