

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

FILED

JUN 30 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-02302

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing telephonically in the above-referenced matter on May 14, 2014, at 10:40 a.m.

APPEARANCES

For the Petitioner:



Petitioner

For the Respondent:

Ken Hamblin
Field Office 10 Medicaid Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

The petitioner is appealing the decision of his Health Maintenance Organization ("HMO") to deny his request asking that his maintenance medications be dispensed in 90-day supplies instead of the currently dispensed 30-day supplies.

PRELIMINARY STATEMENT

[REDACTED] ("petitioner"), the petitioner, appeared on his own behalf. Ken Hamblin, Field Office 10 Medicaid Fair Hearing Coordinator for the Agency for Health Care Administration (sometimes hereinafter referred to as "respondent", "AHCA", or the "Agency"), appeared on behalf of the Agency for Health Care Administration. India Smith, Grievance and Appeals Coordinator for Sunshine Health; David Gilchrist, D.O. FACOI, Medical Director for Sunshine Health; and Donna Laber, R.N., Manager of Grievances and Appeals for Sunshine Health, all appeared as witnesses on behalf of the Agency. Paula Daley, Grievance and Appeals Coordinator for Sunshine Health, and Carolyn Janvier, also a Grievance and Appeals Coordinator for Sunshine Health, were presently solely for the purpose of observation.

The Agency introduced Exhibits "1" and "2", inclusive, at the hearing. The hearing record in this matter was left open until the close of business on May 16, 2014 for the Agency to provide the additional documentation it intended to introduce at the hearing but inadvertently omitted from its evidence submission. Once received, this information was accepted into evidence and marked as respondent's Exhibit "3". The list of 100-day maintenance medications on the Agency's internet website which is referenced in respondent's Exhibit "3" was printed and taken into evidence as respondent's Exhibit "4". The petitioner did not introduce any evidence.

This appeal encompasses the denial by Sunshine Health, the petitioner's Health Maintenance Organization, to dispense the petitioner's maintenance medications in 90-day supply increments instead of the current 30-day supply increments. These include: Atorvastatin (20 mg); Aspirin (81 mg); Ramipril (2.5 mg); and Glipizide. 30-day supplies

of these medications were approved by Sunshine Health and dispensed to the petitioner in April of this year. Any subsequent denials of these or any other medications based on an alleged lack of medical necessity or any other reason are outside the scope of this hearing. However, this does not in any way prevent petitioner from requesting a fair hearing on any such matters.

Based upon preliminary information supplied at the hearing, the hearing officer initially assigned the burden of proof to the respondent. However, pursuant to a review of all of the testimony and evidence in this matter, the hearing officer determines that the burden of proof should be assigned to the petitioner since it is the petitioner who is requesting a change in his previously approved services.

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 is an adult male. He resides in Broward County, Florida.
2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.
3. The petitioner is enrolled in Sunshine Health. Sunshine Health is a Health Maintenance Organization contracted by the Agency for Health Care Administration, the respondent, to provide services to certain Medicaid eligible persons in the State of Florida.
4. The petitioner is prescribed the following medications by his physician: Atorvastatin (20 mg); Aspirin (81 mg); Ramipril (2.5 mg); and Glipizide. No prescription from the petitioner's physician was introduced at the hearing for any of the medications.

5. The petitioner has his prescriptions filled at Walgreen Pharmacy. Although the prescriptions are not automatically refilled, Walgreen will deliver the prescriptions to the petitioner's home after he requests a refill.

6. On March 14, 2014, Sunshine Health denied the medication Atovastatin. As a result of the denial, the petitioner requested an appeal of that denial on March 17, 2014. On March 25, 2014, the prescription was approved. No notice was submitted indicating the denial or approval; however, both parties agree this did occur.

7. On April 9, 2014, the Sunshine Health Appeals and Grievance Coordinator contacted the petitioner to determine which medications were at issue in his appeal. Petitioner informed Sunshine Health that he wanted a hearing on the issue of getting his medications for 90-days. Sunshine Health referred petitioner to their handbook that states they only approve medications to be dispensed up to a 34-day supply. No notice was issued to the petitioner. The petitioner was not denied any of his medications.

8. The petitioner testified at the hearing that 30-days goes by quickly; that he sometimes forgets to request a refill timely and he has to go without his medication until the prescription is filled; that it is more convenient to have the medications dispensed in 90-day supplies; that dispensing the medications in 90-day supply increments will result in a net savings to the taxpayers; that his previous HMO allowed 90-day refills; and that dispensing the medications in 90-day supply increments is the right thing to do.

9. The Agency's witness testified Sunshine Health members can request a refill up to seven (7) days prior to when they will be out of a medication.

CONCLUSIONS OF LAW

10. By agreement between the Agency for Health Care Administration 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.

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

12. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

13. Petitioner in the present case is requesting a change in the manner in which his prescriptions are dispensed. Prior to proceeding to the merits of the appeal, it is necessary to determine if there is jurisdiction to rule on this request.

14. In order for an action to be reviewed by a hearing officer, there must have been a termination, suspension, or reduction in services provided. 7 C.F.R. § 431.201 states:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services...

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

...
Notice means a written statement that meets the requirements of § 431.210.

15. This is further defined in Fla. Admin, Code R. 65-2.044 which states:
65-2.044 Right to Request a Hearing.

Any applicant/recipient dissatisfied with the Department's action or failure to act has a right to request a Hearing. He/she may do so when it is believed that:

- (1) Opportunity to make application has been denied.
- (2) The application has been rejected.
- (3) The application has not been acted upon within a reasonable length of time.
- (4) The benefits have been modified or discontinued.
- (5) Reconsideration of the assistance/service benefits is refused or delayed.
- (6) Opportunity has not been given to make a choice of service...

16. The petitioner has not been denied any Medicaid benefits but would prefer to have his medications dispensed in larger amounts. The respondent has not refused to provide the petitioner with medications, nor has it reduced the petitioner's benefits. Although the petitioner would prefer to receive the medications in 90-day amounts, this is not a reduction or a denial of benefits.

17. The Sunshine Health Member Handbook, in the section **Dispensing Limits**, states the following:

Drugs may be dispensed up to a maximum of 34 days supply for each new prescription or refill. A total of 85% of the days supply must have elapsed before the prescription can be refilled for PDL drugs at a Sunshine Health network pharmacy or through the mail order benefit.

18. Fla. Admin. Code R. 59G-4.250 Prescribed Drug Services incorporates by reference the Florida Medicaid Prescribed Drug Services Coverage, Limitations, and Reimbursement Handbook, updated June 2012.

19. The Florida Medicaid Prescribed Drug Services Coverage, Limitations, and Reimbursement Handbook, updated June 2012, on Page 3-iii, in the section **Dispensing Quantity Maximum**, states as follows:

Medicaid will not reimburse for any prescription with more than a 34 day supply unless (a) the minimum marketed package size is greater than 34 days, or (b) the drug is designated as a maintenance drug for which a 100-day supply may be dispensed. Drugs approved for 100-day supply dispensing will be approved by the Medicaid Pharmaceutical & Therapeutics (P&T) Committee and posted on

the AHCA website at www.ahca.myflorida.com/Medicaid/Prescribed_Drug
(emphasis added)

20. While it is allowable to dispense some medications in 100-day supplies, it is not mandatory. Sunshine Health cannot be more restrictive than Medicaid, but the dispensing of the medication is an optional provision and not one that is reviewable by this authority.

21. The respondent has taken no action to reduce, suspend, deny, or delay services; there is no action that can be reviewed. While the petitioner would prefer to receive his medications in 90-day supplies, this is not an action that is reviewable or can be mandated. Therefore, this action must be dismissed.

DECISION

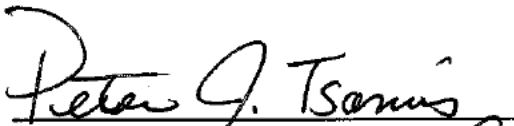
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DISMISSED.

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.

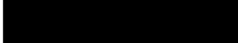
DONE and ORDERED this 30th day of June, 2014,

in Tallahassee, Florida.



Peter J. Tsamis
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