

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

DEC 17 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06238

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: HMO

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on October 13, 2009, at 9:15 a.m., in Fort Lauderdale, Florida. The petitioner was present and represented himself. The respondent was represented by Ken Hamblin, program operations administrator. Present from the respondent on the telephone was Hazel Greenberg, program administrator, and Alexandria Perry, program analyst. Present on the telephone from Molina Healthcare was Maritza Borrajero, chief operations officer, Jose Perez, chief medical officer, Holly Morreau, pharmacy director, Monica Lenard, contract director, and Maria Sobalvarro, appeals coordinator.

The record was held open for 14 days from the date of the hearing, which was through October 27, 2009, to allow the respondent an opportunity to submit information into evidence. The respondent submitted information into evidence within the deadline.

ISSUE

At issue is the Agency's July 9, 2009 action of denying the petitioner's request to pay \$675.00 for the prescription drug Oxycontin, to be funded through the Medicaid Program. The petitioner is also requesting that the Medicaid Program pay him \$32.25 for copies of medical records, plus \$300.00 for pain and suffering for going nine days without Oxycontin, for a total of \$1,007.25. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a recipient of Medicaid benefits through a Health Maintenance Organization Molina Healthcare. He received a notice dated July 9, 2009, informing him that his request for Oxycontin Tab 30MG CR, and Oxycontin Tab 80MG CR was denied because of documenting the failure of generic formulary alternatives to this medication.
2. Included in the evidence is a copy of a letter from the petitioner dated August 25, 2009, stating that he is requesting the Medicaid Program to pay him \$675.00 for the prescription drug Oxycontin, and \$32.25 for copies of medical records, plus \$300.00 for pain and suffering for going nine days without Oxycontin, for a total of \$1,007.25.
3. Included in the evidence is a copy of a receipt from PS Drugs showing that the petitioner paid \$675.00 on July 17, 2009 in the quantity of 60 for Oxycontin 80MG.
4. Included in the evidence is a copy of a Molina Healthcare Drug Formulary 2008. Under the title of Generic Medications, it states that selected medications have FDA approved generic equivalents available. It also states that generic drugs will be dispensed whenever available, and that Molina encourages the use of quality generic products.
5. Included in the evidence is a copy of a page from the Molina Healthcare Drug Formulary listing Oxycontin, and the generic drug Oxycodone SR. The respondent's

representative explained at the hearing that AHCA agreed to accept and approve the Molina Healthcare Drug Formulary.

6. Included in the evidence is a copy of a statement from Molina Healthcare stating that on July 8, 2009, the pharmacy director received an initial request from Dr. requesting for the petitioner Oxycontin 80MG, and Oxycodone 30MG. This request was denied by the Molina Healthcare pharmacy director.
7. The request for Oxycontin 80MG, and Oxycodone 30MG was denied because the doctor did not submit to Molina Healthcare, chart notes or documentation indicating the failure of generic formulary alternatives, and the petitioner's medication history.
8. Included in the evidence is a statement from Molina Healthcare stating that on July 13, 2009, a second request for the medications for the petitioner from Dr. was denied by the pharmacy director based on the lack of the required documentation.
9. Included in the evidence is a statement from Lina Perez-Sordo, government contracts specialist from Molina Healthcare. It states that selected medications, including Oxycontin have FDA approved generic equivalents available. The Molina Drug Endorsement states that generic drugs will be dispensed whenever available.
10. According to Lina Perez-Sordo's statement, which is included in the evidence, she spoke with Dr. the petitioner's physician, and he agreed to write a prescription for the generic drug Oxycodone 80MG SR, and he also agreed that this is the same medication as Oxycontin. The petitioner did not agree with his doctor, and he took it upon himself to purchase the brand named drug knowing that it was not covered by the plan. According to the petitioner at the hearing, he did this because he felt that the generic brand did not work for him.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S. The Florida Statutes at 409.912 states:

The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required...

14. The agency may require prior authorization for the off-label use of Medicaid-covered prescribed drugs as specified in the General Appropriations Act. The agency may, but is not required to, preauthorize the use of a product for an indication not in the approved labeling. Prior authorization may require the prescribing professional to provide information about the rationale and supporting medical evidence for the off-label use of a drug...

In accordance with the Florida Administrative Code at 59G-1.010:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care,

be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service...

Section 59G-1.010 further explains as follows that:

(226) "Prior authorization" means the approval by the Medicaid office for a Medicaid provider, or by a prepaid health plan for its affiliated providers, to deliver Medicaid covered medical or allied care, goods, or services in advance of the delivery of the care, goods, or services...

The petitioner's request for \$675.00 for the prescription drug Oxycontin, to be funded through the Medicaid Program, was denied. The petitioner is also requesting that Medicaid pay him \$32.25 for copies of medical records, plus \$300.00 for pain and suffering for going nine days without Oxycontin, for a total of \$1,007.25. AHCA agreed to accept and approved the Molina Healthcare Drug Formulary 2008, which states in part:

GENERIC MEDICATIONS

Selected medications have FDA-approved generic equivalents available. The Molina drug endorsement states... "generic drugs will be dispensed whenever available."

The Molina Healthcare Drug Formulary lists Oxycontin, and the generic drug Oxycodone SR. The petitioner paid for Oxycontin because he felt that the generic brand did not work for him. After careful consideration, it is concluded that the denial of \$675.00 payment for Oxycontin for the petitioner, funded through the Medicaid Program, is upheld.

Fl. Admin. Code 65-2056 explains the Basis of Hearings, which includes an Agency's action to deny Medicaid benefits. It is determined that there is no basis for appeal for copies of medical records, and for pain and suffering. After careful consideration, it is determined that the petitioner's request for the Medicaid Program to

pay him \$32.25 for copies of medical records, and \$300.00 for pain and suffering, is denied.

DECISION

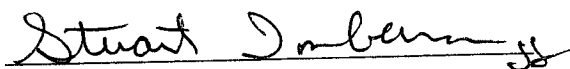
The appeal is denied and the Agency's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 17th day of December 2009,

in Tallahassee, Florida.



Stuart Imberman
Hearing Officer
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Copies Furnished To