

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

FILED

MAY 07 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-01141

PETITIONER,

Vs.

CASE NO.

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 February 25, 2015 at 10:06 a.m. and reconvened on March 11, 2015 at 1:42 p.m.

APPEARANCES

For the Petitioner: Pro Se

For the Respondent: Lisa Sanchez, Senior Human Services Program Specialist,
Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's action to deny Petitioner's request for a prescription for SOMA(carisoprodol).

PRELIMINARY STATEMENT

From United Healthcare, Susan Frishman, Senior Compliance Analyst and Holly Moreau, Pharmacy Account Manager appeared as witnesses for the Respondent.

The Respondent entered three documents into the record, which were marked Respondent Exhibits 1, 2 and 3.

The Petitioner entered one document into the record, which was marked Petitioner Exhibit 1.

Initially, the Petitioner explained the difficulty she was experiencing in getting her prescription for morphine filled by a pharmacist. She stated she had gone to a number of pharmacies and each had refused to fill the prescription. The representatives from United Healthcare agreed to work with the Petitioner to find a pharmacist who would fill the prescription while also acknowledging that a pharmacist does have the right not to fill a prescription. The undersigned advised that no remedy for this particular issue could be provided through the appeal process.

The issue under appeal was then identified as the denial of the re-filling of the Petitioner's prescription for SOMA (carisoprodol).

Because the Petitioner stated she has been receiving the SOMA medication for years, burden of proof was initially assigned to the Respondent as an adverse action. However, during testimony, the Respondent stated there were no records of the Petitioner receiving the SOMA medication prior to joining United Healthcare. United Healthcare advised that SOMA does not require a prior authorization to be filled but is limited by Medicaid to 120 tablets in a 365 day period. The Petitioner received 120 SOMA tablets in August 2014. The prior authorization request for a refill of the SOMA

medication within the 365 day period was initiated by the Petitioner and therefore, burden of proof shifted to her. The prior authorization request constitutes an exception to the limited amount of SOMA in a 365 day period.

FINDINGS OF FACT

1. The Petitioner is a 53 year-old Medicaid recipient enrolled with the managed care provider United Healthcare. She suffers from chronic back pain and muscle spasms.

2. An initial prescription for 120 tablets of SOMA (carisoprodol), not requiring a prior authorization, was filled for the Petitioner on August 11, 2014. Medicaid has a drug limitation of 120 tablets in a 365 period for SOMA. A prior authorization is required for any refills within the 365 day limit.

3. The Petitioner's physician submitted a prior authorization prescription request on January 8, 2015 for carisoprodol (SOMA) with an explanation the patient manages muscle spasms with this medication.

4. On January 11, 2015, United Healthcare sent a denial letter for the refill providing in relevant part:

The requested medicine is allowed for one month per year. The facts given to us show you have already received carisoprodol this year. Plan preferred agents are: baclofen, chlorzoxazone, cyclobenzaprine, methocarbamol, or tizanidine.

5. The Respondent's witness explained that carisoprodol is limited because it is an addictive medication and the preferred alternatives also provide relief without the addictive side effects.

6. The record was held open until March 27, 2015 for the Petitioner to provide a letter from her doctor, along with another Prior Authorization request, explaining why the SOMA medication was needed and the use of trial and failure of other medications in her previous history. No letter or prior authorization was provided by the Petitioner.

CONCLUSIONS OF LAW

7. 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.

8. This is a final order pursuant to § 120.569 and § 120.57, Fla. Stat. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

9. The burden of proof was assigned to the Petitioner in accordance with Fla. Admin. Code R. 65-2.060 (1). Per the rule, the standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence.

10. 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.

11. Fla. Admin. Code R. 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...[emphasis added].

12. AHCA's Prescribed Drug Coverage, Limitations, and Reimbursement Handbook (Handbook) dated July 2014, incorporated in Florida Administrative Rule 59G-4.250, page x-ii states in relevant part:

Pharmacy providers must comply with all applicable policies in the General Handbook as well as the Prescribed Drug Coverage, Limitations, and Reimbursement Handbook, which is incorporated by Rule 59G-4.250.

13. On page 1-4 of the Handbook, it also states in relevant part:

HMO prescribed drug services are defined the same as for the Medicaid fee-for-service program and include all legend drug products covered by fee-for-service Medicaid as defined in Chapter 2 of this handbook, Legend Drugs. Medicaid's contract with HMOs states that Medicaid HMOs may use prior authorization and/or step therapy to encourage compliance with the preferred drug list.

A Medicaid HMO is required to cover any product that is required to be covered under the fee-for-service Medicaid program as specified in section 1927 of Title XIX of the Social Security Act. If a product meets the definition of a covered service under that section there must be a provision to make it available through the HMO and through fee-for-service.

14. On page 2-4 of the Handbook, Preferred Drug List is explained under covered services, in relevant 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 in selected therapeutic classes will be presented to the P & T Committee with their relevant clinical efficacy and relative net cost positions. The P & T Committee will recommend the most cost effective drugs in each therapeutic category to AHCA for consideration for inclusion on the PDL. A minimum of two products per therapeutic class, if available, will be recommended.

15. Medicaid limits the amount of SOMA (carisoprodol) to 120 tablets per 365 days.

Medicaid allows for exceptions to this limitation if the prescribing physician provides an explanation of for the medical necessity for of continued use of carisoprodol instead of one of the preferred medicines.

16. The Petitioner has not provided proof of medical necessity for ongoing use of the SOMA medication from her physician.

17. After considering the evidence and all of the appropriate authorities set forth in the findings above, the undersigned is in agreement with the Respondent's decision to deny the prior authorization for the SOMA (carisoprodol) medication.

DECISION

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

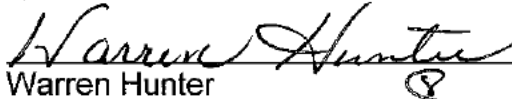
NOTICE OF RIGHT TO APPEAL

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 7th day of May, 2015,

in Tallahassee, Florida.


Warren Hunter
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:  Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager