

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

**FILED**

Dec 11, 2015

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-07847

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 Dade  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 16, 2015 at 10:00 a.m.

**APPEARANCES**

For the Petitioner:  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 bariatric surgery was correct. The Petitioner bears the burden of proof in this matter.

### **PRELIMINARY STATEMENT**

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

Appearing as witnesses for the Respondent were Dr. Vincent Pantone, Chief Medical Officer, and Lourdes Gayo, Grievance and Appeals Manager, from Simply Healthcare, which is the Petitioner's managed health care organization. Respondent submitted the following documents as evidence for the hearing, which were marked as Respondent Exhibits: Exhibit 1 – Statement of Matters; Exhibit 2 – Authorization Request; Exhibit 3 – Denial Notice; Exhibit 4 – Plan Appeal Request; Exhibit 5 – Medical Criteria.

Also present for the hearing was a Spanish language interpreter – [REDACTED] Interpreter Number [REDACTED] from Propio Language Services.

### **FINDINGS OF FACT**

1. The Petitioner is a thirty-eight (38) year-old 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 September 3, 2015, the Petitioner's treating physician (hereafter referred to as "the provider"), requested prior authorization from Simply Healthcare to perform a bariatric surgery procedure on the Petitioner. Simply Healthcare denied this request on September 11, 2015 based on medical necessity criteria. The denial notice also stated the following: "There is no documentation that you have been following a consistent medically supervised weight loss diet plan prior to the decision to operate."

3. The Petitioner has been diagnosed with [REDACTED] and [REDACTED]. She is seeking the bariatric surgery 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 he reviewed medical records submitted by Petitioner's primary care physician and surgeon and there is no listing of a specific diet plan. In addition, the submitted medical records only covered an approximately three month period from June to mid-August, 2015. Dr. Pantone also mentioned that the records submitted by Petitioner's psychologist stated she had been eating rice, beans, ice cream and bread because she could not follow her diet.

5. The Petitioner believes her request for the bariatric surgery should be approved because she has not been able to lose weight by any other means. She stated she has tried to follow a diet and perform exercise. She also stated she suffers from depression and anxiety which has made it difficult to follow a diet because she overeats when she feels the effects of anxiety. With regard to her psychologist's reference to her eating rice, beans, bread, and ice cream, she stated she does not eat those things every day, only when she feels her anxiety.

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 Fla. Stat. § 120.80.

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

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, 7<sup>th</sup> 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-5.020.

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."

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 six month weight loss program and this was not established in the Petitioner’s case.

Although the Petitioner’s treating physician has requested the bariatric surgery, this does not in itself establish that this service is medically necessary according to the rule provisions outlined above.

15. After considering the evidence and testimony presented, the undersigned concludes that the Petitioner has not met her burden of proof in establishing that the Respondent’s action was incorrect. The medical records submitted only cover a three-month period and do not include a specific diet plan. In addition, the psychological

records submitted and the Petitioner's testimony establish she has not been consistently complying with any diet guidelines due to her anxiety issues.

**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 11 day of December, 2015,

in Tallahassee, Florida.



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Rhea Gray, Area 11, AHCA Field Office Manager