



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO
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MEGHAN DAVEY
Director

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

M.O.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
AMERIVANTAGE D-SNP,	:	OAL DKT. NO. HMA 1300-2016
	:	
RESPONDENT.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Respondent filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is June 16, 2016 in accordance with an Order of Extension.

This matter concerns the denial by Amerivantage Dual Eligible Special Need Plan (D-SNP) of a request by Dr. David Shevitz to provide an injection of "chemical agent into multiple veins of same leg". P-1. The denial notice stated "[s]ervices not authorized by network/primary care providers."

Amerivantage D-SNP did not appear at the hearing. Despite this, the Administrative Law Judge held a hearing with Petitioner providing testimony. The Initial

Decision found that testimony was sufficient to find that the treatment was medically necessary and that Amerivantage D-SNP's denial "was not properly supported by the facts of by the law." ID at 4. Unfortunately the facts in the Initial Decision rely on the unsupported hearsay testimony of Petitioner. Moreover, that testimony was used to reach conclusions of medical necessity when there was no foundation that Petitioner had medical training or background that would permit such a finding. Thus, I hereby REVERSE the Initial Decision.

While Amerivantage D-SNP offered no explanation as to its failure to appear, the reliance on Petitioner's hearsay testimony was improper. Not only was Petitioner's testimony hearsay, it was treated as an expert opinion. Petitioner testified as to what Dr. Carlos Tejada "believed" regarding these injections. The provider listed on the denial was Dr. Shevitz; not Dr. Tejada.

A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." No medical or clinical personal was sworn in as an expert to testify. Rather Petitioner's testimony espoused a position from a doctor who did prescribe the treatment. Thus, I FIND that Petitioner has not presented any legally competent evidence to demonstrate medical need for the services.

However, Amerivantage D-SNP has provided clarification regarding the denial including the fact that Dr. Shevitz's appealed the denial through a separate process. Petitioner has no liability for this claim and the provider has been advised that it should have not billed her. Respondent Exceptions. Amerivantage D-SNP avers it has contacted both the provider and Petitioner to explain this.


I am satisfied that this satisfies the issue at hand and that Petitioner's appeal has been resolved by Amerivantage D-SNP. Thus, I hereby find that denial has been reversed through correction of the claim and billing process and that there is no longer a contested issue.

THEREFORE, it is on this ^{14th} day of JUNE 2016,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the finding of medical necessity based on the unsupported hearsay testimony; and

That this claim denial is withdrawn and that payment has been made in accordance with the applicable process.


Meghan Davey, Director
Division of Medical Assistance
and Health Services
