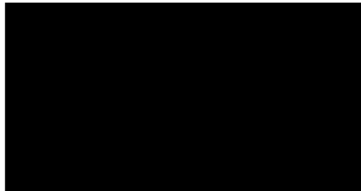


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

MAR 28 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-00897

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 11, 2014, at 2:45 p.m., with all parties appearing telephonically.

APPEARANCES

For the Petitioner: 

For the Respondent: Oscar Quintero, program supervisor, Agency For Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's action of January 27, 2014, to deny the petitioner's and her physician's request for a prior service authorization for a Bilateral Reduction mammoplasty that would cover as payment of a medical procedure for the petitioner through Medicaid. The petitioner has the burden of proof.

PRELIMINARY STATEMENT

Present as a witness for the petitioner was [REDACTED] the petitioner's daughter.

Present as witnesses for the respondent were Dr. Jose Cortes, physician reviewer and Gary Erickson, registered nurse, both from eQHealth Solutions.

Sharifa Ranger was present as an interpreter.

FINDINGS OF FACT

1. The petitioner is a Medicaid recipient in Miami-Dade County, Florida.
2. The Agency For Health Care Administration (AHCA) has authorized eQHealth Solutions to makes Prior (service) Authorization Process decisions. The service requested for the petitioner was a Bilateral Reduction Mammoplasty, or also known as bilateral breast reduction. The petitioner's request was due to back pain. The petitioner's bra size is a 42D. The Prior Authorization Process was completed for the petitioner by eQHealth Solutions. The Agency determined on January 27, 2014, the petitioner's request for the surgery or medical procedure would be denied.
3. The Agency issued a notice to the petitioner and her treating physician providing a reason for the adverse decision: "The reason for the denial is that the services are not medically necessary..." The Agency also provided a rationale for the decision:

Patient with macromastia. Required information as per AHCA guidelines/requirements for breast reduction was requested from the provider. Documentation submitted did not support the medical necessity of the requested procedure, therefore unable to approve at this time.

Specifically the clinical information received did not include:

1. Documentation stating that the recipient has moderate to severe persistent symptoms in two or more of anatomical areas affecting specified daily activities for at least 12 continuous months.
2. A signed a dated statement letter from both the primary care physician and the surgeon stating 1) that there is a reasonable likelihood that the symptoms are primarily due to macromastia. 2) the recipient has been compliant with all therapeutic measure prescribed, breast reduction is the recipient's last resort, 3) and reduction mammoplasty is likely to result in an improvement of the recipients chronic and specifically described pain that effects specified daily activities; and pain symptoms have persisted, as documented in the physician's clinical notes, despite at least 6-month trial of well-documented therapeutic measures.
4. The respondent witness indicated that eQHealth Solutions sent the petitioner's treating physician a letter (page 35 Respondent Composite Exhibit 1) advising of clinical documentation requirements for the requested procedure. Part of the information was returned from the petitioner's treating physician (Dr. Panthaki), as shown on pages 37 through 50 of the respondent exhibit, but the information sent did not include the "guideline information" as noted in the above notice sited.
5. The respondent witness pointed out that the medical information presented for the petitioner indicates the petitioner has diagnosis of psoriasis; fibromyalgia; osteoarthritis; psoriatic arthritis and is overweight. The petitioner is five feet, one inch tall and weighs about 244 pounds. This witness pointed out that a statement from one of the petitioner's treating physician states: "Patient states increase of size of breast...but we also recommend that she should work to reduce her weight." This witness indicated that the petitioner's complaints may be associated with her above noted conditions/diagnosis and not necessarily her breast size. This witness also

indicated that other than the petitioner's weight gain; the medical information; however, shows she has improved for all of her medical conditions.

6. The respondent witness indicated that the clinical documentation requirements for the Bilateral Reduction mammoplasty are noted in the Practitioner Services Coverage and Limitation Handbook. He indicated that the Agency, through eQHealth Solutions, follows the provisions as outlined in the "Handbook" cited above when making this decision.

CONCLUSIONS OF LAW

7. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

8. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

9. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

10. 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...

11. The Practitioner Services Coverage and Limitation Handbook (2012) sets forth Prior Service Authorization requirements for Reduction Mammoplasty Services, found on pages 2-114 and 2-115 and states:

Reduction mammoplasty must be prior authorized by Medicaid, regardless of the place of service. The rendering surgeon must obtain prior authorization for the procedure. Requests for outpatient surgical procedures must be submitted through the fiscal agent and requests for in-patient procedures must be submitted through the Medicaid QIO. Medical necessity for reduction mammoplasty may be determined through the prior authorization process for women aged 18 or older, or for females under age 18 for whom growth is complete.

Along with the prior authorization request, the surgeon must submit original color photographs that clearly present the recipient's body area from mid-chin to waistline. Hair must be secured up and off of the shoulders. Photographs must include a:

- Frontal view;
- Right lateral view;
- Left lateral view; and

- A closer view of the inframammary folds, if clinical documentation includes chronic skin conditions.

The surgeon must document and submit with the authorization request the amount of breast tissue, not fatty tissue, (in grams) that will be removed from each breast.

All of the following criteria must be met for reduction mammoplasty:

- Recipient has moderate to severe persistent symptoms in two or more of the anatomical areas listed below, affecting specified daily activities for at least 12 continuous months:

- Pain in upper back;
- Pain in neck;
- Pain in shoulders;
- Chronic headaches;
- Painful kyphosis, documented by x-rays; and
- Pain with ulceration from bra straps cutting into shoulders.

- Photographic documentation confirms severe breast hypertrophy;

- Recipient has undergone an evaluation by her primary care physician who determined that all of the following criteria are met, and the requesting surgeon concurs:

- A signed and dated statement letter from the primary care physician and the surgeon stating that there is a reasonable likelihood that the symptoms are primarily due to macromastia, the recipient has been compliant with all alternative therapeutic measures prescribed, breast reduction is the recipient's last resort, and reduction mammoplasty is likely to result in an improvement of the recipient's chronic and specifically described pain that affects specified daily activities; and

- Pain symptoms have persisted, as documented in the physician's clinical notes, despite at least a 6-month trial of well-documented therapeutic measures, such as:

- Supportive devices (describe device and continuous length of time used);

- Analgesic or non-steroidal anti-inflammatory drugs (NSAIDs) interventions (list drug, dosage and length of continuous treatment);
- Physical therapy, exercises, and posturing maneuvers (describe type and length of treatment).
- Women who are 40 years of age or older are required to have a mammogram that is negative for cancer, performed within 6 months prior to the date the surgeon signed the authorization request for reduction mammoplasty. A copy of the mammogram report must accompany the authorization request.

It must be noted that chronic intertrigo, eczema, dermatitis, and or ulceration in the inframammary fold in and of themselves are not considered medically necessary indications for reduction mammoplasty. The condition not only must be unresponsive to dermatological treatments (e.g., antibiotics or antifungal therapy) and conservative measures (e.g., good skin hygiene, adequate nutrition) for a period of six (6) months or longer, but must also satisfy criteria stated above.

Documentation of medical necessity must also include:

- Detailed statement of recipient's complaints and symptoms;
- Current height;
- Current weight;
- Documentation of weight loss or gain during past 12 months;
- Current bra (including cup) size;
- A list of prescribed, over-the-counter medications and supplements used by the recipient during the past 12 months (including dosage, frequency, purpose, and duration of treatment);
- A list of current medications used to address breast-related skin conditions, infections, or pain;
- The procedure to be used for removing breast tissue; and
- Description of the surgical procedure to be used for removal of excess breast tissue.

12. As shown in the Findings of Fact, the Agency on January 27, 2014, denied the petitioner's and her physician's request for a prior service authorization for a Bilateral Reduction mammoplasty based on: "The reason for the denial is that the services are not medically necessary..."

13. The petitioner argued that she has back pain directly due to her breast size. She states that she cannot "sweep" her floor; has problems eating; and has rashes under her breasts; all due to her breast size. She argued that she has indentations on her shoulder due to her bra and the weight of her breasts. The petitioner does not agree with the respondent's physician witness that her back pain could be due to one of her other physical conditions. She argued that she needs a breast reduction for health problems which is due to her breast size alone.

14. The respondent stated that the petitioner may go through with the breast reduction therapy and the results will not relieve her complaints. He argued that the petitioner's (other) diagnosis's/conditions could be the reason for the petitioner's complaints of pain. He argued that taking into consideration the medical information submitted and the Practitioner Services Coverage and Limitation Handbook, the petitioner does not meet the medical necessity requirements to receive the Bilateral Reduction Mammoplasty.

15. For the case at hand, the hearing officer agrees with the respondent's physician witness argument that based on the medical information as submitted and the Practitioner Services Coverage and Limitation Handbook; the petitioner does not meet the medical necessity requirements to receive the Bilateral Reduction Mammoplasty.

16. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the Agency's action on January 27, 2014, to deny the petitioner's request for prior service authorization of the Bilateral Reduction Mammoplasty, based on the request not meeting the medically necessary criteria for the Medicaid Program. The petitioner has not met her burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

FINAL ORDER (Cont.)

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DONE and ORDERED this 28th day of March, 2014,

in Tallahassee, Florida.



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