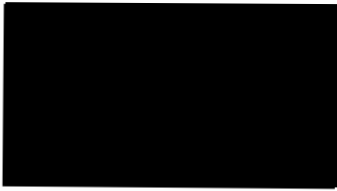


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
MAR 04 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-08924

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 17, 2014 at 10:20 a.m. and reconvened on December 29, 2014 at 10:00 a.m.

APPEARANCES

For the Petitioner: Pro se

For the Respondent: Oscar Quintero, Program Operations Administrator,
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether the Agency properly denied Petitioner's request for an Inflatable Penile Prosthesis.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration (AHCA or Agency) is responsible for administering Florida's Medicaid Program. AHCA contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients. Positive Health Care (PHC) is the Petitioner's HMO or 'plan'.

Serving as Respondent's witnesses were: Dr. Wayne Chen, Senior Medical Director for PHC and Melanie Gordon, Quality Improvement Manager for PHC.

Respondent entered one document into the record and was marked as Respondent Exhibit 1.

The Petitioner represented himself and entered two documents which were marked Petitioner Exhibit 1 and 2.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner is a Medicaid recipient and is an enrollee of the Positive Health Care plan. He has been diagnosed with diabetes, high blood pressure, acquired immunodeficiency syndrome (AIDS), testicular hypofunction, anxiety, depressive disorder and erectile dysfunction (impotence).

2. A prior authorization request dated September 18, 2014 was submitted on the Petitioner's behalf to Positive Health Care (PHC) for an Inflatable Penile Prosthesis. On

October 3, 2014, PHC sent a notice to the Petitioner denying the request and providing the following explanation for the decision:

Per the Centers for Medicaid and Medicare Services (CMS), surgical treatment of impotence must meet medical necessity criteria for approval. Medical necessity criteria includes demonstrated need and purpose for restoration of an impaired bodily function as well as failure of conservative treatment for other organic causes that may contribute or cause impotence. Based on the documentation submitted by the requesting provider, both of the described criteria were not demonstrated.

3. Petitioner filed a timely fair hearing request on October 14, 2014.
4. The Petitioner stated that the surgery for an inflatable penile prosthesis was a last resort to address his impotence. He explained that he has had this condition for years and has tried Viagra, pills and penile injections. He noted that the injections were very painful and not long lasting. He has used the injections for approximately two years. He has used these injections every 2-3 weeks, but stated he will not take any more injections. He explained that the injections cost \$200 and are not covered by Medicaid. Because he is on a fixed income he cannot afford to pay for the injections.
5. Petitioner testified he had used a topical medication once to address his erectile dysfunction but it burned when he used it. Shortly afterwards, he began the penile injections.
6. The Respondent's witness offered a topical medication that would not cause any burning sensation when used, but the Petitioner stated he would no longer use any 'abnormal' remedies.
7. The Respondent's witness also advised the Petitioner that the paroxetine he is taking has impotence as one of its side effects. He advised the Petitioner to talk with

his doctor about replacing this with another medication that did not have impotence as a side effect.

CONCLUSIONS OF LAW

8. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 120.80, Florida Statutes. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

9. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency.

10. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

11. As this matter involves a request for a service, the burden of proof was assigned to the Petitioner pursuant to Florida Administrative Code Rule 65-2060(1).

12. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

13. Section 409 Part IV, Florida Statutes, provides the legal basis for Medicaid's Managed Care services.

14. 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** [emphasis added]; 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...**[emphasis added]

15. The Petitioner argued that he has used Viagra, pills, topical medication and penile injections, and the results have not been satisfactory. He stated he has done research and spoken with friends who have the inflatable penile prosthesis, and he feels the prosthesis will solve his impotence and allow him to live a 'normal life'.

16. The Respondent argued that the Petitioner is using a medication that may be contributing to his impotence. The Respondent also argued that more conservative remedies are available which the Petitioner is not willing to try. The Respondent determined that medical necessity has not be established based on these facts.

17. After considering the evidence, the Fla. Admin. Code Rules and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the Petitioner has not met his burden of proof. The undersigned finds that the Respondent

made a correct determination in denying the requested service because medical necessity has not been demonstrated.

DECISION

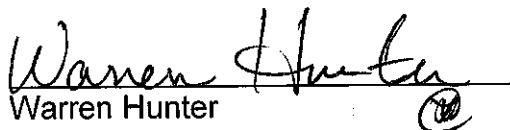
Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby DENIED and Agency's action is AFFIRMED.

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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 5th day of March, 2015,

in Tallahassee, Florida.



Warren Hunter
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager