

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

FILED

MAY 12 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-01914

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 31, 2015 at 8:37 a.m.

APPEARANCES

For the Petitioner:


Pro Se

For the Respondent:

Carol King
Registered Nurse Specialist

ISSUE

At issue is whether respondent's denial of petitioner's request for a positron emission tomography (PET) scan was proper.

PRELIMINARY STATEMENT

Petitioner represented herself. Petitioner's Exhibit "1" was accepted into evidence.

Ms. King appeared as both the representative and witness for the respondent. Present as a witness from MedSolutions was Dr. Ralph Templin, D.O. and Associate Medical Director. Present from Molina Healthcare of Florida were Natalie Fernandez, Government Contract Specialist and Bonnie Blitz, Director of Healthcare Services. Respondent's Exhibits "1" and "2" were accepted into evidence. Administrative Notice was taken of Fla. Admin. Code Rules. 59G-1.010 and 59G-4.205; Florida Statutes § 409.913 and § 409.963 and the Florida Practitioner Services Coverage and Limitations Handbook.

The record was held open through April 7, 2015 for respondent to provide Medicaid eligibility information and MedSolutions' Oncology Imaging Guidelines for a PET scan. Information was timely received and entered as Respondent's Exhibit "3".

The record was held open through April 14, 2015 for petitioner to provide a written response to respondent's post hearing submissions. A response was not received.

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 a 44 year old female. In 2014 she was diagnosed with breast cancer. An ongoing regime of chemotherapy followed.
2. The Department of Children and Families (DCF) determines Medicaid eligibility.
3. Through November 30, 2014 petitioner was eligible for Medicaid services through the Managed Medical Assistance (MMA) Program. Services were provided by Molina Healthcare of Florida (Molina).

4. In November 2014 petitioner became eligible for Social Security Disability.
5. On November 30, 2014 petitioner's eligibility for the MMA Program ended. At that time, all services through Molina ended¹.
6. Petitioner acknowledges her Medicaid services through Molina ended on November 30, 2014.
7. DCF thereafter determined petitioner eligible for Medicaid's Medically Needy Program with a share of cost of approximately \$1,000 per month. Eligibility for this program commenced on December 1, 2014.
8. For those in the Medically Needy Program, Medicaid eligibility is determined on a monthly basis. The individual must submit medical bills to DCF. The individual becomes Medicaid eligible on the day when allowable medical expenses equal the designated SOC. The individual is then Medicaid eligible from that date until the end of the month. The entire process starts over the following month.
9. Through the Medically Needy Program, petitioner was determined Medicaid eligible for the following timeframes:
 - December 11, 2014 – December 31, 2014
 - January 5, 2015 – January 31, 2015
 - February 16, 2015 through February 28, 2015
 - March 9, 2015 through March 31, 2015
10. In January 2015, petitioner's oncologist submitted a prior authorization for a PET scan to Med Solutions.

¹ Molina's presence at the hearing was for informational purposes, only. Molina issued no denials regarding the PET scan at issue.

11. Respondent contracts with MedSolutions to review requests for diagnostic imaging for certain individuals not in the MMA Program. The review is to determine whether the procedure is medically necessary.

12. All information submitted by petitioner's oncologist was then reviewed by MedSolutions' Medical Director.

13. On January 15, 2015 MedSolutions denied the request. A notice was issued to petitioner's oncologist and stated, in part:

We received a request on Jan 14, 2015 regard the following service(s)/procedure(s):

PET imaging with concurrently acquired CT for attenuation correction and anatomical localization; skull base to mid-thigh.

Our Medical Director has reviewed this request. This request will not be covered by Florida Medicaid. This decision was based on the following: We are unable to approve the requested procedure based on MedSolutions Oncology Imaging Guidelines which might support PET scan in the evaluation and restaging (recurrence) of breast cancer if other conventional imaging studies, including CT, MRI or bone scan is/are inconclusive. The clinical information provided does not meet these criteria.

14. On January 26, 2015 a physician at MedSolutions conducted a peer to peer review with petitioner's oncologist. A computed tomography (CT) scan with contrast was recommended by the MedSolutions physician. Petitioner's oncologist accepted this as an alternative to a PET scan.

15. On or about January 14, 2015 a PET scan; skull to mid-thigh was completed. MedSolutions was not aware the procedure had been performed at the time of the peer to peer review. The payment source for the procedure is not known.

16. On February 23, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

17. Petitioner argues Molina previously approved PET scans. A PET scan is necessary to determine whether the cancer has metastasized.

18. Respondent argues the prior PET scans showed no residual disease.

Additionally, a PET scan is not necessary for surveillance purposes during chemotherapy. Based on petitioner's current medical status, a CT scan of the chest is the accepted standard.

CONCLUSIONS OF LAW

19. By agreement between the Agency for Health Care Administration 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.

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

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

22. The burden of proof is assigned to the petitioner. The standard of proof in an administrative hearing is by a preponderance of the evidence. (See Fla. Admin. Code R. 65-2060(1).) The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

23. The Findings of Fact establish petitioner's eligibility for the MMA Program ended on November 30, 2014. On December 1, 2014 she transitioned to the Medically Needy Program with a monthly SOC.

24. It is noted that billing was submitted to DCF to substantiate meeting the SOC as Medicaid eligibility was determined for dates in December 2014; January 2015; February 2015; and March 2015.

25. Florida Statute § 409.913 (5) states:

A Medicaid provider is subject to having goods and services that are paid for by the Medicaid program reviewed by an appropriate peer-review organization designated by the agency. The written findings of the applicable peer-review organization are admissible in any court or administrative proceeding as evidence of medical necessity or the lack thereof.

26. The Findings of Fact establish MedSolutions is the peer review organization who, on respondent's behalf, determines medical necessity for requested imaging procedures.

27. Section 409.905, Florida Statute addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law....

28. Regarding medical necessity, Fla. Admin. Code R. 59G-1.010(166) provides the following definition:

(a) 'Medical necessary' or 'medical necessity' means that medical or allied care, goods or services furnished or ordered must 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 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 covered service.

29. For the requested PET scan, petitioner must demonstrate each condition of medical necessity has been satisfied. Medical necessity is not subject to a personalized definition. Rather, the definition in Fla. Admin. Code R. 59G-1.010 is the controlling authority.

30. A prior PET scan did not indicate a return of breast cancer.

31. Evidence does not establish a medical professional determined any of the following conditions exist:

- Indications of a recurrence of breast cancer
- A suspected metastasis
- Inconclusive results from more conservative imaging protocols
- Unique symptoms which can only be further evaluated by a PET Scan

32. Persuasive evidence in support of the PET scan was not presented. It is also noted that petitioner's oncologist consented to a CT scan.

33. No compelling evidence was presented which imputed the medical opinion of Dr. Templin or the clinical guidelines used by MedSolutions.

34. Regarding the Medically Needy Program, Fla. Admin. Code R. 65A-1.701,

Definitions, states in part:

(30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month.

35. The Florida Medicaid Provider General Handbook (Provider Handbook)

continues by providing the following clarification on page 3-31

A Medically Needy recipient becomes eligible on the day that the recipient incurs allowable medical expenses that equal the amount by which his income exceeds the Medicaid income standard (share of cost). The recipient must submit his medical bills to DCF, and DCF makes the eligibility determination. The recipient will be eligible through the end of the month.

36. Should petitioner disagree with the amount of her monthly SOC, that matter can be addressed with DCF.

37. The issue before the hearing officer does not focus on payment for the January 2015 PET scan. Rather, the issue is whether the denial of a PET scan on January 15, 2015 was proper.

38. Petitioner has not demonstrated, by the required evidentiary standard, that respondent's action in this matter was incorrect. The following conditions of medical necessity have not been satisfied:

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 safely be furnished, for which no equally effective and more conservative or less costly treatment is available statewide; and,

DECISION

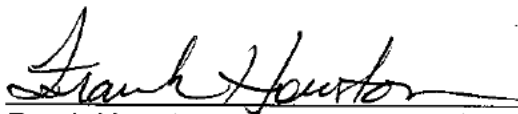
Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied.

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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 12th day of May, 2015,

in Tallahassee, Florida.


Frank Houston

Hearing Officer
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