

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-01701

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in this matter telephonically on April 2, 2015, at 1:45 p.m. The hearing was reconvened on April 7, 2015, at 10:35 a.m.

APPEARANCES

For the Petitioner:



Petitioner

For the Respondent:

Carol King, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner meet her burden to prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly denied her request for a chest compression device?

PRELIMINARY STATEMENT

██████████ the petitioner ("petitioner"), appeared pro se.

Carol King, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration (sometimes hereinafter referred to "AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals from South Florida Community Care Network ("SFCCN") appeared as witnesses on behalf of the Agency: Edward Markovich, M.D., Adult Medical Director; Catherine Ruiz, Grievance and Appeals Coordinator; and Alexander Fabano, Contract Manager. The following individuals from South Florida Community Care Network were present solely for observation: Priscilla Pasquarella, Supervisor of Customer Service; Michael Alvarez, Director of Customer Service; and Shannon Gonzalez, Utilization Supervisor. The same individuals who were present for the hearing on April 2 were also present for the hearing on April 7.

The petitioner introduced Exhibits "1" through "22", inclusive, during the hearing, which were accepted into evidence and marked accordingly. The respondent introduced Exhibits "1" through "11", inclusive, which were also accepted into evidence and marked accordingly.

FINDINGS OF FACT

1. The petitioner is a 27-year-old female diagnosed with cystic fibrosis.
2. Petitioner was eligible to receive Medicaid benefits at all times relevant to these proceedings.
3. The petitioner is an enrolled member of South Florida Community Care Network. South Florida Community Care Network is a provider service network that is

contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in the State of Florida.

4. The petitioner's effective date of enrollment with South Florida Community Care Network was July 1, 2014.

5. On or about November 20, 2014, the petitioner's provider submitted a prior authorization request to South Florida Community Care Network for an AFFLOW VEST HFCWO System "AFFLOW Vest".

6. The AFFLOW VEST HFCWO System is a chest compression device which helps to loosen thickened secretions in order to relieve airway obstruction.

7. On or about November 20, 2014, the petitioner's provider submitted a prior authorization request to South Florida Community Care Network for an AFFLOW Vest. This request properly included a prescription for the product as well as clinical notes.

8. The South Florida Community Care Network Medical Director reviewed the petitioner's request for the AFFLOW Vest on November 24, 2014. The comments made by the Medical Director regarding the request were as follows:

Medical necessity not established

Records reviewed- patient evaluated by pulmonary specialist 9/10/14 for bronchitis/viral respiratory illness. History of cystic fibrosis. Afflovest ordered.

Per 10/8/14 pulmonary no documents "**History of Present Illness / Interval History: [REDACTED] is feeling much better since I have seen her last. She has no complaints at present.**"

Per 10/23/14 nursing note documents "She stated "I'm still eating lots of fruits and vegetables and counting carbs. I've got it down to a fine art now." She has been going to the gym once a week with a friend and doing "gentle workouts." She stated she walks on the treadmill and then

does some light weightlifting. On other days, as long as the weather is nice, she goes walking outside."

Rx fails to detail the vest usage Re: hours per day, time per day, etc.

9. South Florida Community Care Network denied the petitioner's request for the AFFLOW VEST in a letter dated December 1, 2014. The letter states, in part: "We have DENIED/LIMITED this/these service (s) because the documentation sent by your doctor did not support the request for Chest Compression Gen System/ AFFLO vest. Please follow-up with your doctor for an alternative plan of care."

10. On or about December 22, 2014, the petitioner sent a letter to South Florida Community Care Network requesting that it reconsider its decision to deny the AFFLOW Vest.

11. South Florida Community Care Network sent a letter dated January 1, 2015 to the petitioner acknowledging its receipt of the request for a reconsideration.

12. The South Florida Community Care Network Medical Director completed a reconsideration review of the petitioner's request on January 5, 2015. The comments made by the Medical Director regarding the reconsideration were as follows:

Medical necessity not met

Records reviewed- patient with cystic fibrosis who currently has a HiFi-ROM Therapy Vest which she currently uses. No documentation of malfunction, inability to use properly, ineffectiveness.

Pulmonary physician documents " patient been using HiFi-ROM therapy vest on a consistent basis last several years." New portable vest "would allow her to be more compliant with her treatments when on the go work, school, travel."

There is no mention of lack of compliance by physician or in appeal letter from member.

Medical necessity not met as defined in therapy services coverage and limitation handbook chapter 59G 1.010

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, recipient's caretaker, or the provider.

13. South Florida Community Care Network sent a letter dated January 16, 2015 to the petitioner explaining it had decided to uphold its original decision to deny the request for the AFFLOW Vest on reconsideration.

14. The petitioner received an upgrade to her current chest compression vest in or about 2009-2010. The upgrade is no longer under warranty.

15. As a result of the cystic fibrosis, the petitioner has very sticky mucus in her lungs she must cough out daily to prevent bacterial infections and shortness of breath. If these secretions are not moved timely, bacterial infections and pneumonia may begin and result in antibiotic use and/or hospitalization. Petitioner uses a chest compression device to assist with removing these secretions.

16. The petitioner is compliant with the recommended use of her current chest compression vest and uses it for anywhere between 35 and 50 minutes, three to four times per day.

17. Petitioner's current chest compression device is working properly. There are no reported incidents of it malfunctioning.

18. The petitioner's current chest compression vest is effective at performing its intended function.

19. The AFFLOW Vest is much lighter than the petitioner's current chest compression vest. It weighs approximately 10 pounds versus the 20 pound weight of

the existing vest. Unlike the petitioner's current chest compression vest, the AFFLOW Vest is battery operated and does not require the use of an electrical outlet during therapy. This would allow the petitioner to continue therapy at home and not have to go to the hospital in the event of a power outage. The AFFLOW Vest is generally easier to handle than the petitioner's current device, has fewer cords, and comes with a remote.

20. It is the respondent's position that the AFFLOW Vest is being requested primarily for the convenience of the petitioner.

CONCLUSIONS OF LAW

21. 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.

22. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat., and Chapter 59G, Florida Administrative Code. The Program is administered by AHCA. All goods and services requested under the Florida Medicaid Program must be shown to be medically necessary in order to be approved.

23. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

24. The petitioner is requesting a new item of durable medical equipment. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

25. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

26. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(4) **HOME HEALTH CARE SERVICES.**--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(a) The agency shall require prior authorization of home health services....

(c) The agency may not pay for home health services unless the services are medically necessary ...

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

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. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program.

28. Although the terms medically necessary and medical necessity are often used interchangeably and may be used in a variety of contexts, their definition for Florida Medicaid purposes is contained in the Florida Administrative Code. Fla. Admin. Code R. 59G-1.010 states:

(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.
 - (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.

29. Section 409.913, Fla. Stat. governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows

"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....

Section (1)(d) goes on the further state:

...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

30. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the

hearing officer is the final decision making authority for the Agency. See § 120.80, Fla. Stat.

31. In the present case, the petitioner's current chest compression device is working properly and effective at accomplishing its intended goal. Further, the evidence shows that the petitioner is compliant with her use of the existing equipment. Although the AFFLOW Vest is battery operated and weighs less than the petitioner's current equipment, this does not make the new device medically necessary. Pursuant to the above, the hearing officer is in agreement with the position of the Agency that the new equipment is being requested for the convenience of the recipient.

32. The definition of medical necessity set forth in Fla. Admin. Code R. 59G-1.010 (166)(a) explains goods or services furnished or ordered must:

(5) Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

33. Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the petitioner has not met her burden of proof that the Agency incorrectly denied her request for the new AFFLOW Vest.

34. In rendering this decision, the undersigned hearing officer considered all of the testimony and documentary evidence presented during the hearing process and reviewed all conditions of "medical necessity" set forth in the Florida Administrative Code and the rules governing the Florida Medicaid program.

DECISION

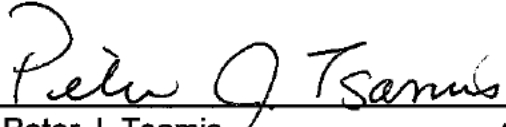
The petitioner's appeal is hereby DENIED.

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 7th day of May, 2015,

in Tallahassee, Florida.


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