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

[redacted]

APPEAL NO. 15F-01742

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 19 St. Lucie
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 18, 2015 at 11:06 a.m.

APPEARANCES

For the Petitioner: [redacted]
Pro Se

For the Respondent: Carol King
Registered Nurse Specialist

ISSUE

At issue is whether a denial for magnetic resonance imaging (MRI) of petitioner's cervical and lumbar spine was proper.

PRELIMINARY STATEMENT

Petitioner offered no exhibits into evidence.

Ms. King appeared as both the representative and witness for the respondent. Present as witnesses from Prestige Health Choice (Prestige) were: Kimberly Lewis, Director of Grievance and Appeals; Esther Pierre-Louis, Supervisor of Grievance and Appeals; and Dr. Marc Rivo, Vice Present for Population Health Management. Respondent's exhibits "1" and "2" were accepted into evidence. Administrative Notice was taken of Fla. Admin. Code R. 59G-1.010; the Florida Practitioner Services Coverage and Limitations Handbook; and Florida Statutes § 409.963; § 409.965: § 409.971; § 409.972; and § 409.973.

The record was held open through March 25, 2015 for respondent to provide the MRI guidelines utilized in its decision making process. 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's birthdate is [redacted] He was Medicaid eligible at all times relevant to this proceeding.

2. Petitioner's Medicaid services are through the Statewide Medicaid Managed Care Program. Effective August 1, 2014, Prestige is the managed care entity which provides petitioner's Medicaid services.

3. Petitioner is diagnosed with lumbago and cervicalgia. The conditions cause both lower back and neck pain. The pain started in or about 2002 when petitioner was involved in an automobile accident. At present, ibuprofen is taken to reduce the pain.

4. To address the above conditions, petitioner's last received physical therapy was in 2002.

5. On January 26, 2015 petitioner was evaluated by Dr. [redacted] Case notes from that visit identified no fractures; pinched nerves; weakness in the lower extremities; or recent trauma to the back or neck. Dr. [redacted] noted no indication of either a tumor or infection. The neck was determined to be supple with a full range of motion. Petitioner's coordination was recorded as "grossly normal' and ambulation as "Casual gait is within normal limits". Dr. [redacted] identified severe tenderness in the cervical and lumbar areas.

6. On January 28, 2015 Dr. [redacted] submitted to Prestige a prior authorization for the MRIs at issue. The prior authorization was accompanied by the above case notes and a prescription.

7. Submitted information was thereafter reviewed by Prestige's Medical Director, Dr. Justo Garcia. On February 4, 2015 a Notice of Action was issued by Prestige which denied the requested MRIs. The notice stated, in part:

> We determined that your requested services are not medically necessary because the services do not meet the reason(s) below: (See Rule 59G-1.010)
>
> Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
>
> The facts that we used to make our decision are: clinicals are insufficient to determine medical necessity.

8. On February 16, 2015 petitioner contacted the Office of Appeal Hearings and timely requested a fair hearing.

9. Upon receipt of the hearing request, a second Prestige physician conducted a review of submitted information. The review occurred on February 18, 2015 and the original decision was upheld. As the petitioner did not request the second review, a notice was not issued.

10. A Prestige "rapid response team" member then contacted Dr. [redacted] and recommended a course of physical therapy.

11. Petitioner asserts he has not yet been offered physical therapy.

12. Respondent argues a significant medical condition was not identified to warrant a MRI. This would include a fracture; mass; infection; or pinched nerve. As such, a more conservative protocol should be implemented. Respondent asserts clinical guidelines first call for six to eight weeks of physical therapy. If not successful, other protocols, including a MRI, could then be considered.

CONCLUSIONS OF LAW

13. 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.

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

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

16. 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.).

17. 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.

18. 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."

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

20. 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.

21. The pain associated with petitioner's lower back and neck 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.

22. Petitioner has not demonstrated that a treatment more conservative than a MRI has been completed. There is no documentary evidence that a trial of physical therapy was attempted and determined to be ineffective by a medical professional. Additionally, the evidence does not establish other conservative protocols such as chiropractic care or a supervised home exercise program have been attempted.

23. No credible evidence was presented to impute the medical opinion of Dr. Rivo or the clinical guidelines used by the physician reviewers at Prestige.

24. It is noted petitioner's treating physician prescribed the MRIs at issue. Fla. Admin. Code R. 59G-1.010(166), however, directs that a prescription on its own does

not establish medical necessity. The prescription must be accompanied by persuasive medical information to warrant the treatment or procedure.

25. Petitioner has not demonstrated by the required evidentiary standard that respondent's denial of the MRIs was incorrect. 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 ...

DECISION

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

DONE and ORDERED this 11th day of May, 2015,

in Tallahassee, Florida.

Frank Houston
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: [redacted] Petitioner
Carol King, Field Office 9 Medicaid