

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

FILED

MAY 04 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01702

PETITIONER,

Vs.

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 March 16, 2015 at 11:30 a.m.

APPEARANCES

For the Petitioner:

 Petitioner

For the Respondent:

Dianna Chirino, Senior Program Specialist
Agency for Health Care Administration (AHCA)

STATEMENT OF ISSUE

At issue is whether the Respondent's denial of the Petitioner's request for a lap sleeve gastrectomy was correct.

PRELIMINARY STATEMENT

The Petitioner did not submit any documents as evidence for the hearing, other than what was already included in the Respondent's evidence filing.

Appearing as witnesses for the Respondent were Dr. Vincent Pantone, Medical Director, and Lisvette Lopez, Grievance and Appeals Manager, from Simply Healthcare, which is the Petitioner's managed health care organization. Respondent submitted medical records and internal grievance letters as evidence for the hearing, which were marked as Respondent's composite Exhibit 1.

FINDINGS OF FACT

1. The Petitioner is an adult Medicaid recipient who is enrolled in the Statewide Medicaid Managed Care (SMMC) – Managed Medical Assistance (MMA) plan. She receives services under the plan from Simply Healthcare.
2. On or about January 22, 2015, the Petitioner's treating physician (hereafter referred to as "the provider"), requested prior authorization from Simply Healthcare to perform a lap sleeve gastrectomy procedure on the Petitioner, which is a type of bariatric surgery. Simply Healthcare denied this request on January 27, 2015 based on the following medical necessity criteria:

Must be needed to protect life, prevent significant illness or significant disability, or alleviate severe pain;

Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs;

Must be able to be 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.

3. The Petitioner has been diagnosed with obesity, high blood pressure, high cholesterol, sleep apnea, and kidney disease. She is seeking the lap sleeve gastrectomy procedure as a means of achieving weight loss.
4. Simply Healthcare's notice to the Petitioner advised her that her request for bariatric surgery was denied based on medical necessity guidelines. The Respondent's expert witness, Dr. Pantone, testified that the applicable medical necessity criteria for this type of surgery require there be documentation that the patient has tried and failed a medically supervised weight loss program for at least six months prior to approval of the surgery. Dr. Pantone also stated the medical records submitted by the Petitioner's treating physician did not contain this type of documentation, which should include documents such as a diet log and follow-up visits.
5. The Petitioner believes her request for the lap sleeve gastrectomy should be approved because she has not been able to lose weight by any other means. She has tried different diets, and she exercises every day. She also believes her treating physicians may have not accurately documented her weight loss attempts in her medical records.
6. Services under the Medicaid State Plan in Florida are provided in accordance with the Respondent's Florida Medicaid Provider General Handbook ("Medicaid Handbook"), effective July, 2012.

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 Ch. 120.80, Fla. Stat.

8. This is a final order pursuant to § 120.569 and § 120.57, Fla. Stat.
9. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
10. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Petitioner. 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.).
11. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Medicaid Program is administered by the Respondent. The Medicaid Handbook referred to above is incorporated by reference in Fla. Admin. Code R. 59G-4.001.
12. Florida Statute § 409.912 requires that Respondent "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 that respondent must "operate or contract for the operation of utilization management and incentive systems designed to encourage cost-effective use of services and to eliminate services that are medically unnecessary."
13. The Medicaid Handbook and Fla. Admin. Code R. 59G-1.010(166) define medical necessity as follows:
 - "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.

(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.

14. Although petitioner testified she has done all she can to try to lose weight, she must also satisfy each of the remaining components of the rule's requirements concerning medical necessity. Respondent's medical expert testified that medical necessity guidelines require a documented trial and failure of a medically supervised weight loss program and this was not established in the Petitioner's pre-authorization request. Although the Petitioner's treating physician has requested the lap sleeve gastrectomy, this does not in itself establish that this service is medically necessary according to the rule provisions outlined above.

15. Petitioner has not established by a preponderance of the evidence that her requested lap sleeve gastrectomy is medically necessary as defined by Fla. Admin. Code R. 59G-1.010(166). The undersigned notes the evidence submitted contains a diet log prepared by the Petitioner. However, this diet log was submitted to Simply Healthcare after the pre-authorization request was denied on January 27, 2015 and it only contains three days of diet information. After considering the evidence and

relevant authorities set forth above, the undersigned concludes that the Petitioner has not met her burden of proof in establishing that the Respondent's action was incorrect.

DECISION

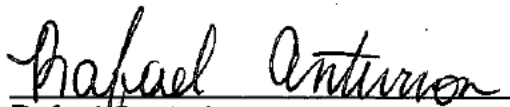
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

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 agency has no funds to assist in this review, and any financial obligations incurred will be the Petitioner's responsibility.

DONE and ORDERED this 4th day of May, 2015,

in Tallahassee, Florida.



Rafael Centurion
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662

Copies Furnished To:

██████████ Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager