

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

FILED

Dec 14, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07844

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

APPEARANCES

For the Petitioner:



For the Respondent:

Monica Otalora, 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 an electrical nerve stimulator (TENS unit) was correct. Petitioners bear the burden of proof in this matter.

PRELIMINARY STATEMENT

The hearing in this matter was originally scheduled for October 9, 2015, but was heard on October 16, 2015 in conjunction with another hearing request filed by the Petitioner.

The Petitioner did not submit any documents as evidence for the hearing.

Appearing as witnesses for the Respondent were Susan Frischman, Senior Compliance Analyst, and Dr. Miguel Fernandez, Chief Medical Officer, for United Healthcare, which is the Petitioners' managed health care organization. Respondent submitted the following documents into evidence: Exhibit 1 – Statement of Matters; Exhibit 2: Service/Equipment Request; Exhibit 3 – Denial Notice; and Exhibit 4: Grievance and Appeals documents, including medical records.

FINDINGS OF FACT

1. The Petitioner is a thirty-nine (39) year old Medicaid recipient who is enrolled in the Statewide Medicaid Managed Care (SMMC) – Managed Medical Assistance (MMA) plan. He receives services under the plan from United Healthcare.
2. Petitioner's coverage with United Healthcare began on January 1, 2015. He was previously covered by Humana.
3. On or about March 24, 2015, Petitioners' treating physician (through a durable medical equipment provider) submitted an authorization request to United Healthcare for approval of an electrical nerve stimulator (a/k/a TENS unit).
4. On or about March 25, 2015, United Healthcare denied the pre-authorization request for the TENS unit. Petitioner filed an internal appeal/grievance with United

Healthcare and United Healthcare denied his appeal/grievance on or about April 15,

2015. The denial notice stated the following:

Based on our review of your appeal, we have determined that the service you requested cannot be approved. We made the decision because this does not meet the 2015 Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook. It says for this to be approved, the item must be on the list of approved items. The item you asked for is not on the list. This is why we cannot approve this request.

5. The Petitioner testified he believes the TENS unit should be approved because he used a TENS unit previously when he was covered by Humana and he uses this item as a painkiller because he does not take any narcotic medications.

6. The Respondent's witness, Dr. Fernandez, stated the request for the TENS unit was not denied because of any medical necessity considerations, but because the item is not covered under Florida Medicaid guidelines.

7. 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, and the Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook"), effective July, 2010.

CONCLUSIONS OF LAW

8. 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 Fla. Stat. § 120.80.

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

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

11. 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.).

12. 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 and the DME Handbook are incorporated by reference in Chapter 59G-4, Florida Administrative Code.

13. The DME Handbook lists various types of medical equipment which are covered by the Florida Medicaid Program. The DME Handbook also states the following on page 2-3:

Many durable medical equipment (DME) items and services are limited to recipients under 21 years of age.

To determine whether a service is available to all recipients or limited to recipients under age 21 years of age, refer to the DME and Medical Supply Services Provider Fee Schedules and the service specific requirements described in this handbook.

14. The electrical nerve stimulator, or TENS unit, requested by the Petitioner is not listed as a covered benefit or service in either the DME Handbook or the accompanying fee schedules.

15. Managed care plans, such as United Healthcare, are required to comply with the various Medicaid Handbooks and regulations.

16. After considering all the documentary evidence and witness testimony presented, the undersigned concludes United Healthcare correctly denied Petitioner's request for the electrical nerve stimulator.

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 14 day of December, 2015,

in Tallahassee, Florida.



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