

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

FILED  
FEB 18 2010  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-08659

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 14 Bay  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on February 9, 2010, at 10:00 a.m. The petitioner represented herself. The respondent was represented by Stephanie Cortes, program operations administrator, Agency for Health Care Administration (AHCA). Testifying on behalf of the respondent was Dr. Maureen Levy, medical director, KePRO. Also testifying or present on behalf of the respondent was Gary Erickson, RN, nurse reviewer, KePRO, Diane Weller, contract manager, KePRO and Melanie Clyatt, RN review operations manager, KePRO.

**ISSUE**

At issue is the respondent's decision of December 9, 2009 and reconsideration of December 12, 2009 to deny inpatient hospitalization services. The respondent

determined the request for laparoscopy with total hysterectomy does not meet medical necessity criteria.

The petitioner has the burden of proof.

### **FINDINGS OF FACT**

1. The petitioner, age 46, has symptoms of excessive or frequent menstruation. The petitioner has had a tubal ligation after the birth of her child. She has a history of abnormal uterine bleeding and continues to have heavy cycles with passage of large clots despite a history of a dilation and curettage (D and C) and endometrial ablation (May 27, 2009) to evaluate these symptoms. She is a smoker. The petitioner believes that she has a diagnosis of anemia as a result of her excessive menstruation.
2. On December 7, 2009, the respondent's contracted KePRO organization received a request to perform a laparoscopy with a total hysterectomy. An OB/GYN with KePRO reviewed the documentation provided with this request. The documentation showed the petitioner to have complaints of abnormal uterine bleeding and hemoglobin of 11.2 (November 25, 2009), but no pathology was given to account for these symptoms. The reviewing KePRO OB/GYN then denied the requested hysterectomy as information provided showed a normal uterus. There was no failed progestin therapy such as aygestin continuously (NOT contraindicated in smokers) or Mirena therapy. The bleeding has not

resulted in anemia requiring transfusion and the anemia is mild with no mention of iron therapy.

3. On December 11, 2009, KePRO received a request for reconsideration from the attending physician. The request then included listed diagnoses of excessive menstruation and a disordered proliferative endometrium unable to treat with OCP's due to tobacco use. The petitioner was prescribed Repliva for anemia.
4. On December 15, 2009, the request underwent reconsideration review by a second KePRO physician consultant, who had not issued the initial denial, did not practice medicine in the county where the facility was located, and who was board-certified in OB/GYN. Based on the review, the decision was made to deny the request as there was no indication of failed conservative management presented.
5. The petitioner indicated she currently takes Celbate to treat her anemia after her last hemoglobin in November 2009 or December 2009. She was unable to present test results to show a worsening of her anemia and has not followed up with her physician to check the progress of the iron therapy.
6. The KePRO OB/GYN opines that reconsideration can be completed following the completion of iron therapy and post therapy test results. The use of progestin is not contraindicated for smokers. It was suggested that the petitioner try Aygestin or Mirena therapy as a more conservative management before consideration be given to a laparoscopy with hysterectomy. Further, the KePRO physician opines

that the hemoglobin test results are within normal parameters and do not show that the petitioner suffers from anemia due to blood loss.

### CONCLUSIONS OF LAW

The Florida Administrative Code Rule 59G-4.150, addresses Inpatient Hospital Services under the Florida Medicaid Program, in pertinent part:

(1) This rule applies to all hospital providers enrolled in the Medicaid program.

(2) All hospital providers enrolled in the Medicaid program must comply with the Florida Medicaid Hospital Services Coverage and Limitations Handbook, incorporated by reference in Rule 59G-4.160, F.A.C., and the Florida Medicaid Provider Reimbursement Handbook, UB-04, incorporated by reference in Rule 59G-4.003, F.A.C....

Inpatient hospital services that are requested under the Florida Medicaid Program must meet the medical necessity criteria described in the Florida Medicaid Hospital Services Coverage and Limitations Handbook, June 2005, page 2-1, as follows:

#### Covered Services and Limitations

##### **Medical Necessity**

Medicaid reimburses for services that are determined medically necessary, do not duplicate another provider's service, and are:

- Necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
- Individualized, specific, consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the recipient's needs;
- Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;

- Reflect the level of services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
- Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

In this appeal, the treating physician has requested inpatient hospitalization services to perform a hysterectomy. However, the hospitalization request alone does not in itself make the requested hospitalization medically necessary as per the following on page 2-2 of the above referenced handbook:

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 covered service.

The second bullet cited above, shows that defined medically necessary services must be consistent with symptoms or confirmed diagnosis of the illness or injury under treatment to be defined as medically necessary. The opinion of the treating physician must be given considerable and substantial weight in the conclusion of the diagnosis of the illness and necessary treatment. There must be a conclusion of good cause to overcome the customary weight given the treating physician's opinion (see C.F. v. Department of Children of Families, 934 So.2d 1(2005)).

In this appeal, there is minimal evidence from the petitioner's treating physician to show that more conservative methods have been attempted to treat the petitioner's condition. The reviewing KePRO OB/GYN noted that the first submission of documentation was absent any clinical documentation to support that anemia existed or that iron therapy was attempted. Further, there was no indication of endometriosis or

that other conservative management was attempted to treat the petitioner's condition. In the absence of evidence from the treating physician to show that hormone therapy and iron therapy have been attempted as a more conservative treatment option, there is good cause to overcome the customary weight given the treating physician's opinion on the medical necessity of the requested hysterectomy surgery. Thus, the respondent's decision to deny the requested inpatient hospitalization for the hysterectomy is upheld.

**DECISION**

This appeal is denied and the respondent action 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 19<sup>th</sup> day of February, 2010,

in Tallahassee, Florida.



Linda Garton  
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FINAL ORDER (Cont.)

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