

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

**FILED**

Dec 15, 2015

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-06587

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 02 Leon  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on November 9, 2015 at 11:39am

**APPEARANCES**

For the Petitioner:



For the Respondent:

Dianne Soderlind, Registered Nurse Specialist

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action of June 29, 2015 denying a replacement Cochlear processor. The petitioner carries the burden of proof by the preponderance of evidence.

**PRELIMINARY STATEMENT**

father of the petitioner, appeared as a witness for the petitioner.

Michael O'Donnell, Grievance and Appeals Coordinator, and Esther Pierre-Louis,

Supervisor Grievance and Appeals, from Prestige Health Choice appeared as witnesses for the Agency.

The Agency provided evidence, which included three parts, prior to the hearing. Part one of the evidence was from AHCA included 17 pages. AHCA added two pages during hearing and 19 pages were entered as Respondent Exhibit 1. Part two of the evidence was from Prestige and included 12 pages. This was entered as Respondent Exhibit 2. Part three of the evidence was information sent from the petitioner to the Agency. This was entered as Petitioner Exhibit 1. The petitioner provided additional information during the hearing. This was entered as Petitioner Exhibit 2.

#### **FINDINGS OF FACT**

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner is a (age 31) is a Florida Medicaid recipient. Prestige Health Choice is the contracted Medicaid services provider for the petitioner.
2. The petitioner is hearing impaired. He has cochlear implants and external processors for both ears.
3. The petitioner left his left external processor at Shands for repair approximately a year ago. He had an appointment to pick it up in late November 2015.
4. A request was submitted to Prestige Health Choice on June 18, 2015 for a new processor for the petitioner's right ear.
5. Prestige Health Choice issued a Notice of Action on June 29, 2015 denying the petitioner's request for an external speech processor and controller, integrated system replacement. The reason given for the decision was: "The requested

services is not a covered benefit.” The notice also stated, “Request has been denied as a non-covered benefit under Medicaid Fee Schedule.”

6. The petitioner is requesting new external processors for both ears; but would be happy just to receive one right now.

7. The petitioner has been taking course work for Heating, Ventilation and Air Conditioning (HVAC). He has one semester left to complete his coursework.

8. The petitioner believes he needs the new processors as opposed to having his current processors repaired. The requested processors are waterproof. His current processors are not waterproof. The petitioner explained that the current processors will not function properly if exposed to moisture or sweat.

9. The petitioner explained he is concerned his completion of HVAC will have him working in sweaty or damp environments where his processors could fail and cause a safety issue with him hearing motors running.

10. The petitioner is concerned that the HVAC companies that would hire him if he was not hearing impaired or had waterproof processors may not hire him without the waterproof processors.

11. Prestige approved the repair or refurbishment of the failing processor.

12. Prestige noted in the audiologist’s letter she “fully expected a denial of an upgrade, since to her, all that is needed to restore functional hearing at this time would be a repair (replacement with a refurbished version) of the non-functioning left sided processor”.

13. Prestige believes the petitioner's request for a new processor is a vocational issue not an issue of medical necessity. Prestige found no proof the member could not fully function with only a repaired or refurbished device.

14. Prestige advised that hearing-impaired individuals are allowed one device per ear every three years.

### **CONCLUSIONS OF LAW**

15. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

16. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

17. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code § 65-2.060(1)). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7<sup>th</sup> Ed.).

18. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the Agency.

19. All Medicaid goods and services must be medically necessary. The definition of medically necessary is found in Fla. Admin. Code § 59G-1.010 and 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.

...

**(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)

20. The above controlling authority sets forth that medical necessity means the medical care, goods, or services furnished which meets **all** five of the above-cited criteria. One of the criteria is the service 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.

21. Prestige denied the petitioner's request for a new upgraded processor for the right ear. Prestige approved repair of the current processor or replacement with a refurbished processor. The undersigned concludes the petitioner's request for a new processor does not rise to the level of medical necessity under Medicaid law, as repairing the unit or replacing with a refurbished unit will allow the petitioner to hear. The undersigned further concludes this would be considered an equally effective or less costly treatment as stated in the above cited Medicaid law.

22. The undersigned notes that the concern for safety in his future vocation of HVAC should his processors fail. However, the controlling authorities direct the undersigned to review current medical necessity, not a future or possible situation. The petitioner may desire to consult with the Department of Economic Opportunity's Vocational Rehabilitation local office to determine if that organization can assist with the upgrade requested.

23. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes the respondent's decision in this matter was correct. The petitioner did not prove by a preponderance of the evidence the request for new processors meets all the requirements for medical necessity requirements for Medicaid payment through its contracted HMO.

### **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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

FINAL ORDER (Cont.)  
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DONE and ORDERED this 15 day of December, 2015,  
in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
Marshall Wallace, Area 2, AHCA Field Office Manager