

FILED

MAR 17 2015

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10822

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 18 Seminole
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 3, 2015 at 8:30 a.m.

APPEARANCES

For the Petitioner:  Petitioner

For the Respondent: Doretha Rouse, Registered Nurse Specialist
Agency for Health Care Administration (AHCA)

STATEMENT OF ISSUE

At issue is whether the Respondent's denial of the Petitioner's request for MRI scans was correct.

PRELIMINARY STATEMENT

The Petitioner submitted medical records as evidence for the hearing, which were marked as Petitioner's Composite Exhibit 1.

Appearing as witnesses for the Respondent were Lenny Burgos, Appeals Manager at Magellan Complete Care, and Dr. Brian Zimmerman, Physician-Consultant at Magellan Complete Care, which is the Petitioner's managed health care organization. Also present as observers for the hearing from Magellan Complete Care were Audrey Cohen, Contract Manager, and Dr. Gabriella Cora, Medical Director. Respondent submitted eleven exhibits as evidence for the hearing, which were marked Respondent Exhibits 1 through 11.

FINDINGS OF FACT

1. The Petitioner is an adult Medicaid recipient who is enrolled in the Statewide Medicaid Managed Care (SMMC) – Managed Medical Assistance (MMA) plan. She receives services under the plan from Magellan Complete Care.
2. On or about December 4, 2014, the Petitioner's treating physician (hereafter referred to as "the provider"), requested prior authorization from Magellan to perform a MRI scan of the thoracic spine on the Petitioner. Magellan denied this request on December 8, 2014. On or about December 11, 2014, Petitioner's provider submitted another prior authorization request to Magellan to perform a MRI scan of the lumbar spine. This request was also denied by Magellan on December 19, 2014.

3. The Petitioner suffers from pain in her back which she describes as being severe and chronic pain. She last had a MRI scan of her spine in 2008.

4. Magellan's notices to the Petitioner advised her that her requests for MRI scans were denied based on medical necessity guidelines. The notices state that the guidelines require a failure to respond to six weeks of conservative care, including medications, physical therapy, chiropractic care, and a home exercise program, before an MRI scan can be approved.

5. The Petitioner believes her MRI scans should be approved due to the severity of her back pain and also because her prior MRI from 2008 needs to be updated.

6. The Respondent's expert witness, Dr. Zimmerman, testified that the denial of the Petitioner's request for the MRI scans was appropriate because medical necessity guidelines require a failure of attempted conservative treatments prior to approval of an MRI scan. Dr. Zimmerman also stated the information submitted by the Petitioner's provider did not document any such attempts at conservative treatment and Magellan requested additional information from the provider in that regard but did not receive any further information.

7. Services under the Medicaid State Plan in Florida are provided in accordance with the Respondent's Florida Medicaid Provider General Handbook ("Medicaid Handbook"), effective July, 2012.

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 Ch. 120.80, Fla. Stat.

9. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.
10. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
11. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. 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 Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Medicaid Program is administered by the Respondent. The Medicaid Handbook referred to above is incorporated by reference in Fla. Admin. Code R. 59G-4.001.
13. Florida Statute § 409.912 requires that Respondent "...purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care." In addition, the statute provides that Respondent must "...operate or contract for the operation of utilization management and incentive systems designed to encourage cost-effective use of services and to eliminate services that are medically unnecessary."
14. The Medicaid Handbook and Fla. Admin. Code R. 59G-1.010(166) define medical necessity as follows:
- "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 [emphasis added].

...
(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.

15. Although Petitioner testified she is in severe back pain, she must also satisfy each of the remaining components of the rule's requirements concerning medical necessity. Respondent's medical expert testified that medical necessity guidelines require a failure of attempted conservative treatments prior to approval of an MRI scan and this was not established in the Petitioner's pre-authorization request. Although the Petitioner's treating physician has requested the MRI scans, this does not in itself establish that this service is medically necessary according to the rule provisions outlined above.

16. Petitioner has not established by a preponderance of the evidence that her requested MRI scans are medically necessary as defined by Fla. Admin. Code R. 59G-1.010(166). After considering the evidence and relevant authorities set forth above, the undersigned concludes that the Petitioner has not met her burden of proof in establishing that the Respondent's action was incorrect.

DECISION

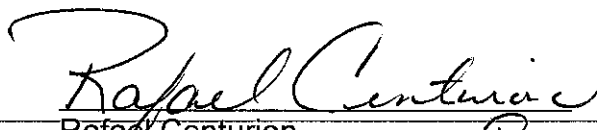
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

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 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 March, 2015,

in Tallahassee, Florida.



Rafael Centurion
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662

Copies Furnished To:

 Petitioner
Judy Jacobs, Area 7, AHCA Field Office