

April 21, 2020

The Honorable Karen Fann, President
Arizona State Senate
1700 W. Washington
Phoenix, AZ 85007

The Honorable Russell Bowers, Speaker
Arizona State House of Representatives
1700 W. Washington
Phoenix, AZ 85007

Re: Report on Modified or Rejected Administrative Law Judge Conclusions of Law

Dear President Fann and Speaker Bowers:

A.R.S. 41-1092.08(B) provides that, within thirty days of receiving an administrative law judge's decision, the head of the agency may review the decision and accept, reject or modify it. If the head of the agency rejects or modifies the decision, the agency head must provide a written justification for the rejection or modification of each Finding of Fact or Conclusion of Law.

Subsection (B) also requires that if the agency head rejects or modifies a Conclusion of Law, the written justification shall be sent to the President of the Senate and the Speaker of the House of Representatives.

Most, if not all, administrative law judge decisions and the associated decision of the agency head regarding the AHCCCS program include information that is confidential under State and Federal law. See 45 CFR Part 164 and AAC R9-22-309. As such, AHCCCS cannot provide the full text of the administrative law judge decisions or the agency decision. As a practical matter, redacted versions of the justification for a modification or rejection of an administrative law judge's Conclusion of Law are not comprehensible without the full context of Findings of Fact and Conclusions of Law made by the administrative law judge.

For that reason, AHCCCS is providing quarterly summary information. For the quarter ending March 31, 2020, AHCCCS has identified 20 matters where the agency had rejected or modified an administrative law judge's Conclusions of Law. During that same quarter, AHCCCS reviewed 150 administrative law judge decisions. The following Conclusions of Law were modified or rejected:

- Modified the Conclusion of Law to address additional legal arguments made by the member regarding exclusions of income for purposes of determining the member's required contribution to the cost of the member's care.

- Rejected the Conclusion of Law regarding allowing an additional deduction to determine the member's required contribution to the cost of the member's care, due to lack of legal and factual basis for allowing the additional deduction.
- Modified the Conclusions of Law to correct name of physician who reviewed the PAS assessment and to add analysis that, had the applicant received increasing points associated with limitation in mobility and eating, the applicant's score would not have raised the applicant's score enough to qualify for long term care services.
- Modified the Conclusion of Law to add a request for an additional evaluation to be completed by the health plan in order to determine the member's need for continuing therapy.
- Rejected the Conclusions of Law that the applicant was automatically eligible because the determination that the applicant was not eligible was made more than 45 days after the application, and rejected the Recommended Decision to uphold the appeal on that basis.
- Modified the Conclusion of Law to clarify rules regarding the requirement, for purposes of determining ALTCS eligibility, for verification of income for individuals who are legally married.
- Modified the Conclusion of Law to clarify that the Cost of Living Increase a member received in January did not impact the determination that his income exceeded applicable standards.
- Rejected the Recommended Decision upholding denial of a member's request for durable medical equipment because a request to withdraw the appeal was received following the hearing based on health plan's post-hearing decision to approve the request.
- Modified the Conclusion of Law to clarify the effect of pending judicial appeal on a member's enrollment with the Division of Developmental Disabilities as the program contractor.
- Modified the Conclusion of Law to add additional legal authority for physician review of ALTCS applications involving psychiatric conditions.
- Rejected the Conclusions of Law that the applicant's payment to her mother was an oral contract and that the payment was made "exclusively" for a purpose other than to establish eligibility for ALTCS and rejected the Recommended Decision to find the applicant eligible on that basis.
- Modified the Conclusion of Law to add findings of a Physician Consultant's review regarding the denial of the applicant's ALTCS eligibility.
- Rejected the Recommended Decision approving a reduced payment to the hospital based on a clinical determination that the medical device included on the claim was properly billed.
- Modified the Conclusion of Law to address additional arguments made by a provider regarding the timeliness of a request for hearing.
- Modified the Conclusion of Law to add a legal citation to the statutory limit on prosthetic devices.
- Rejected the Recommended Decision that the applicant met medical criteria for ALTCS because the Administrative Law Judge did not consider the opinion of the physician reviewer and otherwise failed to apply the administrative rules in determining whether the applicant needed an institutional level of care.

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- Modified to add a Conclusion of Law to address the issue of whether the member was eligible for the ALTCS transitional program.
- Rejected the Recommended Decision that a healthcare provider should not be reimbursed for service because the health plan failed to verify the member's eligibility prior to approving the prior authorization request.

Please feel free to contact me if you have any questions about this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Jami Snyder". The signature is fluid and cursive, with the first name "Jami" and last name "Snyder" clearly distinguishable.

Jami Snyder

Director

cc: Richard Stavneak, Director, Joint Legislative Budget Committee
Matt Gress, Director, Governor's Office of Strategic Planning and Budgeting
Christina Corieri, Governor's Office, Senior Policy Advisor