

Circuit Court for Prince George's County
Case No.: C-16-CV-23-005854

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 397

September Term, 2025

IN THE MATTER OF ATHENA McCRARY

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 26, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In this appeal, we are tasked with determining whether an Administrative Law Judge (“ALJ”) in the Office of Administrative Hearings erred in upholding a decision by Aetna Better Health of Maryland denying a request for coverage for a transthoracic echocardiography under stress or “stress echo” based on lack of medical necessity. For the reasons to discuss, we find no error and affirm the judgment.

STANDARD OF REVIEW

When reviewing a decision of an administrative agency, we look through the circuit court’s decision and evaluate the decision of the agency. Our primary goal is to determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious. We conduct a two-fold inquiry, examining whether there is substantial evidence in the record to support the agency’s findings and conclusions and whether the agency’s decision is premised upon an erroneous conclusion of law. We will uphold the agency’s decision as long as it is not premised upon an error of law and if the agency’s conclusions reasonably may be based upon the facts proven. We review *de novo* an agency’s conclusions of law.

Hayden v. Md. Dep’t of Nat. Res., 242 Md. App. 505, 520-21 (2019) (cleaned up).

BACKGROUND

We need not recount the factual and procedural details involved in this case as the parties themselves are well aware of them. Although mindful that we are reviewing the decision of the Administrative Law Judge (“ALJ”) who convened a hearing and took evidence on the matter, and not the decision of the Circuit Court for Prince George’s County who affirmed that decision upon Athena McCrary’s petition for judicial review, we shall include here the circuit court’s succinct summary of the evidence before the ALJ:

[T]here is substantial evidence in the record supporting the Administrative Law Judge’s Findings of Fact and conclusion that Aetna properly denied Petitioner’s request for a stress test because the procedure was not medically necessary. Aetna Better Health of Maryland is a

participating Medicaid Managed Care organization part of the Maryland Department of Health’s Health Choice program providing enrollees with medically necessary services in accordance with COMAR 10.67.06.01A (2019). Petitioner was enrolled with Aetna, and in 2022, tested positive for COVID-19. Because Petitioner continued to test positive and was complaining of chest and other pains, she was fitted with a heart monitor. The final heart monitor report indicated there were “no significant abnormalities;” nonetheless, her doctor, Diedra Varner at MedStar Shah Medical Group, referred Petitioner to undergo a transthoracic echocardiography under stress procedure.

Aetna “did not receive any records that would allow [them] to see if the requested service is needed,” and notice of a 1-time 14-day extension was sent to allow Aetna time to conduct a review of the request. A copy of this notice was sent to Petitioner’s doctor. The record does not show Petitioner’s doctor provided a response. Thereafter, Dr. Frances Zappalla, an Associate Medical Director at eviCore, evaluated the medical necessity of the need for a stress echo. In doing so, eviCore requested “additional clinical information” from Petitioner’s doctor. A separate letter was sent to Dr. Varner on June 26, 2023 “offering to have a Medical Director speak with Dr. Varner regarding the...determination.” Petitioner subsequently requested Aetna waive the 14-day extension and requested an expedited appeal, on June 29, 2023. Petitioner received an appeal confirmation on June 30, 2023. In addition, Aetna sent Petitioner a request for additional information and to have her physician provide records showing “abnormal heart test results.” No such information was provided. Subsequently, an independent review was conducted by Joseph Guzzo, a board-certified physician in cardiovascular disease to review the medical necessity determination. A report of his findings recommending coverage of the stress echo test be denied was provided to Aetna. This recommendation was again reviewed by an Aetna medical director. Thus, a final denial letter was sent to the Petitioner on July 26, 2023. Petitioner requested a fair hearing through the Office of Administrative Hearings, and a remote hearing was held on November 9, 2023. Petitioner’s doctor did not testify, and no evidence was presented demonstrating the medical necessity for the stress echo.

Order of the Circuit Court for Prince George’s County dated March 25, 2025 affirming Administrative Law Judge’s conclusion that Aetna Better Health of Maryland properly denied the [petitioner’s] request for transthoracic echocardiology under stress procedure is not medically necessary.

DISCUSSION

In this appeal, Athena McCrary (who represents herself as she also did before the Administrative Law Judge and the circuit court), presents four questions for our review.¹

¹ Ms. McCrary phrased the questions presented as follows:

1. Under the terms of the Affordable Care Act, did Aetna Better Health of Maryland discriminate against Athena McCrary based on her Medicaid status when the company delayed and denied timely access to a transthoracic echocardiogram without speaking to her cardiologist and when the denial of care went against Ms. McCrary's wishes?
2. Whether Aetna's Chief Medical Officer Dr. Lucy Gibney and MCMC's Dr. Joseph Guzzo's refusal to follow federal guidelines and research on Long Covid (NIH, CDC, VA) and their decision to ignore Ms. McCrary's chest pain by denying treatment for an echocardiogram would be considered medical malpractice and a violation of the Rehabilitation Act of 1973 which prohibits discrimination against people with disabilities?
3. Whether Athena McCrary's 14th Amendment right to due process was blocked by the lower courts judges under the terms of the U.S. Constitution (S1.5.4.1) which states: "Due process may also require other procedural protections such as . . . cross-examination, discovery, and a decision based on the record" when the Maryland Office of Administrative Hearings Judge refused to include Ms. McCrary's opening statement, the federal research she submitted as evidence and her cross-examination of the sole defense witness who perjured herself when she admitted Aetna issued the denial due to a billing code error, not because it wasn't medically necessary, ruling in Aetna's favor and, when the Prince George's County Circuit Court Judge stated in his ruling that his decision must be viewed in the light most favorable to the agency and also ignored Ms. McCrary's evidence and cross-examination and affirmed the previous court, ruling in Aetna's favor?
4. Under the terms of the Affordable Care Act, did Aetna Better Health of Maryland's decisions to choose and accept the medical opinions of all White American doctors (Dr. Zapalla, Dr. Guzzo, Dr. Gibney) who never saw Ms. McCrary face to face over the medical opinion of a Black American cardiologist (Dr. Varner), who ordered the echocardiogram after treating Athena McCrary, a Black American woman and Medicaid recipient as a patient twice, show racial bias, racial discrimination and / or a pattern of systemic racism when making decisions that affect the healthcare outcomes of the Black American individuals on Medicaid Aetna insures? Furthermore, did Aetna's decision to deny Ms. McCrary's final appeal after she presented federal government research about the risks of heart failure, heart attacks and strokes for Long Covid patients serve as an act

(continued)

The only issue properly before us, however, is whether there was substantial evidence to support the decision of the ALJ. We conclude that there was and, accordingly, affirm the judgment. In short, Aetna presented substantial evidence to support its decision that the stress echo was not medically necessary, and Ms. McCrary presented no evidence to the contrary.

As for Ms. McCrary’s claim that she was denied her due process rights during the ALJ hearing, our review of that transcript does not support that allegation. She was given the opportunity to present her case and to cross-examine Aetna’s sole witness.

Nor are we persuaded that Aetna’s witness, in McCrary’s words, “perjured herself when she admitted Aetna issued the denial due to a billing code error, not because it wasn’t medically necessary[.]” The witness testified that the decision was based on the particular test ordered by Ms. McCrary’s physician using the code 93351, which involves “continuous pictures of the heart while the electroconductivity of the heart is being monitored.” The insurer deemed that procedure not medically necessary based on the submitted information. If the physician had requested “a stress test” (without continuous pictures of the heart) the code would have been 93306. The decision here was based on the code utilized by the ordering physician and the information (or lack thereto) to support a medical necessity for the procedure.

of malicious intent when making decisions about medically necessary treatments for the people they insure?

In sum, we are persuaded that the ALJ’s decision was supported by substantial evidence.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**