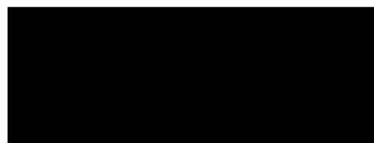


Dec 21, 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08047

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 06 Pasco
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter telephonically on November 17, 2015 at 10:40 a.m.

APPEARANCES

For the Petitioner:



Petitioner

For the Respondent:

Stephanie Lang, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the respondent incorrectly denied her request for a thoracic radiofrequency neurolysis?

PRELIMINARY STATEMENT

 ("petitioner"), the petitioner, appeared on her own behalf.

Stephanie Lang, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency: Elizabeth Schneider, M.D., Medical Director of Amerigroup Florida; and Tracy Parks, Clinical Manager for Quality at Amerigroup Florida.

The petitioner introduced petitioner's Exhibit "1", inclusive, at the hearing, which was accepted into evidence and marked accordingly. The respondent introduced respondent's Exhibits "1" through "6", inclusive, at the hearing, which were accepted into evidence and marked accordingly. The hearing record in this matter was left open until the close of business on November 20, 2015 for the respondent to provide a copy of the Amerigroup Member Handbook. Once received on November 19, 2015, the information was accepted into evidence and marked as respondent's Exhibit "7". The hearing record was then closed.

FINDINGS OF FACT

1. The petitioner is a 38-year-old female.
2. Petitioner was eligible to receive Medicaid benefits at all times relevant to these proceedings.

3. Petitioner is enrolled in Amerigroup. Amerigroup is a health maintenance organization (“HMO”) that is contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. On August 6, 2015, the petitioner’s pain management doctor submitted a request to Amerigroup for a thoracic radiofrequency neurolysis.

5. Thoracic Radiofrequency Neurolysis is a procedure that involves using radio waves to selectively destroy both large and small nerve fibers in the thoracic spine in an attempt to break the pain communication cycle from the nerve fibers to the portion of the brain that registers pain.

6. The prior authorization request from the petitioner’s pain management doctor asks for bilateral T4-5, T5-6 and T6-7 thoracic radio-frequency rhizotomy, two weeks apart. The request explains as follows:

The patient has experienced pain that has limited their activities for at least 6 months or more. The patient has tried treatments such as correction of posture abnormalities, pharmacotherapy, and back support. Pain is moderate to severe. The patient has undergone a diagnostic facet injection with significant initial relief of their pain of 90% or more. To improve QOL and FC, I feel that the patient would benefit from a radio-frequency rhizotomy procedure to reduce the pain mainly due their facet joint anthropathy syndrome.

7. Under History of Present Illness, the prior authorization request states the petitioner “has tried physical therapy and chiropractic treatment, which worsened her pain. She has also tried anti-inflammatory medications.” The request does not go into detail regarding the duration of the physical therapy and chiropractic treatment.

8. In a Notice of Action dated August 17, 2015, Amerigroup notified the petitioner it was denying her request for a thoracic radiofrequency neurolysis.

9. The Notice of Action states, in part:

We determined your requested services are **not medically necessary** because the

services do not meet the reason(s) checked below: (*See Rule 59G-1.010*)

Must be individualized, specific and consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

Must meet accepted medical standards and not be experimental or investigational.

Must be able to be 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.

10. The Notice of Action goes on to explain:

The facts that we used to make our decision are: we cannot cover the pain shots your doctor is asking for (thoracic level radiofrequency neurolysis). You have back pain. The pain is in the middle of your back (thoracic spine). Your doctor wants to give you pain shots in the middle part of your spine (thoracic). We have not seen that a pain shot in the middle of the spine will help you. It needs to be looked at more (investigational). We used your health plan medical policy Amerigroup, Medical Policies, SURG.00066: Percutaneous Neurolysis for Chronic Neck and Back Pain to decide this....

11. On or about August 25, 2015, Amerigroup's Medical Director completed a peer-to-peer consultation with the petitioner's provider who requested the thoracic level radiofrequency neurolysis. The Medical Director explained Amerigroup's position to the provider that it will not approve the procedure because it is considered investigational.

12. On or about September 2, 2015, Amerigroup completed an internal review of its decision to deny the petitioner's request. The decision to deny the procedure was upheld on reconsideration.

13. The thoracic spine is the part of the spine that spans from approximately the shoulders to the hip bone.

14. The petitioner has [REDACTED] as well as [REDACTED] in her thoracic spine.

15. The results of the petitioner's MRI completed on July 22, 2014 contain the following impressions:

1. Right foraminal protrusions T5-T6, T6-T7 and T7-T8 with right foraminal narrowing. The T6-T7 and T7-T8 disc protrusions are larger than the T5-T6 protrusion, but again unchanged from the prior study.
2. Blocked vertebra T3-T4.
3. Bulging disc T2-T3.

16. The petitioner experiences substantial pain as a result of the problems in her thoracic spine.

17. The petitioner underwent thoracic facet joint injections on July 21, 2015. These injections are designed to anesthetize the nerves in the affected area in order to provide temporary pain relief.

18. The thoracic facet joint injections the petitioner received on July 21, 2015 were successful in providing the petitioner with temporary pain relief.

19. The thoracic facet joint injections the petitioner received are different than the requested procedure. Thoracic facet joint injections involve administering a numbing agent whereas thoracic radiofrequency neurolysis involves physically burning the nerve and destroying the tissue.

20. Successful results from thoracic facet joint injections do not necessarily indicate thoracic radiofrequency neurolysis will be successful.

21. Successful results from thoracic facet joint injections do not necessarily indicate thoracic radiofrequency neurolysis will be successful.

22. It is the respondent's position that thoracic radiofrequency neurolysis is an investigational procedure – that the safety and efficacy of the procedure have not been demonstrated.

23. The Amerigroup Medical Director testified there is no evidence based medicine to support burning the nerves in the thoracic spine. She explained you only want to pursue an invasive treatment if the potential benefit is greater than the risk of harm.

24. Thoracic radiofrequency neurolysis has a risk of complications including infection and potentially worse pain. Studies indicate there is usually a recurrence of pain. Most patients experience a 50 percent reduction of pain for anywhere between three to six months.

25. The Amerigroup Medical Director suggested a number of alternatives to thoracic radiofrequency neurolysis including cognitive behavioral therapy, certain types of exercises, and physical therapy.

CONCLUSIONS OF LAW

26. By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

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

28. All goods and services requested under the Florida Medicaid Program must be shown to be medically necessary in order to be approved.

29. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

30. The petitioner in the present case is requesting a new service. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

31. 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.).

32. The Florida Medicaid program is authorized by Fla. Stat. ch 409 and Fla. Admin. Code R. 59G. The Medicaid program is administered by the respondent.

33. Section 409.905, Fla. Stat. 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...

(9) PHYSICIAN SERVICES.—The agency shall pay for covered services and procedures rendered to a recipient by, or under the personal supervision of, a person licensed under state law to practice medicine or osteopathic medicine. These services may be furnished in the physician's office, the Medicaid recipient's home, a hospital, a nursing facility, or elsewhere, but shall be medically necessary for the treatment of an injury, illness, or disease within the scope of the practice of medicine or osteopathic medicine as defined by state law. The agency shall not pay for services that are clinically unproven, experimental, or for purely cosmetic purposes.

34. Section 409.912, Fla. Stat. states, in relevant parts:

Cost effective purchasing of health care. - The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program.

35. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Chapter 59G-4. In accordance with the above Statute, the Handbook states on page 1-27

Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.

Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

36. Pages 1-28 of the Florida Medicaid Provider General Handbook provide a list of HMO covered services. These services include physician services.

37. Page 1-30 of the Florida Medicaid Provider General Handbook states: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

38. Although the terms medically necessary and medical necessity are often used interchangeably and may be used in a variety of contexts, their definition for

Florida Medicaid purposes is contained in the Florida Administrative Code. Fla. Admin.

Code R. 59G-1.010 states:

(166) "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.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

39. Section 409.913, Fla. Stat. governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows

"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....

Section (1)(d) goes on the further state:

...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

40. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the hearing officer is the final decision making authority for the Agency. See § 120.80, Fla. Stat.

41. Amerigroup follows Anthem policy on percutaneous neurolysis for chronic neck and back pain. The policy states as follows:

Initial radiofrequency (RF) neurolysis for chronic cervical facet pain (C2-C3 thru C7-T1 vertebrae) or chronic lumbosacral facet pain (T12-L1 thru L5-S1 vertebrae) is considered **medically necessary** when **all** of the following criteria are met:

1. No prior spinal fusion surgery in the vertebral level being treated;
AND
2. Pain that is *not* radicular; **AND**
3. Low back (lumbosacral) or neck (cervical) pain, suggesting facet joint origin when evidenced by the absence of nerve root compression is documented in the medical record on history, physical and radiographic evaluations;
4. Pain that has failed to respond to 3 months of conservative therapy*
AND
5. A diagnostic, temporary block with local anesthetic of the facet nerve (medial branch block) or injection under fluoroscopic guidance into the facet joint has resulted in at least a 50% reduction in pain for the duration of the specific local anesthetic effect used [e.g., generally 3-4 hours for bupivacaine (Marcaine, Sensorcaine) and 30 minutes to 1 hour for lidocaine (Xylocaine)]. **Note:** a diagnostic, temporary block is not required for repeat RF at a previously treated site, if it has been less than one year since the last RF.

...

***Note:** Conservative therapy consists of an appropriate combination of medication (e.g., NSAIDs, analgesics), physical therapy, spinal manipulation therapy, epidural steroid injections, or other interventions based on the individual's specific presentation, physical findings and imaging results.

Investigational and Not Medically Necessary:

1. Radiofrequency neurolysis is considered **investigational and not medically necessary** for the treatment of chronic back pain for all uses that do not meet the criteria identified as medically necessary listed above, including but not limited to treatment of cervicogenic headache or thoracic facet pain.

...

42. The petitioner has not demonstrated by a preponderance of the evidence that she meets all the criteria in the previous paragraph for thoracic radiofrequency neurolysis to be determined medically necessary. A careful review of the evidence indicates only paragraph 5 of the initial requirements – A diagnostic, temporary block with local anesthetic of the facet nerve (medial branch block) or injection under fluoroscopic guidance into the facet joint has resulted in at least a 50% reduction in pain for the duration of the specific local anesthetic effect used – has been fulfilled. Therefore, the petitioner has not met her burden of proof to demonstrate the Agency for Health Care Administration incorrectly denied her request for thoracic radiofrequency neurolysis.

43. If the petitioner continues to experience pain in the area of her thoracic spine, her pain management doctor may submit another request to Amerigroup for thoracic radiofrequency neurolysis, providing concrete information to support each of the requirements set forth above. Should the respondent deny any such request, the petitioner will have the right to request another fair hearing associated with that denial. The petitioner may have her doctor testify at any future hearing.

44. In rendering this decision, the undersigned hearing officer considered all of the testimony and documentary evidence presented during the hearing process and reviewed all conditions of "medical necessity" set forth in the Florida Administrative Code and the rules governing the Florida Medicaid program.

DECISION

The Petitioner's appeal is hereby 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 21 day of December, 2015,

in Tallahassee, Florida.



Peter J. Tsamis
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