

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

FILED
NOV 10 2015
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-06745

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 Orange
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing on October 5, 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 denial of Petitioner's request for pre-operative refractions for cataract surgery. The burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

Respondent presented the following witnesses:

- Stephanie Shupe, Senior Grievance Coordinator, Staywell.
- Alexandria Hicks, Senior Grievance Coordinator, Staywell.
- Carrie Jenkins, Vendor Account Manager, WellCare.
- Dr. Michael Hecht, O.D., Medical Director, Premier Eye Care.

- Liz Jackson, Director of Network Management, Premier Eye Care.

Petitioner moved Exhibits 1 and 2 into evidence at the hearing. Respondent moved Exhibits 1 through 7 into evidence at the hearing. Administrative notice was taken of the July 2012 Florida Medicaid Provider General Handbook. The record was held open for both parties to submit additional evidence. Respondent submitted additional evidence, entered as Exhibit 8, as well as excerpts from the May 2014 Optometric Services Coverage and Limitations Handbook.

FINDINGS OF FACT

1. Petitioner is a 61-year-old female. At all times relevant to this proceeding, Petitioner was eligible to receive Medicaid services.
2. Petitioner is enrolled with Staywell as her Managed Medical Assistance (MMA) plan. Premier Eye Care ("Premier") is Staywell's vision services vendor.
3. Petitioner wants cataract surgery. She testified the cataract surgery itself was approved, but the necessary pre-operative refractions were not. There is no dispute that cataract surgery is a covered benefit.
4. Dr. Hecht stated refractions, CPT code 92015, are always a non-covered service for medical eye exams. He stated refractions as part of a routine eye exam are covered.
5. Premier confirmed Petitioner received one (1) eye exam, with refraction, during the last 365 days. The exam took place on May 8, 2015. Staywell asserts: "Per Premier, there is no specific contract language in the Vendor contract that speaks to specific, defined services, such as refractions." (Respondent's Exhibit 8).

6. Dr. Hecht testified Premier has not issued any denial and only recommends denials to WellCare. He stated pre-operative refractions are a non-covered service. He also stated all surgeons require patients to have pre-surgical refractions before they will perform surgery.

7. Petitioner testified she cannot have the cataract surgery without the pre-operative refractions because the surgical center, Magruder Eye Institute ("Magruder") will not perform the surgery without it.

8. Petitioner said the cataract surgery was scheduled and when she got to Magruder's facility, they called her into the office and said she would have to pay \$250.00 before she could go in for the pre-op or anything else. Dr. Hecht said this would be typical; a pre-operative refraction would be performed, and then a request to perform the surgery would be submitted and reviewed for medical necessity. He stated there was never a request to perform the surgery sent to Premier.

9. According to page 3 of Staywell's Grievance Notes, dated July 30, 2015, Staywell's Grievance Department spoke to an individual named Jenny at Premier. The notes state: "[Jenny] was under the impression that the appointment was set up and that Magruder was to contact the member to advise her of the appointment. Jenny stated that in the beginning the office wanted to charge the member for testing. Premier reviewed and it met the medical guidelines so all was covered but the refractions." (Respondent's Exhibit 4).

10. Petitioner testified the refractions were originally going to cost \$250.00 out-of-pocket (\$125.00 per eye), although the Grievance Notes indicate it was \$200.00.

Per page 2 of the Grievance Notes, Staywell "Contacted Premier and spoke to

Jenny... She stated they had already worked out with Magruders that the refractions would be a total of \$90.00 for the refractions which is not a covered expense on the member's plan. Jenny and the medical director will follow up with Magruders regarding the refractions and then follow up with the member." (Respondent's Exhibit 4).

11. On July 30, 2015, Staywell sent a letter to Petitioner confirming the conversation with her and that she would have to pay a total of \$90.00 to Magruder for the refractions. The letter stated Petitioner had the right to request a Fair Hearing if she disagreed.

12. Petitioner timely requested a hearing on August 10, 2015.

CONCLUSIONS OF LAW

13. 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.

14. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

15. This is a Final Order, pursuant to §§ 120.569 and 120.57, Fla. Stat.

16. 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.).

17. 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.

18. The May 2014 Florida Medicaid Optometric Services Coverage and Limitations Handbook ("Optometric Handbook") is promulgated into law by Florida Administrative Code Chapter 59G-4.

19. According to ACHA's Medicaid MMA Contract with Staywell, "In no instance may the limitations or exclusions imposed by the Managed Care Plan be more stringent than those in the Medicaid Optometric Services Coverage and Limitations Handbook and Medicaid Vision Services Coverage and Limitations Handbook." (Respondent's Exhibit 6).

20. On page 2-3 of the Optometric Handbook, it states: "Medicaid will reimburse only two refractions performed in the provider's office per recipient, per 365 days. The 365-day period begins with the date of the first refraction."

21. There is some dispute as to whether or not a formal request by Magruder for the cataract surgery has been submitted. Dr. Hecht said a request would not be submitted until after the refractions are performed, and that Premier does not have a request on file. Petitioner's testimony, and Staywell's Grievance Notes seem to indicate the cataract surgery itself has been approved, but she is being required to pay out-of-pocket for the refractions. Because the medical necessity of the cataract surgery is not currently under review, the undersigned will only address the refractions.

22. Both Dr. Hecht's testimony and Staywell's Grievance Notes indicate the medical necessity of the pre-operative refractions is not in dispute because they are required

in order for the cataract surgery to proceed. The only dispute is whether or not the refractions are a covered benefit.

23. Staywell confirmed Petitioner received one (1) eye exam with refraction on May 8, 2015. Per the Optometric Handbook, Petitioner is allowed up to two (2) refractions every 365 days.

24. Since Petitioner has only utilized one (1) eye exam with refraction within the past 365 days, the plain language of the Optometric Handbook leads the undersigned to conclude that she is entitled to one (1) additional refraction within the 365 day period beginning on May 8, 2015 and ending on May 7, 2016.

DECISION

Based upon the foregoing, Petitioner's appeal is GRANTED insofar as she is entitled to receive one (1) additional refraction at this time, pursuant to the Medicaid Handbooks.

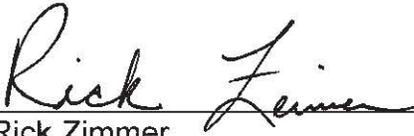
NOTICE OF RIGHT TO APPEAL

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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 10th day of November, 2015,

in Tallahassee, Florida.



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