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

[redacted]

PETITIONER,

APPEAL NO. 15F-09958

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 04 Duval
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 5, 2016 at 3:07 p.m.

APPEARANCES

For the Petitioner: pro se

For the Respondent: Sheila Broderick, registered nurse specialist

STATEMENT OF ISSUE

Whether it is medically necessary for the petitioner to receive epidural steroid injections in her neck, upper-back and mid-back. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (Agency or AHCA or respondent) administers the Florida Medicaid Program. Medicaid rules require that most recipients receive their Medicaid services through the Managed Care Plan. The Agency contracts with numerous health care organizations to provide medical services to its program participants. Molina Healthcare of Florida (Molina) is the contracted health care organization in the instant case.

By notice dated November 19, 2015, Molina informed the petitioner that her request for epidural steroid injections (ESI) in the neck, upper-back, and mid-back through Medicaid was denied. The notice reads in pertinent part:

> We have determined that your requested services are not medically necessary because the services…must meet accepted medical standards and not be experimental or investigational.
> …
> The asked for injections into your spine are not approved. Using standard and accepted rules a Molina Healthcare doctor has looked at this request and determined that, based on the medical records which were given to us, this procedure is not medically necessary. We see from the records your doctor sent us that you have neck and shoulder pain. Pain medicine is not helping. Your pain is in a portion of your spine for which this spine injection has not been proven to be effective. According to Molina policy, we do not cover procedures which have not been proven to be effective.

The petitioner timely requested a hearing to challenge the denial decision on December 1, 2015.

There were no additional witnesses for the petitioner. The petitioner did not submit exhibits.

The respondent presented several witnesses from Molina: Carlos Galvez, contract specialist; Rebecca Quintana, director of government contracts; Dr. Marc Bloom, chief medical officer; Elvis Leiva, manager of healthcare services; and Valeria Maguire, medical director. The respondent submitted documentary evidence which was admitted into the record as Respondent's Composite Exhibit 1.

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 Florida Medicaid recipient. The petitioner is enrolled with Molina HMO.

2. The petitioner suffers from [redacted] which causes severe neck and back pain.

3. For several years, prior to enrollment with Molina, the petitioner received quarterly ESI and facet joint injections (numbing injections) in her neck and throughout her spine to manage the pain. The petitioner was enrolled with First Coast Advantage HMO during this period.

4. First Coast Advantage does not participate in Medicaid's new Managed Care Plan, implemented in late 2014. The petitioner was required to convert to a participating HMO. She was enrolled with Molina effective January 1, 2015.

5. All Medicaid goods and services must be medically necessary as determined through a prior service authorization process. HMOs may provide goods and services in excess of what is covered by Medicaid, but are not required to do so. During the

early 2015 HMO conversion period, Molina continued to approve the petitioner's ESI treatments without conducting a prior service authorization review, as part of its conversion agreement with AHCA.

6. Molina conducted its first ESI medical necessity review in May 2015. Molina concluded that there was insufficient evidence to prove that steroid injections in the neck/upper-back/mid-back regions were effective in treating chronic back pain. Medicaid precludes provision of services which are investigational or experimental in nature. Molina terminated the petitioner's ESI treatments in May 2015.

7. The petitioner continued to receive facet (numbing) injections throughout her spine after the ESI treatments were terminated.

8. On November 13, 2015, the petitioner's treating physician submitted a request to Molina to resume ESI treatments. The physician used procedure code 62310 – injections in the cervical (neck) and thoracic (upper and mid) regions of the spine.

9. Molina denied the request on November 19, 2015. Molina again concluded that the ESI treatments were not medically necessary because there was insufficient evidence to prove that steroid injections in the neck/upper-back/mid-back regions are effective in treating chronic back pain.

10. The petitioner argued that her treating physician used the wrong procedure code. She did not request steroid injections in the cervical (neck) region. She would like injections in the upper-back and mid-back only. The petitioner argued that the steroid injections she received in the past were more effective than any other treatment.

She argued without the steroid injections her back feels “like it is splitting into a thousand pieces” when she “stands at the sink for more than five minutes.”

11. Dr. Marc Bloom, Molina chief medical officer, testified that the combination of numbing injections and ESI treatments the petitioner received for several years make it clinically impossible to determine which treatment was effective. The doctor explained that ESI treatments are the industry standard of care for lower back pain only. There are no published reports or clinical trials which prove that ESI treatments are effective in any other region of the spine. Steroid injections in the neck/upper-back/mid-back are considered experimental. Medicaid does not reimburse for experimental services.

12. Dr. Bloom opined that other forms of pain management, such was oral medications and numbing injections, are the industry standard of care for pain management in the neck/upper-back/mid-back regions.

CONCLUSIONS OF LAW

13. By agreement between the AHCA and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

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

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

16. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

17. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 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, 7th Ed.).

18. The Florida Medicaid Program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G.

19. Fla. Admin. Code R. 59G-1.010(166) explains that medical or allied care, goods, or services furnished or ordered must meet the definition of medically necessary or medical necessity, and defines medical necessity as:

> "Medical necessary" or "medical necessity" means that 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 patent's needs;
> 3. Be consistent with generally accepted professional medical standards as defined by the Medicaid program and not be experimental or investigational;
> 4. Be reflective of the level of service that can safely be furnished, 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.

20. The cited authority explains that Medicaid goods and services must meet generally accepted professional medical standards and cannot be experimental or investigational in nature.

21. The respondent denied the petitioner's request for steroid injections to treat neck/upper-back/mid-back pain caused by [redacted] The respondent concluded that there was no evidence that ESI treatments are effective in the neck/upper-back/mid-back regions and therefore is considered experimental. Medicaid does not cover experimental procedures.

22. The petitioner argued that she should receive ESI because it is the pain management treatment that has provided her with the greatest relief. The petitioner's verbal testimony was the sole evidence offered regarding the effectiveness of ESI treatments.

23. Dr. Bloom, the only expert witness to testify during the hearing, opined that the requested ESI treatments are not medically necessary because there is no clinical evidence that steroid injections are effective in the neck and upper/mid back. Dr. Bloom opined that ESI treatments have proven to be effective only in the lower region of the spine.

24. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes that the petitioner did not meet her burden in this matter. The petitioner did not prove by a preponderance of the evidence that is medically necessary that she receive ESI treatments in the neck, upper-back, and mid-back regions.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent'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 18 day of February, 2016,

in Tallahassee, Florida.

Leslie Green

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Copies Furnished To: [redacted], Petitioner
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