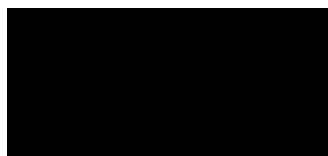


Jan 04, 2016

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

APPEAL NO. 15F-09437

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE
ADMINISTRATION
CIRCUIT: 13 Hillsborough
UNIT: AHCARESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 30, 2015 at 1:00 p.m. in Tampa, Florida.

APPEARANCESFor the Petitioner:  pro se

For the Respondent: Stephanie Lang, Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether the Agency properly denied Petitioner's requests for Depends underwear, Aveeno Skin Relief Moisturizer, Neutrogena Original Formula Soap, Bard Cunningham clamp, Dove bar soap, Ketoconazole cream and shampoo, and Desitin cream. Petitioner holds the burden of proof on these matters by the preponderance of evidence.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration (AHCA or Agency) is responsible for administering Florida's Medicaid Program.

Petitioner testified and did not present any other witnesses. Serving as Respondent's witnesses were Carlene Brock (Quality Operations Nurse), Tracy Parks (Manager of Clinical Quality), Dr. Elizabeth Schnieder (Medical Director) and Lenora Fisher (Case Manager), all with Amerigroup.

The hearing officer took administrative notice of Sections 409.910, 409.962, 409.963, 409.964, 409.965, 409.973 Florida Statutes, Florida Administrative Code Rules 59G-1.001, 59G-1.010, 59G-4.070, the Florida Medicaid Durable Medical Equipment ("DME") and Medical Supply Services Provider Fee Schedule ("fee schedule"), and the DME and Medical Supply Services Coverage and Limitations Handbook.

Petitioner entered two exhibits into evidence, marked and entered as Petitioner's Exhibits 1 and 2, respectively. Respondent submitted eight exhibits during the hearing, marked and entered as Respondent's Exhibits 1 through 8, into evidence. The record closed on December 30, 2015.

Petitioner submitted an additional hearing request prior to hearing. In the interest of judicial economy, it was dismissed on the record at the hearing and will not be scheduled separately. Petitioner's new hearing request was for the hearing officer to lift [REDACTED] trespass warning, order a surgeon to perform bladder surgery, and reinstate him as a patient at the urology practice which discharged him for aggressive behaviors. The Office of Appeal Hearings has no jurisdiction over provider

actions, treatment choices, or patient discharges, in accordance with 42 C.F.R. §§ 431.220 and 431.201. There was no allegation in the new hearing request that the Respondent denied any properly made request for service, only disputes regarding actions his provider took. Therefore, all portions of the new hearing request were dismissed. Petitioner was given information to file complaints against the hospital and the provider through alternate channels, if he chooses to do so.

Petitioner requested a full copy of the DME Handbook, rules, and procedures. The Agency representative printed a copy of the DME Handbook and provided it to Petitioner after the hearing.

Amerigroup agreed to provide Petitioner with a list of alternative in-network providers for urology and incontinence supplies. This was for Petitioner's convenience and is unrelated to the decision on the issues on appeal.

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 is an adult male over age 21 who is diagnosed with various [REDACTED]

[REDACTED]. He is considered disabled by the Social Security Administration. He is able to walk.

2. Petitioner's urologist provided a prescription for a [REDACTED] to assist with Petitioner's [REDACTED]. The medical supply company submitted a request for T2029, which is a specialized medical item. [REDACTED] is the procedure code for the [REDACTED]

[REDACTED] Neither code is listed on the Medicaid DME Fee Schedule.

Amerigroup denied the clamp request as a non-covered benefit because the code does not appear on the fee schedule. Petitioner was notified of the denial by phone.

Amerigroup did not issue a written denial notice because this occurred during a vendor transition period.

3. The medical supply company instead offered it to Petitioner at a cash price, rather than filing an insurance claim which would be denied. Amerigroup refused to pay cash to the supplier on Petitioner's behalf.

4. The [REDACTED] code does not appear on the Medicaid fee schedule. Therefore, Amerigroup will not cover it. Amerigroup stated there is no exception to request a non-covered item or unlisted procedure code for medical need for an adult over age 21.

5. Petitioner's plan has an over the counter benefit. As part of this benefit, certain common drugs and pharmacy items are covered by the plan, up to \$25 per month in items.

6. Petitioner's request for Desitin cream was denied at the pharmacy. Desitin cream appears on Amerigroup's list of approved over the counter items. Amerigroup argues the denial was a pharmacy error, and the Desitin should be approved. Amerigroup attempted to process a claim for Desitin to ensure there wasn't a system error, and it was approved.

7. Petitioner alleges he was denied Ketoconazole cream and shampoo at the pharmacy. Amerigroup paid claims for these items on October 29, 2015. Therefore this request was not denied. Petitioner stated that some of the items he previously requested the hearing for were approved, but did not specify which ones.

8. Petitioner requested Depends diapers from the pharmacy. Petitioner's request for Depends was denied at the pharmacy because Medicaid does not cover incontinence diapers for people over the age of 21. Amerigroup did not issue a denial notice on this request.

9. Petitioner requested Neutrogena Original Formula Soap. The soap was denied at the pharmacy because there was no prior authorization request. The soap is not on a preferred drug list or over the counter approved list, so it requires prior authorization to determine if the request meets medical necessity. Amerigroup has not received a prior authorization request to determine medical necessity.

10. The pharmacy denied Petitioner's requests for Aveeno Skin Relief Moisturizer and Dove Bar soap. Both of these requests were denied because they are not pharmaceutical type items, but regular lotion and soap available in the store. They do not appear on Amerigroup's over the counter list. There are other Aveeno brand items on the list that are available through Amerigroup's over the counter plan, but the one Petitioner specifically requested was not on that list. There is no formula of Dove brand soap on the over the counter list.

11. Petitioner argues that medical necessity overcomes any limitation otherwise placed on Medicaid covered supplies. He has medical reasons for each request, and he believes any denial is a denial of needed medical care.

12. None of Petitioner's requests were reviewed for medical necessity, as defined by the Florida Administrative Code. His requests were all denied based on specific exclusions or limitations set by the Medicaid program. His medical conditions did not factor into the denial decisions at all.

CONCLUSIONS OF LAW

13. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 120.80, Florida Statutes. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

14. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency.

15. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

16. Section 409.912, Florida Statutes provides that AHCA shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care.

17. With regard to the need for Durable Medical Equipment and Supplies ("DME"), Section 409.906(10), Florida Statutes, states in relevant part, "[t]he agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary."

18. Florida Administrative Code Rule 59G-1.010(166) defines 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; 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.

19. The DME and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook") has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.070(2). The DME Handbook defines DME services on page 1-2, as follows:

Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA)...

Medical supplies are defined as medically-necessary medical or surgical items that are consumable, expendable, disposable, or non-durable and appropriate for use in the recipient's home....

Orthotic devices are defined as medically-necessary devices or appliances that support or correct a weak or deformed body part, or restrict or eliminate motion in a diseased or injured body part.

20. Page 2-3 explains that each service request, if medically necessary, is further limited by the DME Handbook and the fee schedule:

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.

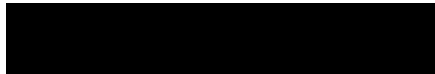
Note: The DME and Medical Supply Services Provider Fee Schedules are available on the Medicaid fiscal agent's Web site at www.mymedicaidflorida.com. Select Public Information for Providers, then Provider Support, and then Fee Schedules. The fee schedules are incorporated by reference in 59G-4.071, Florida Administrative Code.

21. Page 2-97 sets forth the list of relevant non-covered DME items as follows:

The following list of items and services are not reimbursed through the Medicaid DME and Medical Supply Services Program; however some of these items may be reimbursed through other Medicaid programs, such as the Medicaid State Plan, Home and Community-Based Waiver Programs, or other state-operated programs:...

- Diapers and incontinence briefs of any kind for recipients 21 years and older...
- Items or devices used or intended to be used for cosmetic purposes
- Non-sterile cotton tip applicators
- Personal comfort, convenience or general sanitation items...
- Routine and first aid items

22. Exceptions can be made to the non-covered item rule for recipients under 21 years of age, according to page 2-98 of the DME Handbook. Petitioner is over 21 so the exception would not apply to him.



23. Page 2-16 of the DME Handbook states in relevant part, as follows:

Durable medical equipment services or items that require prior authorization (PA) are indicated on the DME Fee and Medical Supply Services Provider Schedules with a "PA" designation. DME services or items that require PA include the following:...

DME items that do not have an assigned procedure code(s) listed on the fee schedules and are requested using the miscellaneous DME procedure code; and miscellaneous DME, which may include items such as external insulin pumps and custom cranial remolding devices...

24. Page 3-7 of the DME Handbook further explains non-classified or miscellaneous codes:

The DME and Medical Supply Services Provider Fee Schedules have "nonclassified" procedure codes. Non-classified procedure codes allow the provider to request reimbursement from Medicaid when a reimbursable item does not have an established fee identified. Pricing non-classified procedure codes is established either by prior authorization or a By Report claim....

Providers must use a non-classified procedure code when the item is reimbursable, but:

The equipment requested needs to be customized to the physical condition of the recipient, and

There is no less expensive treatment modality, equipment, or measures available to meet the recipient's medical needs....

A provider may be reimbursed for a non-classified procedure code after the claim is approved and priced by AHCA.

25. The [REDACTED] was denied because the requested procedure code does not appear on the Medicaid Fee Schedule. However, based on the above authority, items without a code listed on the fee schedule can be requested using a miscellaneous DME code. A9900 is on the fee schedule and is titled "Miscellaneous DME Supply, Accessory, and/or Service Component of Another HCPCS Code." The fee schedule requires prior authorization for this code, which will be granted if the requested item meets medical necessity.

26. The Agency did not review whether Petitioner's request was medically necessary. It was denied simply because it wasn't on the list. It is not specifically excluded as a covered service based on the DME Handbook or any other authority.

27. The request as submitted and at issue during this appeal, which is a request using an unlisted HCPCS code, cannot be approved. Petitioner's provider may re-submit the request for the clamp, including all supporting documentation to show

medical need, using a miscellaneous code as set forth on the fee schedule. Upon receipt of the information and request for miscellaneous DME item, The Agency is required to determine medical necessity of the request.

Disposable Incontinence Supplies (Depends)

28. Disposable incontinence supplies are specifically excluded for recipients over 21 years of age on page 2-97 of the DME Handbook, excerpted above. The DME Handbook, on page 2-48, states the specific limitations on Disposable Incontinence Briefs, Diapers, Protective Underwear, Pull-Ons, Liners, Shields, Guards, Pads, Undergarments:

Medical Necessity

The disposable incontinence supplies as specified in the section are reimbursable only for use by individuals with chronic incontinence caused by a permanent physical or mental condition, including cerebral palsy and developmental delay.

Age Requirements

Disposable incontinence briefs, diapers, protective underwear, pull-ons, liners, shields, guards, pads, and undergarments are covered for recipients four (4), when a child would normally be expected to achieve continence, through twenty (20) years of age.

29. The limitation is reiterated on page 2-49 that disposable incontinence supplies are only for children “four through 20 years of age with a physical or mental condition that results in chronic incontinence.” Petitioner is over 20 years of age. His physical condition is the reason for the incontinence. However, there is no exception in the rules for approval based on financial or other need for someone over 20 years old.

30. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned finds the Agency’s action in this matter was correct.

Over the Counter Items

31. Desitin cream is available at the pharmacy. The denial was a pharmacy processing error. Petitioner should return to the pharmacy for it. If Petitioner is unable to obtain it at the pharmacy, he or the pharmacy should contact Amerigroup. As this item is already approved, this request is dismissed as moot.

32. Amerigroup paid a claim for ketoconazole shampoo and cream on October 29, 2015. Therefore, this request was already provided to Petitioner and is dismissed as moot.

33. Neutrogena Original Formula Soap is not on the over the counter list or a preferred drug list. If it is not on an approved list, it requires prior authorization. Amerigroup has not received a request for prior authorization, so the request was denied at the pharmacy. Amerigroup has not yet made a determination as to whether this item is medically necessary. Therefore, this request is dismissed as not ripe for appeal because Amerigroup has not received the prior authorization request nor made a decision as to medical necessity on this item. Petitioner is encouraged to contact his provider to submit a prior authorization request showing medical reasons for this particular brand and formula soap.

34. Dove brand bar soap and Aveeno Skin Relief Moisturizer are personal sanitation items with no pharmaceutical or medical ingredients. These types of items are specifically excluded by the DME Handbook on page 2-98 as non-covered items (items or devices used or intended to be used for cosmetic purposes, personal comfort, convenience or general sanitation items, routine and first aid items). These items are not included on the expanded over the counter list of covered benefits under

Amerigroup's plan. Other Aveeno brand lotions with pharmaceutical components are on the list and may be obtained through the pharmacy if Petitioner did not meet the dollar limit that month. The Agency properly denied Petitioner's request for Dove bar soap and Aveeno Skin Relief Moisturizer.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 04 day of January, 2016,
in Tallahassee, Florida.



Danielle Murray
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
Don Fuller, Area 6, AHCA Field Office Manager