

sent via email: [REDACTED]@medel.co.uk

Mr [REDACTED]
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5 February 2019

Dear Mr [REDACTED]

Final Appraisal Determination – Cochlear implants for children and adults with severe to profound deafness [ID1469]

Thank you for your letter of 18 January 2019, lodging the MED-EL's appeal against the above Final Appraisal Determination.

Introduction

The Institute's appeal procedures provide for an initial scrutiny of points that an appellant wishes to raise, to confirm that they are at least arguably within the permitted grounds of appeal ("valid"). The permitted grounds of appeal are:

- 1(a) NICE has failed to act fairly, or
- 1(b) NICE has exceeded its powers;
- (2) the recommendation is unreasonable in the light of the evidence submitted to NICE

This letter sets out my initial view of the point of appeal you have raised: principally whether they fall within any of the grounds of appeal, or whether further clarification is required of any point. Only if I am satisfied that your points contain the necessary information and arguably fall within any one of the grounds will your appeal be referred to the Appeal Panel.

You have the opportunity to comment on this letter in order to elaborate on or clarify any of the points raised before I make my final decision as to whether each appeal point should be referred on to the Appeal Panel.

Initial View

You have suggested that NICE has failed to act fairly, in that a test based on/scoring by phonemes is easier than a test based on/scoring by words, and that therefore a higher test score by phoneme could still be indicative of severe hearing impairment.

I should explain that where NICE's grounds of appeal refer to not acting fairly, this means following some unfair procedure (for example, completely ignoring some relevant evidence, or something like that). I have considered the committee papers available on the website which show that the question of adopting a criterion of a phoneme score of 50% or greater on the Arthur Boothroyd word test presented at 70 dBA as indicating adequate benefit from an acoustic hearing aid was widely canvassed by consultees (indeed it seems to have been suggested by one consultee and supported by others). I therefore do not think that there can be a valid argument that this was procedurally unfair.

I have also considered whether your appeal might be valid under ground two. However to be a valid ground two appeal point a conclusion reached by NICE must be (at least arguably) untenable. The fact that it could sensibly be disagreed with (which for present purposes I assume is the case) is not enough. Given that the 50% threshold was proposed by one consultee who appears likely to have expertise in the area, and supported by several others who seem similarly well informed, I cannot at present see that an appeal panel could safely decide that the threshold was unreasonable. I cannot see that there is any evidence of possible confusion between scoring phonemes and scoring words. In saying that, I am not saying that your proposed threshold of 55% might not also be reasonable, but you will understand that that is not the test. Provided the committee's guidance is reasonable, the fact that other guidance would also be reasonable does not make for a valid appeal ground.

Therefore I would not presently be minded to refer this point to an appeal panel.

Please let me have any further observations you may have on this point within the next ten working days, **no later than 19 February 2019**, and I will then finalise my decision on initial scrutiny.

Many thanks

Yours sincerely

Dr Rosie Benneyworth

Vice-Chair

National Institute for Health and Care Excellence