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

[redacted]

APPEAL NO. 14F-10044

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on April 21, 2015 at 1:38pm.

APPEARANCES

For the Petitioner: [redacted] mother

For the Respondent: Diane Soderlind, Registered Nurse,
Agency for Health Care Administration

STATEMENT OF ISSUE

Whether the respondent correctly denied the petitioner's request for a Functional Electronic Stimulation device as it did not meet Medical Necessity.

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

PRELIMINARY STATEMENT

The Agency for Health Care Administration (the Agency or AHCA or respondent) administers the Florida Medicaid Program. The Agency contracts with numerous health plans to provide medical services to its program participants. Prestige Health Choice (Prestige) is the contracted provider in the instant case.

By notice dated September 19, 2014, Prestige informed the petitioner that her request for coverage of a Bioness Functional Electronic Stimulator (FES) was denied. The notice reads in relevant part, "Medicaid does not cover procedures deemed investigational or experimental. Functional Electrical Stimulation is experimental and investigational as ambulatory assist devices related to Traumatic Brain Injury (TBI) because the long term outcomes and effectiveness for this condition has not been established."

On November 19, 2014, the petitioner timely requested a hearing to challenge the denial decision.

The petitioner was present. Present as witnesses for the petitioner were Pam DiMuccio, Clinical Specialist with Bioness, and [redacted] advocate for the petitioner. The petitioner did not provide any evidence to be entered into the record.

Present as witnesses for the respondent from Prestige Health Choice were Dr. Eric Stumpf, Medical Director, and Rachelle Narcisse, Appeals Coordinator. The respondent provided evidence at hearing. The evidence was entered as Respondent Composite Exhibit 1.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner (age 22) is a Florida Medicaid recipient. Prestige is the petitioner's contracted Medicaid services provider.

2. The petitioner was in an automobile accident on March 24, 2013. As a result of the accident the petitioner was diagnosed with a Traumatic Brain Injury (TBI). The petitioner's original prognosis was that she would not be able to walk or talk again. However, the petitioner has recovered those abilities.

3. As a result of the TBI, the petitioner walks with an unbalanced gait and a "drop foot". She will often hold a hand to the wall to help her maintain her balance. The petitioner maintains walking with an unbalanced gait causes her back pain. She receives pain medication, but the petitioner is concerned that relieving the pain by medication is not correcting the cause of the pain.

4. The petitioner has received three Ankle Foot Orthotic (AFO) or ankle braces. The petitioner stated the braces are not helping her walk with a normal gait. The petitioner believes continued use of the AFO will cause her leg to stiffen and decrease her ability to be mobile.

5. The petitioner was introduced to the Bioness Functional Electrical Stimulator (FES) for her ankle and thigh in the spring of 2014. The petitioner found use of the product to improve her gait and relieve pain.

6. The petitioner maintains the use of the Bioness FES device is not experimental or investigational as it has been approved for use in Spinal Cord Injuries

by CMS (Medicare). It is currently in the process of approval for stroke victims. It has not been approved by CMS for use in TBI cases.

7. Dr. Stumpf testified the use of an FES device may be beneficial for the petitioner. Prestige is bound by the fee schedule set forth by the Agency. As the device is not listed in the fee schedule for the petitioner's diagnosis, the device is not a covered service or benefit. Medicaid rule prohibits the provision of services which are investigational or experimental in nature.

CONCLUSIONS OF LAW

8. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to §120.80 Fla. Stat.

9. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

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

11. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code § 65-2.060(1)). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

12. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the Agency.

13. All Medicaid goods and services must be medically necessary. The definition of medically necessary is found in Fla. Admin. Code § 59G-1.010 and states:

(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; (emphasis added)
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.
...
(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.

14. The above controlling authority sets forth that medical necessity means the medical care, goods, or services furnished which meets all five of the above cited criteria; one of those conditions is that the service must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

15. Prestige denied the petitioner's request for a Bioness FES device to assist with her condition. The device has been approved for use in spinal cord injuries. Bioness continues to work for approval in stroke victims. However, the device has not been approved for TBI cases. Prestige concluded the device is considered experimental and investigational and is not a medical necessity as the term is defined in the Florida Administrative Code for Medicaid payment.

16. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes the respondent's decision in this matter was correct. The petitioner did not prove by a preponderance of the evidence that the Bioness Functional Electronic Stimulator meets the medical necessity definition to allow payment by the Medicaid Program.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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 12th day of May, 2015,

in Tallahassee, Florida.

Melissa Roedel
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Copies Furnished To: [redacted] Petitioner
Marshall Wallace, Area 2, AHCA Field Office Manager