

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-06246

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 8:30 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her mother, _____ . The respondent was represented by Ken Hamblin, program operations administrator. Present on the telephone from the respondent was Hazel Greenberg, program administrator, and Teri Lyons, program analyst. Present on the telephone from Universal First was Dr. Tom Culhane, medical director, and Antonia Taylor, appeals team leader.

ISSUE

At issue is the Agency's July 8, 2009 action of denying the petitioner's request for physical therapy, to be funded through the Medicaid Program, due to not meeting medical necessity. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth March 17, 2002, is seven years old. She is a Medicaid benefits recipient through the Health Maintenance Organization Universal First.
2. Included in the evidence is a copy of a notice dated July 8, 2009, stating that physical therapy services was denied for the petitioner.
3. According to information from Universal First, which is included in the evidence, the petitioner had surgery on her right Achilles tendon in 2004, and she had a second operation on March 31, 2008.
4. Included in the evidence is a copy of a statement dated July 20, 2009, from Dr. [REDACTED] z stating that the petitioner had recently undergone Achilles tendon repair that required her to have surgery. According to the doctor, it is medically necessary for the petitioner to have physical therapy to help strengthen the surgically repaired area, and to improve her gait.
5. Included in the evidence is a copy of a Medical Director Denial Review Form dated July 8, 2009, from Dr. [REDACTED] stating that the request for physical therapy for the petitioner was denied. The doctor determined that it is not medically necessary because she is being treated for poor coordination, which is not subject to significant improvement.
6. Included in the evidence is a copy of a statement dated September 1, 2009, from Dr. [REDACTED] r, medical director of Universal First. It states that upon review, the denial of physical therapy for the petitioner is upheld because she has reached full post operative potential.
7. According to Dr. Culhane at the hearing, he agrees with Dr. [REDACTED]), and Dr. [REDACTED] . that physical therapy is not medically necessary for the petitioner. He explained that since

surgery was done on March 31, 2008, there is now no need for physical therapy, and that she could benefit with a home exercise program. The petitioner's mother is appealing the denial of the physical therapy, asserting that the petitioner needs it.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, 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.

Fla. Admin. Code 59G-1.010 states in part:

(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;
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.

Fla. Admin. Code 59G-4.160, addresses outpatient hospital services, and the Hospital Services Coverage and Limitations Handbook explains medical necessity. The petitioner was denied physical therapy services, due to not meeting medical necessity. According to Dr. Katz's July 20, 2009 statement, he asserts that physical therapy is medically necessary for the petitioner. According to him, the petitioner recently had surgery for Achilles tendon repair, however that surgery was on March 31, 2008.

According to the physician that testified at the hearing, the petitioner does not meet the criteria for medical necessity, and she does not now need physical therapy, and that she could benefit with a home exercise program. In addition to the physician that testified at the hearing, another physician, from Universal First agrees that the petitioner does not meet the criteria for medical necessity for physical therapy. She denied the request on a Medical Director Denial Review Form with an explanation that the petitioner is being treated for poor coordination, which is not subject to significant improvement.

A third Physician from Universal First agrees that the petitioner does not meet the criteria for medical necessity for physical therapy, and upon review, the denial of physical therapy for the petitioner was upheld because she has reached full post operative potential. After careful consideration, it is determined that the Agency's action to deny physical therapy services for the petitioner, is upheld.

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

FINAL ORDER (Cont.)

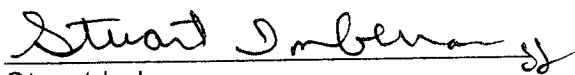
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Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date 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
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To