

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

**FILED**

MAY 01 2014

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-00961

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 15 Palm Beach  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 11, 2014 at 11:36 a.m. and reconvened on April 7, 2014 at 8:30 a.m.

**APPEARANCES**

For Petitioner:



For Respondent: Dave King  
Agency for Health Care Administration (AHCA)

**ISSUE**

Whether respondent's action to deny petitioner's request for the prescription medication Percocet 10-325 mg was correct.

**PRELIMINARY STATEMENT**

A hearing first convened on March 11, 2013. Neither party was in receipt of

evidence submitted by the other party. The hearing was rescheduled to facilitate the exchange of evidence.

Petitioner represented himself and called no witnesses. Petitioner's composite exhibit "1" was entered into evidence.

Present for the respondent on March 11, 2014 from AHCA were Dave King, Management Analyst; Erin Bailey, Medical Health Care Program Analyst; and Pricilla Jefferson, Medical Health Care Program Analyst. Present from Molina Healthcare were Carlos Cantillo, Supervisor of Grievances and Appeals and Rebecca Haake, Director of Government Contracts. Present on April 7, 2017 was Mr. King who appeared both as the respondent's representative and witness. Present from Molina Healthcare were Gladys Medrano, Government Contract Specialist; Dr. Alfred Romy, Director of Pharmacy; and Margarita Quinones, Supervisor of Pharmacy Services. Respondent's composite exhibit "1" was entered into evidence.

The record was held open through April 14, 2014 for respondent to provide Molina's formulary in regard to the medication at issue; information submitted by petitioner's physician; and respondent's contract with Molina in regard to prescription coverage. Information was timely received and entered as respondent's exhibit "2".

#### **FINDINGS OF FACT**

1. The petitioner is a 50 year old male with a birth date of [REDACTED] At all times relevant to this proceeding, petitioner was eligible to receive Medicaid services.
2. Petitioner is diagnosed, in part, with chronic pain syndrome; spinal stenosis; and Guillain Barre Syndrome.

3. The petitioner is enrolled in Molina Healthcare of Florida (Molina). Molina is a Health Maintenance Organization (HMO) which is contracted by the respondent to provide services, including prescribed medications, to certain Medicaid recipients in Florida.

4. In regard to prescription medications, Molina must be in compliance with applicable Medicaid Handbooks. Such includes the Prescribed Drugs Coverage, Limitations and Reimbursement Handbook (Prescribed Drugs Handbook) and the Florida Medicaid Provider General Handbook (Provider Handbook).

5. To address petitioner's pain, Molina approved both Oxycodone 5-325 mg and Oxycodone 7.5-325 mg. Both approvals are current. However, only one can be filled on a monthly basis.

6. On or about January 16, 2014 petitioner's physician [REDACTED] MD, submitted a prior authorization request for Percocet 10-325 mg. The request was faxed to Molina on a Medication Prior Authorization/Exceptions Request Form.

7. Under the section "Previous formulary medication trials: (Length of treatment/outcome with dates), five medications were listed. Also "poor efficacy" was written. No additional information related to treatment; outcomes; or dates was provided.

8. Molina does not cover a brand name drug when a generic is available. The generic for Percocet is Oxycodone.

9. Molina has a formulary which consists of at least two medications per therapeutic class. Oxycodone 10-325 appears on Molina's formulary. The medication, however, requires a prior authorization.

10. A medication requiring a prior authorization is approved only when medically necessary and when other medications on the formulary have been documented to be ineffective.

11. Accompanying Dr. [REDACTED] prior authorization was case notes pertaining to two office visits with the petitioner.

12. The first case note summarizes an office visit with Dr. [REDACTED] on December 5,

2013. Relevant information includes:

- Current medication is Percocet 7.5/325 mg. The relief the medication provides is recorded at "80-90%".
- The status of petitioner's neck; mid back; and lower back were recorded as "Much Improved with medication". Pain severity was listed as "Moderate" for each area.
- In response to the question "Do current meds help with functioning" the response is "Yes".

13. The second case note summarizes an office visit with Dr. [REDACTED] on January 15,

2014. Relevant information includes:

- The status of petitioner's neck and mid back were noted as "Improvement with medication". Lower back status was recorded as unchanged. Pain severity was listed as "Moderate" for each area.
- Current medication is Percocet 7.5/325 mg. The relief the medication provides is recorded at "80-90%".
- In response to the question "Do current meds help with functioning" the response is "Yes".
- Dr. Tapia wrote "Patient reports that the pharmacy told him that they will no longer be carrying the Percocet 7.5/325 mg.
- The dosage for Percocet was increased to 10-325 mg.

14. On January 17, 2014, Molina denied the request for Percocet 10-325mg. The denial notice stated, in part:

Oxycodone/APAP 10-325 mg is not a formulary covered medication. You must have an adequate documented trial and failure of formulary

alternatives before Oxycodone/APAP 10-325 mg will be considered. Although your claims history and chart notes provided by Dr. Alejandro Tapia illustrate the trial of Oxycodone APAP 7.5-325 mg, there were no chart notes which document the failure or reason for failure of formulary alternatives.

15. In response to the above denial, on February 3, 2014 the Office of Appeal Hearings received petitioner's request for a fair hearing.

16. Petitioner states when he last attempted to fill the Oxycodone 7.5-325 mg, he could not locate a CVS Drug Store which carried the dosage. He was thereafter able to find the prescribed dosage at Wal-Mart (85 pills) and Target (73 pills).

17. Due to difficulty securing Oxycodone 7.5-325 mg, petitioner last filled a prescription at the 5-325 mg dosage on March 22, 2014.

18. Petitioner argues he still experiences pain when taking Oxycodone 7.5-325 mg.

19. Respondent states Molina's formulary is in compliance with Medicaid's Preferred Drug List (PDL) and the step therapy process. Both are referenced in the Prescribed Drugs Handbook.

20. Respondent asserts information from Dr. [REDACTED] indicate Oxycodone 7.5-325 mg worked well. No definitive information was provided that the 7.5-325 mg dosage was ineffective.

21. Respondent also asserts Oxycodone 7.5-325 mg is a widely prescribed dosage. Consequently, there are other pharmacies, including Publix and Winn-Dixie, which can be accessed. Molina states the petitioner can contact them prior to filling the next prescription and assistance will be provided.

**CONCLUSIONS OF LAW**

22. 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.

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

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

25. The burden of proof is assigned to the petitioner. The standard of proof in an administrative hearing is by a preponderance of the evidence. (See Fla. Admin. Code R. 65-2060(1).) 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.).

26. The Florida Medicaid program is authorized by Fla. Stat. ch 409 and Fla. Admin. Code R. 59G. The Medicaid program is administered by the respondent.

27. Section 409.912, Fla. Stat. states, in relevant parts:

Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care ...

(3) The agency may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients. This subsection expires October 1, 2014.

28. The Florida Medicaid Provider Handbook is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Chapter 59G-4. In accordance with the above Statute, the Handbook states on page 1-28:

Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee. Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

29. Pages 1-28 of the Provider Handbook lists HMO covered services. The service list includes prescribed drug services.
30. Page 1-30 of the Provider Handbook states: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."
31. The Florida Medicaid Prescribed Drug Services Handbook - 2012 has been promulgated into rule by reference in Fla. Admin. Code R. 59G-4.250.
32. Page 3-ii of the Prescribed Drug Handbook states "To be reimbursed by Medicaid, a drug must be medically necessary ..."
33. The definition of "medically necessary" is found in the Fla. Admin. Code R. 59G-1.010, which 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; 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.

34. The Prescribed Drug Handbook addresses a Preferred Drug List (PDL) on page 3-iv and states, in part:

The Preferred Drug List (PDL) is a listing of prescription products recommended by the Pharmaceutical and Therapeutics (P&T) Committee for consideration by AHCA as efficacious, safe, and cost effective choices when prescribing for Medicaid patients.

...

Products included on the PDL must be prescribed first unless the patient has previously used these products unsuccessfully or the prescriber submits documentation justifying the use of a none-PDL product.

...

Non- PDL drugs may be approved for reimbursement upon prior authorization.

35. Section 409.912 (37)(a) 14, Fla. Stat. states the respondent may require prior authorization for Medicaid-covered prescribed drugs.

36. In addressing the prior authorization process, the Prescribed Drug Handbook states, in part, on Page 3-vi:

The step-therapy prior authorization may require the prescriber to use medications in a similar drug class or that are indicated for a similar medical indication unless contraindicated in the Food and Drug Administration labeling. The trial period between the specified steps may vary according to the medical indication. A drug product may be approved without meeting the step-therapy prior authorization criteria if the prescribing physician provides the agency with additional written medical or clinic documentation that the product is medically necessary...



37. Molina's formulary is the equivalent of respondent's PDL. No evidence was presented showing that the formulary is more restrictive than respondent's PDL.

38. In regard to the generic version of Percocet 10-325 mg, Molina required a prior authorization. The request must be accompanied by documentation that other formulary medications have been ineffective.

39. Petitioner has provided no definitive information that the 7.5-325 mg dosage is ineffective. Rather, the prior authorization information submitted by Dr. Tapia establishes the dosage worked well. Switching to the 10-325 mg dosage appears to be influenced by petitioner's problem filling the 7.5-325 mg prescription.

40. The ability of petitioner to fill part of his monthly prescription at Target and Wal-Mart supports respondent's position that the dosage is available.

41. It is not clear why respondent's notice states Oxycodone 10-325 is not a formulary covered medication. Post hearing, a copy of Molina Healthcare of Florida Drug Formulary 2014 was accepted and entered into evidence. Oxycodone/APAP 10/325 is listed under the narcotic analgesic class on page six. The dosage requires a prior authorization.

42. Page five of Molina's Formulary addresses the prior authorization process and states:

Prescriptions for medications requiring prior approval or for medications not included on the Molina Drug Formulary may be approved when medically necessary and when Formulary alternative have demonstrated ineffectiveness. When these exceptional needs arise, the physician may fax a completed "Prior Authorization/Medication Exception Request" form to Molina ...

43. Petitioner has not demonstrated the 7.5-325 mg. dosage is ineffective.

44. A request for the 10-325 mg. dosage is in conflict with the following conditions of medical necessity:

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;  
...
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...

45. Petitioner has not established by the required evidentiary standard that respondent's action in this matter was improper.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is DENIED and respondent's action is AFFIRMED.

### **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.

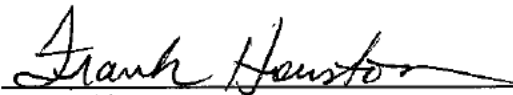
FINAL ORDER (Cont.)

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DONE and ORDERED this 01 day of May, 2014,

in Tallahassee, Florida.



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