

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-06972

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 17 Broward  
UNIT: AHCA

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned hearing officer convened an administrative hearing telephonically in the above-referenced matter on October 12, 2015, at 3:12 p.m.

**APPEARANCES**

For the petitioner:



Petitioner

For the Respondent:

Sandra Moss  
Program Administrator  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

Did the petitioner prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly denied her request for an additional nine tablets of (100 mg) tablets.

**PRELIMINARY STATEMENT**

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

Sandra Moss, Program Administrator with the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals from Sunshine Health appeared as witnesses on behalf of the Agency: India Smith, Grievance and Appeals Coordinator; David Gilchrist, D.O., Medical Director; and Richard Plymel, Pharm. D., Pharmacy Manager.

The hearing record in this matter was left open until the close of business on October 15, 2015 for the respondent to provide a copy of the Florida Medicaid Summary of Drug Limitations for ██████████. Once received, this information was accepted into evidence and marked as respondent's Exhibit "1". The hearing record was then closed.

**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 an adult female.
2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.
3. The petitioner is an enrolled member of Sunshine Health. Sunshine Health is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. [REDACTED] is a medication used for the treatment of migraine headaches.

5. The petitioner's doctor prescribes [REDACTED] (100 mg) for the petitioner.

6. The petitioner filled a prescription for [REDACTED] on August 12, 2015.

The one-month supply of the medication consisted of nine tablets.

7. The petitioner returned to the pharmacy on August 15, 2015 to request an additional nine tablets of [REDACTED]. The pharmacy rejected the petitioner's request for the additional nine tablets.

8. The petitioner has been prescribed [REDACTED] for an extended period of time.

9. A one-month supply of [REDACTED] previously consisted on 18 tablets.

10. The last time the petitioner's [REDACTED] prescription was filled with 18 tablets was October 31, 2014.

#### CONCLUSIONS OF LAW

11. 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.

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

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

14. The petitioner is requesting additional tablets of her medication. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

15. 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, 7<sup>th</sup> Ed.

16. 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.

17. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference into the Medicaid Services Rules by Fla. Admin. Code Rule 59G-5.020.

18. Page 1-22 of the Florida Medicaid Provider General Handbook provides a list of Medicaid covered services. These services include prescribed drug services.

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:

(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 medical necessity, or a covered service.

20. Section 409.912 (37)(a), Florida Statutes states, in relevant parts:

14. The agency may require prior authorization for Medicaid-covered prescribed drugs. The agency may prior-authorize the use of a product:

- a. For an indication not approved in labeling;
- b. To comply with certain clinical guidelines; or
- c. If the product has the potential for overuse, misuse, or abuse.

The agency may require the prescribing professional to provide information about the rationale and supporting medical evidence for the use of a drug....

21. Fla. Admin. Code R. 59G-4.250 Prescribed Drug Services incorporates by reference the Florida Medicaid Prescribed Drug Services Coverage, Limitations, and Reimbursement Handbook, updated July 2014.

22. The Florida Medicaid Prescribed Drug Services Coverage, Limitations, and Reimbursement Handbook addresses Service Limitations on Page 2-8. It states as follows:

Medicaid limits the quantity and number of refills that may be reimbursed for certain drug classes. Medicaid also limits reimbursement for certain drug classes to recipients based upon clinical considerations of the patient's age. A current list of drug limitations can be found on the Internet at: [www.mymedicaid-florida.com](http://www.mymedicaid-florida.com). Click on Public Information for Providers, then Pharmacy, then Drug Limitations.

23. The link above leads to a Summary of Drug Limitations. On Page 17 of 43 of this summary appears [REDACTED] 25mg, 50mg and 100mg tablets. Next to the description, it states "Maximum of 9 tablets every 30 days".

24. The respondent correctly denied the petitioner's request for any additional tablets in excess of the nine she received for August based on the limitation set forth above.

25. Pursuant to the above, the petitioner has not met her burden of proof to demonstrate the respondent incorrectly denied her request for additional tablets of the prescription drug [REDACTED]

### DECISION

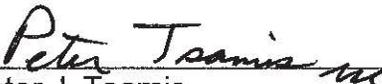
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is hereby DENIED.

### 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 10<sup>th</sup> day of November, 2015,

in Tallahassee, Florida.

  
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Hearing Officer  
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Tallahassee, FL 32399-0700  
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FINAL ORDER (Cont.)

15F-06972

PAGE - 7

Copies Furnished To:

 Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager