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

[redacted]

APPEAL NO. 15F-00002

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 19 Martin
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 6, 2015 at 2:04 p.m.

APPEARANCES

For the Petitioner: [redacted]
Pro Se

For the Respondent: Sharron Garrison
Registered Nurse Specialist

ISSUE

At issue is whether respondent's denial of a request for magnetic resonance imaging (MRI) of the left knee was proper.

PRELIMINARY STATEMENT

Petitioner entered no exhibits into evidence.

Ms. Garrison appeared as both the representative and witness for the respondent. Present from Molina Healthcare were: Natalie Fernandez, Government

Contract Specialist; Dr. Mark Bloom, Chief Medical Officer; Alice Quiros, ABP of Government Contracts; and Jeffery King, Vice President of Health Care Services. Respondent's exhibits "1" and "2" were accepted into evidence. Administrative Notice was taken of Florida Statutes § 409.971; § 409.973; Fla. Admin. Code Rules 59G-1.010(166); 59G-4.205; 59G-4.002; and the Florida Medicaid Practitioner Services Coverage and Limitations Handbook.

The record was held open through February 13, 2015 for respondent to provide additional information. Information was timely received and entered as respondent's exhibit "3".

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner is an adult female. Her birth date is [redacted]. At all times relevant to this proceeding, petitioner was Medicaid eligible.

2. Petitioner's Medicaid services are through the Statewide Medicaid Managed Care Program. Molina is the managed care entity which provides petitioner's Medicaid services. Petitioner became a Molina plan member on August 1, 2014.

3. Petitioner experiences pain and swelling in one knee. She is employed as a waitress and, due to the condition, has been unable to work. Upon seeing a physician, an anti-inflammatory was prescribed as well as a course of prednisone.

4. Although considered as a possible treatment, a documented regime of physical therapy has not been completed.

5. Petitioner's physician submitted a prior authorization request to Molina for a MRI of the knee. On December 1, 2014 the request was denied. The notice issued to the treating physician stated, in part:

> We were asked to approve a request for a MRI scan of the joint of the lower extremity. This request has been denied because it has not met InterQual Criteria of Imaging Protocol Subset for MRI scan of the joint of the lower extremity.
>
> The asked for MRI of your knee is not approved. Using standard and accepted rules a Molina Healthcare doctor has looked at this request. We did not receive medical records from your doctor to support this request. We asked for the records several times. We do not know what problems you are having with your knee. We do not know if you hurt your knee. We do not know if you have any weakness or problems walking. We do not know what other treatments you have tried. We would need to know these things to be able to approve the scan. Please call you doctor and ask the office to send us the medical records we need.

6. On December 29, 2014 the petitioner contacted the Office of Appeal Hearings and timely requested a fair hearing.

7. When evaluating the need for a MRI, InterQual criterions are nationally recognized guidelines.

8. On December 29, 2014 Molina received medical records from the treating physician. A Molina representative contacted the petitioner by phone on January 26, 2015 and stated the MRI was approved. An authorization number was provided.

9. On January 27, 2015 Molina discovered the above contact was based on incorrect information provided by the treating physician. The procedure had not been approved by Molina. Additionally, the authorization number provided by the treating physician was never issued by Molina.

10. A physician reviewer at Molina had actually reviewed the medical records and upheld the original decision. As per InterQual criteria, the medical records did not indicate documented results of either physical therapy or home exercises.

11. Petitioner was notified by phone of both the error and that the original decision was upheld.

12. Petitioner did not receive the MRI at any time between the phone call on January 26, 2015 and the phone call on January 27, 2015.

13. Petitioner asserts that treatment should follow a diagnosis. The MRI would aid in the physician making the correct diagnosis.

14. Respondent argues that medical necessity has not been demonstrated. More conservative approaches, including physical therapy, should be accessed before a MRI. Should clinical information document a lack of success with physical therapy, petitioner could resubmit a request for the MRI.

CONCLUSIONS OF LAW

15. 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.

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

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

18. 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, 7th Ed.).

19. The incorrect telephone information provided to the petitioner by a Molina representative on January 26, 2015 was avoidable had thorough research of the matter been completed. The Findings of Fact establish, however, the petitioner did not secure a MRI after being misinformed of an approval.

20. The notice of December 1, 2014 is the only written notice issued in this matter. This notice represents petitioner's entry point into the fair hearing process. The analysis conducted by the undersigned will focus on that written denial. The undersigned lacks jurisdiction to impose any type of penalty in regard to the misinformation communicated by a Molina representative.

21. The Florida Medicaid Provider General Handbook (Provider Handbook) – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code R. 59G-4. The Provider Handbook states on page 1-27:

> 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.

22. Page 1-30 of the Provider Handbook continues by stating: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

23. In this instant appeal, Molina is the health maintenance organization which provides petitioner's Medicaid services.

24. Fla. Admin. Code R. 59G-1.010(166) explains that medical or allied care, goods, or services furnished or ordered must meet the definition of medically necessary or medical necessity, and defines medical necessity as:

> (a) 'Medical necessary' or 'medical necessity' means that medical or allied care, goods or services furnished or ordered must 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 patent's needs;
> 3. Be consistent with generally accepted professional medical standards as defined by the Medicaid program and not be experimental or investigational;
> 4. Be reflective of the level of service that can safely be furnished, 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.

25. The pain and swelling associated with petitioner's knee condition is noted. For a MRI to be approved, however, petitioner must demonstrate each condition of medical necessity has been satisfied. Medical necessity is not subject to a personalized definition. Rather, the definition in Fla. Admin. Code R. 59G-1.010 is the controlling authority.

26. Petitioner has not demonstrated that more conservative treatments have failed. Such would include physical therapy and/or activity modification. Additionally, there

was no documentation that the use of anti-inflammatory medication had been unsuccessful. As such, the following conditions of medical necessity have not been satisfied:

> 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 safely be furnished, for which no equally effective and more conservative or less costly treatment is available statewide; and,

27. Petitioner has not established, by the greater weight of the evidence, that a MRI is medically necessary.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 16th day of March, 2015,

in Tallahassee, Florida.

Frank Houston
Hearing Officer
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