

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

FILED

FEB 16 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 15F-00022

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 12 Manatee

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 29, 2015 at 11:08 a.m.

APPEARANCES

For the Petitioner:

Pro se

For the Respondent:

David Beaven, Medical Healthcare Program Analyst, Agency
for Health Care Administration

STATEMENT OF ISSUE

At issue is whether Petitioner established good cause to change her Medicaid Managed Care Plan prior to the open enrollment period.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration (AHCA or Agency) is responsible for administering Florida's Medicaid Program. AHCA contracts with Health Maintenance

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

Witnesses for the Respondent were Robert Walker, Regulatory Research Analyst, and Kimberly Balencie, Manager of Pharmacy Operations with Staywell, A Wellcare Company Health Plan, hereinafter referred to as Staywell.

Respondent's composite exhibit 1 was entered into evidence. Petitioner submitted no exhibits. The record was left open until February 2, 2015 for Respondent to submit its good cause denial letter. There was no good cause denial letter, but call records showing a verbal denial and an excerpt from the Medicaid Prescribed Drug Program Handbook were submitted on January 30, 2015. The call record information was filed and entered as Respondent's exhibit 2 on January 30, 2015. The handbook information was not admitted as evidence.

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 currently enrolled in the Medicaid Managed Care Plan, Staywell.
2. Petitioner seeks disenrollment from Staywell but is beyond the period for which she can voluntarily disenroll. Her next open enrollment period is approximately March 15, 2015.
3. Petitioner wants to disenroll from Staywell because she wants brand name medications, but the HMO refuses to authorize them. The generics and suggested alternatives do not work for her. She alleges she hasn't been able to obtain Dilaudid

(generic name hydromorphone), Soma (generic name is carisoprodol), and Oxycontin (generic name is oxycodone) through Staywell. Additionally, Petitioner wants to use a mail order pharmacy for convenience because it is difficult for her to arrange transportation to the local pharmacies.

4. She subsequently filed a grievance with Staywell on November 3, 2014 due to the denial of her requests for brand name prescription medications.

5. Staywell responded to the grievance by letter dated December 26, 2014, explaining the reasons for the denials of Soma and Oxycontin. The other issue referenced in the grievance letter, dealing with a pharmacy that did not have her information, was not a part of the instant hearing. Petitioner requested a fair hearing with the Office of Appeal Hearings on January 2, 2015.

6. Staywell denied Petitioner's requests for Soma and Oxycontin because it did not have evidence that she tried and failed with other preferred drugs on the formulary list. In its denial notices to the provider, titled Drug Utilization Review, Staywell offered various alternative medications that are on the formulary list that must be tried. Staywell did not deny Petitioner's request for Dilaudid. Petitioner's doctor has since prescribed baclofen, which is an alternative for Soma that was approved.

7. The Agency noted that all managed care plans have similar formulary requirements and Petitioner will continue to have the same problem if she does not provide documentation of trying the alternatives. The Agency advised Petitioner to work with her doctor to try the preferred drugs and then provide documentation that those drugs failed in order to have the brand name drugs approved.

8. Staywell confirmed it does not offer a mail order pharmacy option. Petitioner plans to switch HMOs as soon as her open enrollment period opens or she receives a favorable appeal decision in the instant case, whichever is first.

9. Petitioner is seeking immediate disenrollment from Staywell. She desires a new HMO that will provide her brand name prescriptions.

CONCLUSIONS OF LAW

10. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 120.80, Florida Statutes. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

11. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by AHCA.

12. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

13. As this matter involves a HMO disenrollment request and Petitioner is asserting the affirmative of the issue, the burden of proof was assigned to the Petitioner pursuant to Florida Administrative Code Rule 65-2.060(1).

14. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

15. Section 409.912, Florida Statutes, provides that AHCA shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the

delivery of quality medical care. In addition, the statute provides AHCA may contract with HMOs to provide these services, which AHCA has done with Staywell.

16. Section 409.969(2), Florida Statutes, provides in pertinent part:

(2) DISENROLLMENT; GRIEVANCES.—After a recipient has enrolled in a managed care plan, the recipient shall have 90 days to voluntarily disenroll and select another plan. After 90 days, no further changes may be made except for good cause. For purposes of this section, the term “good cause” includes, but is not limited to, poor quality of care, lack of access to necessary specialty services, an unreasonable delay or denial of service, or fraudulent enrollment. The agency must make a determination as to whether good cause exists. The agency may require a recipient to use the plan’s grievance process before the agency’s determination of good cause, except in cases in which immediate risk of permanent damage to the recipient’s health is alleged.

17. The Medicaid Prescribed Drug Coverage Services and Limitations Handbook (July 2014) (“The Handbook”) is promulgated into law by Florida Administrative Code Rule 59G-4.250(2). The Handbook describes the limitations on prescription drug coverage for Medicaid recipients, including what HMOs are required to cover. The Handbook describes the Medicaid Preferred Drug list¹ (“PDL”) on page 2-4. The PDL is a list of prescriptions that are considered safe and cost effective and which must be prescribed before attempting a non-preferred drug. According to page 2-4 of the Handbook, “[p]roducts 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 non-PDL product.” At page 1-4, HMOs are allowed to use prior authorization and/or step therapy to encourage use of the PDL.

¹ Medicaid Preferred Drug List, Dec. 5, 2014, available online at http://ahca.myflorida.com/medicaid/Prescribed_Drug/pharm_thera/pdf/PDL_2015-01-20.pdf

18. Drugs which are not on the PDL must have prior authorization. Hydromorphone (brand name Dilaudid) up to 8 mg tablets is on the PDL. Hydrocodone (brand name Lortab) is also on the PDL in various dosages. Carisoprodol (brand name Soma) is not on the PDL. Oxycodone (brand name Oxycontin) is also not on the PDL. Therefore, Petitioner will be unable to get Soma or Oxycontin (or any other non-PDL drug) from Staywell without first trying alternatives that are on the PDL.

19. Staywell's contract with AHCA, as permitted by Section 409.912, Florida Statutes, requires the plan to cover brand name drugs if the prescriber writes on the prescription that the brand name is medically necessary and submits a form to the plan indicating bad reactions to the generic or better results with the brand name drug. Therefore, Respondent's denial of the brand name drugs was proper. Petitioner is encouraged to have her physician contact the plan to get alternatives or provide documentation of step therapy attempts.

20. Petitioner is seeking immediate disenrollment from her current plan. No evidence was presented indicating Petitioner receives poor quality of care, lack of access to necessary specialty services, an unreasonable delay or denial of service, or fraudulent enrollment. Florida Administrative Code Rule 59G-8.600 sets forth reasons constituting good cause for disenrollment from a health plan. Upon review of the rule, Petitioner's allegations do not satisfy these requirements. Petitioner is encouraged to take advantage of the open enrollment period if she wishes to change plans.

DECISION

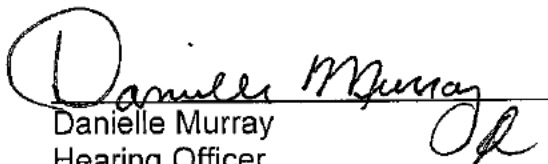
Based upon the foregoing Findings of Fact and Conclusions of Law, the
Petitioner's appeal is hereby DENIED and Agency's action is AFFIRMED.

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.

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

in Tallahassee, Florida.



Danielle Murray
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner

Lorraine Campanaro, Area 6, AHCA Field Office Manager