

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

**FILED**

JUL 17 2014

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-03574

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 June 17, 2014, at 11:00 a.m., with all parties appearing telephonically.

**APPEARANCES**

For the Petitioner: 

For the Respondent: Yadira Carrasquillo, registered nurse, Agency For Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency action, through its service agent; MedSolutions, of April 11, 2014 to deny the petitioner's physicians request to have Medicaid pay for a PET scan test as requested for the petitioner as a prior service authorization (PSA) request. The petitioner has the burden of proof.

### **PRELIMINARY STATEMENT**

Present as a witness for the respondent was Dr. Ralph Templin, associate medical director, MedSolutions. Lenny Alvarez was present as an interpreter.

### **FINDINGS OF FACT**

1. The petitioner is sixty four years of age and a Medicaid recipient living in Miami-Dade County, Florida. On March 6, 2014, the petitioner's physician from Baptist Hospital requested through MedSolutions, as an agent for the Florida Medicaid Program, a PET scan with the request indicating; "Malignant neoplasm lungs."

2. MedSolutions has been contracted by and authorized by the Agency For Health Care Administration (AHCA) to make certain prior service authorization (PSA) decisions for Florida Medicaid recipients. MedSolutions made a determination for this above noted PSA request.

3. MedSolutions made the decision on April 10, 2014 to deny the petitioner's request for the PET scan based on: "...The clinical information provided does not describe the results of a recent (within the past 60 days) detailed history and/or physical examination relevant to the imaging procedure requested." The notice advising of this action was sent to the petitioner's treating physician on April 11, 2014. A different Notice was sent to the petitioner on the same date and indicated: "We cannot approve the test your doctor requested. You must show the results of a recent history and exam. This exam must be within 60 days."

4. The petitioner's treating physician did not request a reconsideration of the above decision, but provided an appeal request letter on April 28, 2014, Respondent Composite Exhibit 1 (page 7).

5. The respondent witness indicated that the petitioner had a CT (CAT) scan on January 18, 2014. Also a PET scan was performed on the petitioner on March 14, 2014. The PET scan that has been denied, is another PET scan request. This witness indicated that the petitioner's physician had not included as part of this PET test request, information concerning the petitioner's "nodule" such as its size and appearance, in the evaluation. He also indicated and referred to the petitioner's physician letter noted above, in which this "letter" did not include any specifics in regard to the CT scan. He also indicated during the hearing that the petitioner had a lung nodule measured at 1.5 centimeters.

6. The respondent witness noted that when MedSolution is considering and making a determination for the PET scan test, even though the size of a "mass" is important, other characteristics have to be considered. He indicated that not all masses are cancerous. For instance, he explained; pneumonia or infections can show as "positive" on PET scans. He stated that sometimes repeating a CT scan or chest x-ray should be done to verify if a "mass" is just not inflammation that could be treated with antibiotics. He indicated that with the limited information as provided in the petitioner's case, MedSolutions could not support the "indication" of a PET scan and that medical necessity was not established.

7. The report provided by the petitioner's physician concerning the PET scan completed on March 14, 2014 (Respondent Composite Exhibit 1, page 10) does not indicate any nodule or nodes in the petitioner's lungs. This report states in part under "Chest": "The nodular opacity within the right middle lobe seen on the prior CT from 01/18/2014 is no longer visualized." Based on this report, the respondent witness also indicated that the so called "mass" is not a "mass" but more likely an infection or pneumonia as indicated above.

#### CONCLUSIONS OF LAW

8. 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.

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

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

11. 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...

12. The Practitioner Services Coverage and Limitations Handbook addresses

imaging tests that include PET scans and states:

Prior authorization (PA) is the approval process required prior to providing certain Medicaid services to recipients. Medicaid will not reimburse for the designated outpatient, non-emergent diagnostic imaging services without prior authorization. Florida Medicaid contracts with QIO entities to safeguard against unnecessary utilization and to assure the quality of care provided to Medicaid recipients. All diagnostic imaging providers are required to adhere to the established requirements and submit the necessary information to Florida Medicaid or the Medicaid QIO currently in place for this process.

13. As shown in the Findings of Fact, the Agency through MedSolutions made the decision on February 26, 2013 to deny the petitioner's request for the PET scan based on: "...The clinical information provided does not describe the results of a recent (within the past 60 days) detailed history and/or physical examination relevant to the imaging procedure requested."

14. The petitioner argued that he was admitted to the hospital based on his lungs that were swollen. He argued that after he was released, he thought he had lung cancer, partly based on that he is a "smoker". He argued that the test was needed to further identify his lung "nodes".

15. The respondent witness stated that the information as provided as part of the request for the PET scan from the petitioner's treating physician was insufficient to show the need of approval of a PET scan for the petitioner. He argued that a request for an x-ray or another CAT scan may be more appropriate, as the information as provided appears to show that the petitioner's "masses" are more apt to be as a result of infection or pneumonia. He argued that the request for the PET scan does not meet the medically necessary requirements for the PET scan to be approved.

16. For the case at hand, the hearing officer agrees with the respondent's arguments, as the evidence that was provided, such as "The nodular opacity within the right middle lobe seen on the prior CT from 01/18/2014 is no longer visualized" as reference to the PET scan report; does not show a medical necessity for the test.

17. 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 to deny the petitioner's and her physician's request for the PET scan on April 11, 2014 based on: "...The clinical information provided does not describe the results of a recent (within the past 60 days) detailed history and/or physical examination relevant to the imaging procedure requested."

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action upheld.

**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 17<sup>th</sup> day of July, 2014,

in Tallahassee, Florida.

Robert Akel

Robert Akel  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager