

MINI PRIMER ON HOW TO HANDLE AN APPEAL OF DENIAL OF INSURANCE COVERAGE FOR GROWTH HORMONE REPLACEMENT THERAPY

By Earl A. Gershenow (February 11, 2007, modified July 1, 2007)

I. INTRODUCTION

A. GENERAL

Some insurance carriers deny initial claims on various technical grounds. It may also be that your insurance company simply suffers from bureaucratic inertia or is not sufficient informed with respect to medical necessity for GHD, which may be cured by an “instructive,” persuasive, and compelling appeal. Because an appeal based on grounds other than pituitary (“classic”) GHD is likely to be denied, you should prepare in advance for the potential need to file an appeal. This requires a fine reading of your contract, a competent physician with experience in growth hormone who will affirmatively support your claim; full diagnostic testing with test results to establish your claim for GHD deficiency unequivocally; and, strict attention—not necessary adherence—to the applicable terms of your insurance contract, implementing policies, and procedural rules.

Appeals can be very complex, difficult to do properly, and time consuming, not to mention attorney fees easily reaching \$25, 000, if you need legal representation; and more if pediatric endocrinologist is necessary to retain as a consultant or as an expert witness. If you intend to appeal the denial of a claim, you should consider obtaining an attorney, even if for limited purposes of reviewing the viability of an appeal, as soon as possible, so as not miss the filing date for the appeal. Whether you proceed on your own, or retain an attorney, you will need to consider information, issues, and perform the tasks presented below as soon as possible upon learning that your claim for rhGH has been denied. Gathering this information yourself will save you considerable attorney fees and time if you need to go that route. The first requirement, however, is to **MEET ALL FILING DEADLINES**.

B. IT’S YOUR CASE; YOUR INVESTMENT

Hard work pays off. Cases are won with facts. Whether you do your own appeal or seek assistance from or representation by an attorney, there are many tasks that you must do to present the best possible case on appeal. Pursuing an appeal will require you and/or your husband to do the following in addition to obtaining the above information.

1. Be aware of and keep on top of all filing and response deadlines for you and the insurance carrier.

2. Keep a detailed daily chronology of every contact (e.g., conversation, event, or activity), to include date and time; name, title/position, address, and telephone number of all primary parties, and a detailed narrative of the nature of each contact, what you said or did, and what the other party(ies) said or did.
3. Timely prepare and follow-up on all correspondence and notes of all oral communications.
4. Consult with the attorney (if you retain one) before filing and discussing any matter with the insurance carrier.
5. Send to the attorney drafts of all documents and records (collectively, “papers”) you prepare, and all documents you receive, as soon as you are ready to discuss the draft or receive a written or oral inquiry from the insurance carrier, your pediatric endocrinologist, or any other person or entity.
6. Maintain orderly files of all information and papers you generate and receive.
7. Have quick access to a computer, copy machine, and facsimile machine.
8. Carefully review all written messages for typos and substance prior to sending them.
9. Do any and all kinds of work necessary, at whatever hour of the day or night necessary, to file and pursue the appeal.

C. USING THE APPEALS CONTRACTOR OF THE INSURANCE COMPANY FOR APPEAL

Most, if not all, rhGH manufacturers retain appeals contractors who are usually “appeals nurses” to provide appeal services free of charge to the patient or his/her parent or guardian; and, provide rhGH free of cost pending the appeal. These free services and products are usually discontinued by the rhGH manufacture when the services of an attorney are retained. Using the appeals contractors for the first level internal appeal is usually not a problem, provided there is at least one additional internal appeal available. If the appeal is denied, you should consider obtaining your own representation.

It can happen that you or your pediatric endocrinologist on your behalf gives away your right to discontinue representation by the appeals contractor upon denial of the first level internal appeal. This unintentional giving of consent can occur by you or your pediatric endocrinologist signing away those rights in the application and/or statement of medical necessity for rhGH, or in any document submitted to you or your pediatric endocrinologist by the rhGH manufacturer’s representative. It is important that you (1) request the pediatric endocrinologist not to act on your behalf in agreeing to be

represented by the rhGH manufacturer or its appeals contractor, and to sign no paper that purports to give such authorization; and (2) when an appeal issue arises, to request the rhGH manufacturer's customer contact to deal directly and only with you concerning consent to be represented by the appeals contractor.

In conducting negotiations with the appeals contractor or other authorized representative, you should ensure that any consent by you be in writing and be accepted by the rhGH manufacturer's authorized representative in writing. The consent should be limited to the first internal appeal. If the rhGH manufacturer's authorized representative declines to accept you into the rhGH manufacturer's program providing free rhGH if you do not agree to go through a second level internal appeal with appeals contractor, then you should consider not accepting the free rhGH because your optimal chance of succeeding on appeal will likely require the assistance or representation of an attorney.

The pharmaceutical manufacturers and appeals contractors do not employ attorneys, probably because of the cost. Rather, they fill in factual documentation in support of medical necessity for the claim, which may be missing; and, they advance in more detail than contained in the application for rhGH, the medical literature in support of the grounds for medical necessity and coverage, and clarify those grounds that are set forth in the statement of medical necessity filed with or as part of the application for coverage for rhGH.

The second appeal, be it internal or an external State level appeal, usually requires a persuasive and compelling appeal and brief in support of the appeal, which contains the presentation of (1) a detailed statement of facts of the case; (2) principals of applicable medical and law; (3) a statement of the issues involved; and (4) theories of medicine and law applied to the facts of the case, which demonstrate both medical necessity and coverage of rhGH under the insurance policy or under State law, which may preempt the criteria specified in the insurance policy.

D. RETAINING AN ATTORNEY

In negotiating a contract for legal services with an attorney to represent you in this matter, doing the following may take time and be a hassle; but, it will potentially save you substantial money and grief in the future.

1. Find an attorney who has litigated the denial of medical insurance claims; and, check with the state bar to find out if the attorney has ever been sanctioned or disbarred. Sometimes, you can find an experienced attorney by checking court records for cases for attorneys who handled cases that involve claims similar to yours.
2. Retain the attorney on an hourly rate basis, which is often kept by tenths of an hour. DO NOT engage an attorney for this work on a contingency fee basis. It can, and will most likely be, a nightmare! In my view, no attorney should even suggest a contingency fee.

3. Request the attorney to give you a written plan of his approach to obtaining coverage for GH. Also, require the attorney to provide periodic progress reports to you, orally or in writing; and, to set benchmarks for a case review to determine whether a change in approach is necessary, or whether you want to proceed at all.
4. Make copies of any and all records that you give the attorney; you may find the records you give the attorney difficult to get back when you need them if you run into a fee dispute.
5. Require the attorney to send you copies of all correspondence, email messages, faxes, court pleadings and papers, and all other communications that are sent or received by the attorney.
6. Require the attorney to inform you of all offers of settlement and other significant communication with anyone concerning the work being done for you.
7. Include a provision that expressly states you (a) may terminate the attorney's service, without cause, upon receipt of notice of termination by the attorney, to take effect upon receipt of the notice; and, (b) are entitled to the return of your original records and a copy of the entire file (for a fee, of course).
8. The attorney should do the following:
 - a. Discuss with you the approach to the case in terms of medical issues, strategies, and tactics.
 - b. Prepare the appeal and supporting brief, which the primary beneficiary and other parent, if any. The brief includes medical and legal issues and applicable law as well as fact, medical and legal cases, and healthcare and medico-legal arguments. The brief is supported with full-text hard copies of medical cases where appropriate and available. The medical and legal issues and argument are tailored to the facts of the case.
 - c. Discuss with you all oral contacts you initiate with the insurance company and prepare all correspondence involved in proceeding with the appeal, which can be “tricky” and time-consuming based on the insurance company’s tactics.
 - d. If hired for pay, there should be an hourly fee agreement that can be terminated by you or the attorney at will. **DO NOT ENTER INTO A CONTINGENCY FEE AGREEMENT.** Although you are not responsible for the attorney’s fees, you are responsible for

all costs, which can be significant. However, the most important reason for not entering a contingency fee agreement is that if you decide to terminate the agreement, the reasonable value of the attorney's services (not the attorney's hourly fee) are due and payable immediately.

II. IMMEDIATE PROCEDURAL AND ADMINISTRATIVE TASKS

Having and understanding of the context requirements for preparing the appeal, it's time to get down to business of obtaining, organizing, and presenting the following information in a format that is readily understandable by whomever is going to represent you or assist you with the appeal.

1. Name address, telephone number, and fax number of the owner (usually the employer) of the insurance policy; name of the family policyholder; and the policy number.
2. Name address, telephone number, fax number, and e-mail address(es) of the family policyholder.
3. From your insurance handbook; and, find out:
 - a. The name, address, telephone, and fax number for your insurance carrier; your policy number; and the fax and address for filing an appeal.
 - b. whether the employer or other owner of the policy pays periodic premiums in return for services and products for illness, conditions, or surgery; or, whether the employer or other owner of the policy self-insured; and uses the insurance company only to administer the insurance policy. There is no appeal the State level for self-insured policies.
 - c. how many internal appeals you have; and whether in the book there is mention of an appeal to the State (with a State agency or commission, or independent reviewing agents).
4. For each level of appeal, find out how many days from:
 - a. the determination or date of notice of the determination of denial of a claim for coverage of rhGH to the day on which a first level appeal must be filed; and
 - b. the determination or date of notice of a determination denying a first level appeal to the day on which a second level appeal must be filed or, in the alternative, on which an appeal to the State must be filed; and

- c. the determination or date of notice of determination denying a second level appeal to the day on which an appeal to the State must be filed.
5. From the insurance company, obtain the letter of denial of the claim for rhGH for your child, and any accompanying attachments or information.

The following information should be obtained and considered in evaluating the potential merits of, and pursuing, an appeal of denial of medical insurance benefits.

6. From your PEDIATRIC ENDOCRINOLOGIST, obtain:
- a. copies of any and all medical records and other documents submitted to rhGH customer's representative concerning or pertaining to application for rhGH.
 - b. copies of any and all other medical records in possession, custody, or control of the pediatric endocrinologist, including: (1) records relating to the investigation, evaluation, diagnosis, and treatment relating to disorders of growth/growth hormone; and any related conditions, including but not limited to, growth and growth velocity charts, biochemical tests, scans of brain and bone, consultation reports, and physician's notes; and (2) all notes of correspondence between the pediatric endocrinologist(s) and insurance carriers regarding the claim or any appeal, including any peer-to-peer review.
7. From the rhGH MANUFACTURER'S CUSTOMER'S REPRESENTATIVE, obtain:
- a. copies of any and all records and other documents submitted to the insurance company by its the representative or agent for coverage of rhGH; and,
 - b. any statement you signed giving the customer's representative right to represent you and the nature of the representation (i.e., claim, 1st internal appeal, through the 2nd level of appeal).
8. Prepare a detailed chronological statement of your child to include:
- a. date of birth, birth weight, birth height, and prenatal and postnatal conditions and complications;
 - b. growth and development data;
 - c. significant illness, diseases, disorders, syndromes, and other medical conditions;

- d. for each such medical condition described in 8.d., including disorders of growth/growth hormone, above, state:
- 1) date of onset;
 - 2) name, specialty, and address of each physician involved in the diagnosis and treatment;
 - 3) name and address of any medical facility and of the admitting physician;
 - 4) prognosis, treatments/therapies, and outcome for each such medical condition; and
 - 5) specifically as to disorders of growth hormone:
 - a) date of onset of GH deficiency, if known;
 - b) date symptoms of GH deficiency recognized;
 - c) date of diagnosis of GH deficiency; and
 - d) cause of GH deficiency, if known.
 - e) physical and emotional symptoms that caused or contributed to by GH deficiency; and, a detailed description of current symptoms and disabling effects; and, historically, how the symptoms and disabling effects have progressed, and are likely to progress, as you see these things; and,
 - f) date started taking rGH;
 - g) date stopped taking rGH;
 - h) kind, brand, and dosage regimen of rGH, and the method of administration;
 - i. what caused you to seek the diagnosis of GHD deficiency for your child.
 - j. kinds of tests and test results used to diagnose GHD.

Submit all information the attorney who represents you, or to any other person who assists, as soon as you obtain it; do not wait to get it all together.

III. SUBSEQUENT TASKS AFTER AND DEPENDENT UPON LEGAL REVIEW OF THE CASE

1. Request from your insurance carrier copies of the following records:
 - a. the insurance policy, employee handbook, all riders, all amendments (collectively, the “policy”), and all policy-wide implementing policies in bulletins or other documents; and implementing rules, regulations, procedures, or policies (collectively, the “implementing documents ”), that concern or pertain to coverage of recombinant (biosynthetic) growth hormone (rhGH) for any and all purposes and coverage under the policy and implementing documents. These documents should contain the schedule of benefits, all coverages, exceptions, exclusions, claims, appeals, and definitions of the terms used, especially “medical necessity,” “investigational,” and “experimental.”
 - b. copies of any and all medical records and other documents submitted to the insurance carrier by the pediatric endocrinologist who prepared and signed the application for rhGH, and submitted it and any and all accompanying documents.
 - c. copies of any and all records and other documents submitted to the insurance company by the representative or agent of the rhGH pharmaceutical manufacturer for coverage of rhGH.
 - d. copies of any and all medical and other records that pertain to, concern, or were considered in denying coverage for growth hormone to your son.
 - e. copies of the policy and implementing instruments that were expressly relied upon in denying coverage for growth hormone to your son.
2. Request for information concerning the decision maker(s) that denied the application for rhGH.
 - a. What are the name, title, position, duties and responsibilities of each person who was involved in deciding whether to grant the appeal?
 - b. If a decision-making element or component of the insurance company (the “decision-making body”):
 - 1) What is the name of the decision-making body?
 - 2) What are the name, title, position, and responsibilities of each member of the decision-making body?

- 3) With respect to each medical doctor who is a member of the decision-making body:
 - a) What is his/her area(s) of medical specialization?
 - b) What is (are) his/her board certification(s)?
 - c) What is his/her area of medical practice (e.g., clinician, researcher, contractor)?
 - d) How many years has he/she practiced as a clinician in the area of growth disorders/growth hormone?
 - e) How many years has it been, if any, since he/she has practiced in the area of growth disorders/growth hormone?
 - d) Is he/she an employee of the insurance company or a contractor; and, if not an employee of the insurance company, what is the name and address of his employer; and, the relationship of that employer to the insurance company?
- 4) In deciding to deny the application for rhGH, did the members of the decision-making body meet in the physical presence of each in making its final decision on the claim?

3. Request your pediatric endocrinologist to seek peer to peer review of denial of you claim with a board certified endocrinologist, who is engaged in the clinical practice of pediatric endocrinology. If such an endocrinologist has not participated in the claims approval process, that is of particular interest and relevance to the appeal.

IV. ASSISTANCE FROM ATTORNEYS WHO VOLUNTEER LEGAL SERVICES TO MEMBERS OF HGF

The Discussion Forums Administrator (Administrator), or other attorney recommended by the Administrator, may undertake to review a claim or appeal, and to assist or represent the member free of attorney fees but with charges for costs and expenses, subject to availability, viability of a claim or appeal after review of the case; and, his/her assessment of member's ability and willingness to cooperate with the attorney, and to do the necessary work detailed above. When the Administrator does not have time to assist directly in the appeal, he may still provide medical and legal information to the member.

Discussion Forum (Forum) members may retain for a fee any attorney of the choice to represent or assist them. However, any attorney to whom a Forum member is referred by the Administrator will have agreed to assist or represent the member free of his/her fee,

other charges for costs and expenses remain. To the extent these services are available, they are independent and apart from HGF; and, HGF takes no responsibility for any attorney services of any kind whatsoever to its members or any other person.

V. NOTE

1. The following documents should be sent to the proper address of insurance company by U.S.P.S. certified mail, return receipt requested. In addition, to expedite such outgoing mail, you can send it by fax, noting above the insider address: "SENT VIA FACISIMILE (the fax no. goes here). However, you will need to ensure that you have correct fax number.
 - (a) any correspondence relating to a filing deadline, including, but not limited to, the appeal and appeal brief.
 - (b) any request for documents.
2. Certain of the information requested of the insurance carrier, rhGH customer representative, and pediatric endocrinologist is intentional redundant: it is important to know what documents each of the sent and received.

Earl A. Gershenow, Esquire
HGF Discussion Forums Administrator
egersh@comcast.net
301-983-8341 (home phone/fax (24/7))