

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

**FILED**

**JUN 12 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02510

PETITIONER,

Vs.

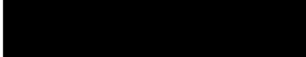
AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 (Dade)  
UNIT: AHCA

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 12, 2014 at 3:00 p.m.

**APPEARANCES**

For the Petitioner:  petitioner's daughter

For the Respondent: Oscar Quintero, Program Administrator  
Agency for Health Care Administration (AHCA)

**STATEMENT OF ISSUE**

At issue is whether the respondent's action to deny the petitioner's request for authorization for ambulatory surgery (bilateral blepharoplasty) was correct.

**PRELIMINARY STATEMENT**

The petitioner was present for the hearing and was assisted by her daughter. The petitioner submitted as evidence for the hearing her medical records and photographs of her eyes, which were marked as petitioner's composite Exhibit 1.

Appearing as a witness for the respondent was Jennifer Landy, M.D., physician-consultant for eQHealth Solutions, Inc. Respondent's composite Exhibit 1 was entered into evidence, consisting of the documentation considered by eQHealth Solutions' physicians in making their decision.

### **FINDINGS OF FACT**

1. The petitioner's service provider, Chrisfouad Alabiad, M.D. (hereafter referred to as "the provider"), requested prior authorization for ambulatory surgery service to perform a bilateral blepharoplasty (eyelid surgery) on the petitioner.

2. eQHealth Solutions, Inc. is the Quality Improvement Organization (QIO) contracted by the respondent to perform prior authorization reviews for this service.

The provider submitted the service request to eQ Health. The submission included, in part, information about the petitioner's medical conditions and her functional limitations.

3. The authorization request submitted by the provider stated, in part, as follows: "The upper eyelids both eyes are blocking the vision." The report also contained a diagnosis of "mild ptosis."

4. A physician at eQHealth Solutions reviewed the submitted information and denied the service request. The physician-reviewer wrote, in part: "The patient does not have significant excess skin that is causing a lash ptosis or peripheral overhang. Recommend denial of requested service at this time." A notice of this determination was sent to all parties on March 17, 2014.

5. The above notice stated that a reconsideration review of this determination by eQHealth could be requested, and additional information could be provided with the request for reconsideration. A reconsideration review was not requested in this case.

6. The petitioner thereafter requested a fair hearing and this proceeding followed.

7. The petitioner's daughter gave the following information concerning her mother's condition: her peripheral vision is blocked, both eyelids are weighing down on the eyelashes which obstructs her vision, her vision is getting progressively worse.

8. The respondent's witness, Dr. Landy, testified that the denial of the petitioner's request for eyelid surgery was appropriate because this surgery is typically performed when the eyelid skin is drooping over the eyelid, which was not evident in this case. Dr. Landy also stated the condition will become progressively worse and surgery will be medically necessary at some point in the future.

9. Ambulatory surgery service is a covered service under the Medicaid State Plan in Florida. These services are provided in accordance with the respondent's Ambulatory Surgical Center Services Coverage and Limitations Handbook ("Surgery Handbook"), effective January, 2012.

#### **CONCLUSIONS OF LAW**

10. 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 Chapter 120.80 Fla. Stat.

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

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

13. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner since the respondent had never previously approved the service request. 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, 7<sup>th</sup> Ed.).

14. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid Program is administered by the respondent.

15. The Surgery Handbook, on page 2-2, states that Medicaid will only reimburse for services which are determined to be medically necessary. The Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Fla. Admin. Code R. 59G-1.010 defines medical necessity:

*(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; 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 do not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.*

16. Based upon the information submitted by the petitioner's provider, eQHealth Solutions completed a prior authorization review to determine medical necessity for the requested surgical service.

17. In the petitioner's case, the respondent denied the request for service.

18. Section 409.913, Fla. Stat., governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows:

*"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....*

Section (1)(d) goes on to further state:

*...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.*

19. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary. As stated above, this proceeding is a de novo proceeding for the purpose of the Agency reaching its final decision. The final decision making authority for this proceeding has been delegated to the hearing officer in Fla. Admin. Code R. 65-2.066.

20. Although the the petitioner's physician recommended the eyelid surgery, Rule 59G-1.010(166) (c), specifically states a prescription or recommendation does not automatically mean the requirements of medical necessity have been satisfied.

21. The respondent's witness, Dr. Landy, stated that she believed the service was not medically necessary at this time because the eyelid skin was not drooping over the eyelid. Dr. Landy also stated the surgery will become medically necessary at some indeterminate point in the future as the condition progressively worsens.

22. The petitioner's daughter testified the surgery should be approved because her mother's vision is getting worse and her vision is obstructed.

23. After considering all the documentary evidence and witness testimony presented, the undersigned concludes the petitioner has not met her burden of proof in demonstrating that the respondent incorrectly denied her request for service. Although the petitioner is suffering vision problems, the eyelid surgery is not medically necessary at this time based on the preponderance of the evidence presented.

### **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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 12<sup>th</sup> day of June, 2014,

in Tallahassee, Florida.

*Rafael Centurion*

Rafael Centurion

Hearing Officer

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Rhea Gray, AHCA Area 11, Field Office Manager