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

[redacted]

APPEAL NO. 11F-08312

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: HMO

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 9, 2012 at 1:32 p.m. by telephone and reconvened on March 5, 2012 at 10:02 a.m. by telephone.

APPEARANCES

For Petitioner: [redacted]

For Respondent: [redacted]
Agency for Health Care Administration

ISSUE

Whether respondent's action of denying petitioner's request for a sacroiliac joint arthrodesis surgical procedure was proper.

PRELIMINARY STATEMENT

This matter was initially set for hearing on December 20, 2011 at 3:00 p.m. in [redacted] Florida. However, the case was placed in abeyance pending the resolution of a Medicaid eligibility hearing that would potentially affect the outcome of this case. On

January 17, 2012 this matter was unabated and scheduled for hearing on February 9, 2012 by telephone. At such time, the undersigned noted the possibility of a lack of jurisdiction since petitioner was no longer Medicaid eligible. This matter was subsequently rescheduled and reconvened on March 5, 2012 after the undersigned concluded corrective action could be ordered, despite petitioner's lack of Medicaid eligibility.

At the initial date of hearing, respondent was represented by [redacted], a Medical/Health Care Program Analyst with the Agency for Health Care Administration (AHCA). Also present for respondent was [redacted], a Medical/Health Care Program Analyst, [redacted] Manager of Appeals and Grievance with [redacted], and [redacted], the Associate Medical Director of [redacted] Petitioner was present and represented herself.

At the date of reconvening, all parties were present and provided testimony. Also present for petitioner was her husband, [redacted] Respondent presented one composite exhibit which was accepted into evidence and marked as respondent's exhibit "1." Petitioner presented no exhibits.

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. Petitioner is a [redacted] female who previously received Medicaid Managed Care health benefits through [redacted]

2. Petitioner suffers from severe pain attributed to her sacroiliac joint.

3. Petitioner uses either a cane or mobilized chair for mobility.

4. Petitioner has been prescribed various treatment modalities to alleviate her pain including a joint injection, prescriptive medications, physical therapy, and chiropractic services; each form of treatment has been unsuccessful.

5. Petitioner's treating physician submitted a prior-authorization request on her behalf for a sacroiliac joint arthrodesis surgical procedure.

6. Respondent determined the surgical procedure was experimental and investigational; authorization for the procedure was denied for not being medically necessary.

7. On October 12, 2011, petitioner received a letter by mail indicating her surgical request was denied. The denial referenced AETNA Clinical Policy Bulletin - 0016.

8. AETNA Clinical Policy Bulletins (AETNA CPB) investigate elective procedures for evidence of a proven benefit and demonstration of effective treatment. AETNA CPB-0016 designates petitioner's requested surgical procedure as experimental and investigational. However, the CPB provides that the procedure may be medically necessary when there has been a severe traumatic injury and a trial of an external fixator demonstrating pain relief.

9. Petitioner has never used an external fixator; therefore, no success of the fixator in providing pain relief has been established.

10. Respondent's medical expert acknowledged petitioner is in severe pain and that petitioner's treating physician prescribed the surgery at issue. However, the expert explained the denial was the result of a review of the generally accepted medical standards, which designate petitioner's requested surgery as experimental and investigational.

11. Respondent's expert opined that little empirical evidence supports petitioner's contention that the surgery would offer a benefit in alleviating her pain. In addition, he indicated alternative treatment modalities with demonstrated effectiveness are available and should be taken advantage of. He identified the alternative modalities as chiropractic services, physical therapy, and optimal medication management. He opined that such forms of treatment have proven success and must be utilized over an extended period rather than an experimental and investigation form of treatment.

12. Petitioner argued she has tried alternative treatment modalities, which have been ineffective. She argued her pain is worsening and indicated she would do anything to stop it.

13. Respondent argued treatment unsupported by the medical community that has no repeated proven benefit is experimental and investigational and cannot be authorized as medically necessary.

CONCLUSIONS OF LAW

14. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat. § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

15. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

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

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

18. Pursuant to Fla. Admin. Code R. 65-2.060(1) the burden of proof was assigned to the petitioner.

19. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

20. Florida Statute § 409.912 provides that respondent "… shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care." In addition, the Statute provides respondent may contract with health maintenance organizations, which respondent has done with Amerigroup.

21. Title 42 Part 438 of the Code of Federal Regulations (C.F.R.) sets forth the federal requirements for Managed Care Medicaid. In particular, § 438.210(a)(2)(iii) allows respondent to place appropriate limitations on services based on the criteria of medical necessity and/or utilization control procedures. Respondent has denied petitioner's requested surgical procedure and bases that decision on the requirements of medical necessity.

22. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity as:

> "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.

23. In contemplation of the Rule, petitioner's requested surgical procedure is not consistent with generally accepted professional medical standards and is experimental and investigational. Although she is in severe pain, the requirements of the Rule cannot be circumvented, as each component must be satisfied. Absent substantial competent evidence to the contrary, petitioner's requested surgery does not meet the requirements of medical necessity.

24. After considering the evidence and relevant laws set forth above, petitioner has not met her burden of proof that respondent's action in denying her requested surgical procedure was in error.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and 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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this _____ day of _____, 2012,

in Tallahassee, Florida.

_____
Michael Sauvé
Hearing Officer
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Copies Furnished To: [redacted] Petitioner
[redacted], Area 6 Medicaid Field Manager
[redacted]