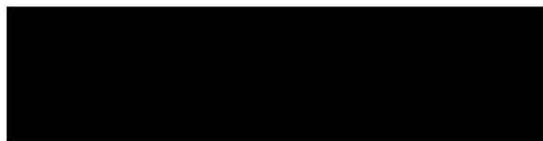


Dec 30, 2015

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-08115

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 Orange
UNIT: AHCARESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing on November 10, 2015 at approximately 10:30 a.m.

APPEARANCES

Petitioner:



For Respondent:

Doretha Rouse
Registered Nurse Specialist
Agency for Health Care Administration**STATEMENT OF ISSUE**

At issue is Respondent's partial denial of Petitioner's request for a prescription drug, Petitioner requested 90 tablets per month, every month. Respondent approved 90 pills for one month, with a limit of a total of 120 pills for 365 days. The burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

Respondent presented the following witnesses:

- Jennifer Arteaga, Grievance and Appeals Coordinator II, Sunshine Health.
- Dr. David Gilchrist, Medical Director, Sunshine Health.
- Richard Plymel, Manager, Clinical Pharmacy Services, Sunshine Health.
- Dr. Philip Benjakul, Physician Adviser, NIA Magellan.

Tracy Thomas, Grievance and Appeals Coordinator II with Sunshine Health (“Sunshine”) observed the hearing. Petitioner gave oral testimony, but did not move any exhibits into evidence. Respondent moved Exhibits 1 through 11 into evidence. The Hearing Officer inadvertently labeled two (2) separate exhibits as Exhibit 2. The exhibits shall now be marked for identification as “Exhibit 2A” and “Exhibit 2B.” The record was held open until November 24, 2015 in order for Respondent to provide additional documentation. Respondent submitted additional evidence, entered as Exhibits 12 through 17.

Administrative notice was taken of the Florida Medicaid Provider General Handbook, July 2012.

FINDINGS OF FACT

1. Petitioner is a 57-year-old female. At all times relevant to this proceeding, Petitioner was eligible to receive Medicaid services.
2. Petitioner first enrolled with Sunshine as her Managed Medical Assistance (MMA) plan on May 1, 2012, and is currently active with the plan.
3. Petitioner’s health conditions include, but are not limited to:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

4. On August 10, 2015, Petitioner attempted to fill a one-month supply of 90 pills of [REDACTED] 350mg tablets and was denied at point-of-sale. Petitioner takes three (3) tablets every day. [REDACTED] is not on AHCA's Preferred Drug List.

5. On August 11, 2015, Sunshine issued a Notice of Action denying the [REDACTED]. The reason given for the denial was "Other authority: Insufficient Information." (Respondent's Composite Exhibit 10). Specifically, the letter stated:

The facts we used to make our decision are:

Your request for this drug is denied. We do not have enough information about your condition to decide if it's medically necessary based upon your health plan pharmacy criteria. It would be helpful to know the following:

Your doctor has been asked to provide additional information for consideration of this request for [REDACTED] tablet 350mg. (Sunshine Health Plan Prior Authorization Criteria).

6. On August 12, 2015, Sunshine reversed the denial in part by approving 90 tablets for 30 days. The approval was for valid for 12 months, however, the approval letter noted that the plan limits the quantity of pills to a total of 120 for every 365 days. Mr. Plymel stated this is the maximum number that can be approved according to Medicaid guidelines. (Respondent's Exhibit 17).

7. The undersigned heard two separate appeal numbers for Petitioner at the same time on November 10, 2015: 15F-07810 and 15F-08115. Appeal number 15F-07810 was requested on September 11, 2015, and appeal number 15F-08115 was requested on September 23, 2015. There was significant overlap in the proposed evidence, and therefore all of the admitted exhibits are common to both appeal numbers.

CONCLUSIONS OF LAW

8. By agreement between the Agency for Health Care Administration (“AHCA” or “Agency”) and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction over this matter pursuant to § 120.80, Fla. Stat.
9. This is a Final Order, pursuant to §§ 120.569 and 120.57, Fla. Stat.
10. 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. Legal authority governing the Florida Medicaid Program is found in Chapter 409 of the Florida Statutes, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, is the single state agency that administers the Medicaid Program.
12. The Florida Medicaid Provider General Handbook, July 2012 (“Handbook”), is promulgated into law by Chapter 59G of the Florida Administrative Code.
13. Page 1-28 of the Handbook provides that every HMO must include prescribed drug services up to the limits required by fee-for-service Medicaid.
14. The Florida Statutes, at § 409.912(8)(a)(16) states, in pertinent part: “[AHCA] shall implement a step-therapy prior authorization approval process for medications excluded from the preferred drug list....”
15. The Florida Medicaid Prescribed Drug Services Coverage, Limitations, and Reimbursement Handbook, July 2014 (“Drug Handbook”) is promulgated into law by Chapter 59G of the Florida Administrative Code.

16. Page 2-4 discusses the Preferred Drug List ("PDL") and the requirements to receive medications not on the PDL. Page 2-14 states, in relevant part: "Non-PDL drugs may be approved for reimbursement upon prior authorization...." Page 2-5 continues, stating: "AHCA will publish and disseminate the additions and deletions to the PDL in a timely manner as they are adopted. The PDL and updates will be posted on the Agency website at

www.ahca.myflorida.com/Medicaid/Prescribed_Drug/preferred_drug.shtml. As stated above, [REDACTED] is not on the current PDL.

17. Page 2-8 of the Drug Handbook addresses the quantity limitations of certain drug classes, stating:

Medicaid limits the quantity and number of refills that may be reimbursed for certain drug classes. Medicaid also limits reimbursement for certain drug classes to recipients based upon clinical considerations of the patient's age. A current list of drug limitations can be found on the Internet at: www.mymedicaid-florida.com. Click on Public Information for Providers, then Pharmacy, then Drug Limitations.

18. Page 34 of the Summary of Drug Limitations, updated November 30, 2015, limits [REDACTED] (Soma) to a "Maximum 120 tablets per 365 days." This matches the limitation provided by Respondent in Exhibit 17. Respondent approved the maximum amount of [REDACTED] for a 12 month period.

19. Since Respondent approved the maximum amount of [REDACTED] under ACHA's Drug Limitations, the undersigned concludes Respondent was correct in only approving 120 pills for the 12 month period.

DECISION

Based upon the foregoing, Petitioner's Appeal is DENIED and the Agency's action is AFFIRMED.

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 30 day of December, 2015,

in Tallahassee, Florida.



Rick Zimmer
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner
Judy Jacobs, Area 7, AHCA Field Office