

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH E. GESSER,)
)
 Petitioner,)
)
 vs.) Case No. 00-3841
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE GROUP)
 INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, this cause came on for a disputed-fact hearing on October 8, 2000, in Gainesville, Florida, before the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Ella Jane P. Davis.

APPEARANCES

For Petitioner: Kenneth E. Gesser, pro se
Apartment D-23
4100 Southwest 20th Avenue
Gainesville, Florida 32067

For Respondent: Julia P. Forrester, Esquire
Department of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner's laser in situ keratomileusis (LASIK) surgery is a covered service for which he is entitled payment/reimbursement under the State of Florida's Self-Insured Group Health Insurance Program.

PRELIMINARY STATEMENT

Blue Cross and Blue Shield of Florida denied Petitioner's request for prior approval of a LASIK procedure. Petitioner, by a May 30, 2000, letter appealed this decision to Respondent Division of State Group Insurance, which also denied his request, effective July 11, 2000. Petitioner timely requested a disputed-fact hearing pursuant to Section 120.57(1), Florida Statutes. The case was referred to the Division of Administrative Hearings on or about September 15, 2000.

A formal pre-hearing conference was convened on October 12, 2000, at the mutual oral request of the parties. By stipulation, it was agreed that Petitioner could present the oral testimony of four witnesses by telephone, with oath or affirmation of the telephonic witnesses to be administered over the telephone by the undersigned Administrative Law Judge. It was ordered that all costs of the telephonic testimony were to be borne by the Petitioner. It was further stipulated that the deposition of Dr. Webb [sic. Cobb], already taken at the request of the Respondent, would be admitted without objection and that the

deposition could be late-filed after formal hearing. (See October 16, 2000, Pre-Trial Order.)

At formal hearing on October 18, 2000, Petitioner testified in person on his own behalf and presented, by telephone, the oral testimony of Teresa Welch, Tana Darley, and Dr. Thomas Barnard. Respondent presented the oral testimony of Melody Bartel. Joint Exhibits 1-7 were admitted in evidence. Petitioner had one exhibit marked but not admitted in evidence. Respondent had one exhibit admitted in evidence. Respondent's Exhibit 1 (also called Respondent's Exhibit 8) was the deposition of Dr. William Cobb, after-filed on October 20, 2000.

A Transcript of proceedings was filed on October 27, 2000.

Respondent's Proposed Recommended Order was timely filed on November 16, 2000. Petitioner filed no proposal.

FINDINGS OF FACT

1. At all times pertinent to these proceedings, Petitioner was a state employee covered under the State of Florida Self-Insured Group Insurance Plan. The provisions of the "State Employees' PPO Plan Group Health Insurance Plan Booklet and Benefit Document" applies to the issues herein.

2. The State of Florida's third party administrator, Blue Cross and Blue Shield of Florida denied prior authorization for Petitioner's LASIK surgery.

3. The Division of State Group Insurance, which administers the State Plan, upheld Blue Cross and Blue Shield's denial of prior authorization by proposed agency action letter dated July 11, 2000.

4. Petitioner timely requested a formal hearing.

5. Petitioner proceeded with LASIK surgery without prior authorization. Petitioner here requests that charges for his LASIK surgery be reimbursed by the State Plan.

6. LASIK surgery is a treatment in which part of the cornea of each eye is removed and reshaped to correct myopia (nearsightedness) or hyperopia (farsightedness).

7. Prior to his LASIK surgery, Petitioner suffered from myopia, a refractive disorder of the eyes. Petitioner's myopia was not the result of an accident or cataract surgery.

8. The evidence is unrefuted and substantial that Petitioner experienced difficulty in his job because of his vision. He had difficulty reading multiple computer screens and documents. His difficulty was acute when shifting his gaze back and forth from one computer screen to another or back and forth from a document to a computer screen.

9. Petitioner's employment performance suffered as a result of his vision problems, and he got headaches.

10. Petitioner attributed his difficulty to the inadequacy of his vision, as corrected by glasses. He tried both bifocals

and "sophisticated bifocals," but he felt he lost considerable peripheral vision with any glasses.

11. Petitioner consulted with two optometrists, Dr. Douglas Jones and Dr. Thomas Barnard. Prior to the LASIK surgery, Dr. Jones and Dr. Barnard agreed that Petitioner's vision was functionally correct to 20/20, with glasses. However, both suggested that LASIK surgery would be beneficial for Petitioner. Only this information was provided with Petitioner's authorization request to Blue Cross and Blue Shield for prior authorization.

12. Petitioner is 50 years old and had the LASIK surgery approximately two months prior to the formal hearing.

13. Petitioner's ability to function in his job improved after the LASIK surgery.

14. By his testimony at formal hearing, Dr. Barnard testified that one of Petitioner's eyes was not correctable with glasses exactly to 20/20 but was, in fact, "20/20-", which meant that Petitioner may have been able to read most of the letters on the 20/20 line but may have missed one or two of them. Nonetheless, Dr. Barnard agreed that this status or diagnosis is considered functional.

15. Dr. Barnard also testified that any person with myopia is going to have some loss of peripheral vision with the use of glasses, depending on the prescription. Further, he testified

that as we age the difficulty in getting a good correction at different distances is just something that people have to put up with after the age of forty. Dr. Barnard has a preference for LASIK surgery over glasses.

16. According to Dr. William Cobb, ophthalmologist, most people with myopia benefit from LASIK surgery when it is successful. The designation of "20/20" vision means that the judgment of acuity of vision is made at a distance of 20 feet. In ophthalmology, all visions are measured by 20/20, which gives a basis for comparison. Glasses can be made to allow for acuity of vision at any stated distance for any specific function. Most people using a computer must have trifocals or special lenses to use with the computer. If trifocal lenses are not adequate, then progressive lenses can be used for multiple focusing distances. In Dr. Cobb's opinion, Petitioner should have been able to obtain glasses to solve his visual problems at specific distances. LASIK surgery corrects vision in the same functional way as glasses, in that it is performed to focus the eyes at one specified distance.

17. The pertinent provision of the "State Employees' PPO Plan Group Health Insurance Plan Booklet and Benefit Document" provides:

The following services and supplies are excluded from coverage under this health insurance plan unless a specific exception

is noted. Exceptions may be subject to certain coverage limitations.

* * *

11. Services and supplies for treating or diagnosing refractive disorders (vision errors which can be corrected with glasses) including eye glasses, contact lenses, or the examination for the prescribing or fitting of eye glasses or contact lenses, unless required because of an accident or cataract surgery that occurred while covered by this health insurance plan. This health insurance plan will cover the first pair of eye glasses or contact lenses following an accident to the eye or cataract surgery.

18. The Division of State Group Insurance has uniformly interpreted this provision to exclude any payment for contact lenses, glasses, or LASIK surgery. The only exception to the exclusion is the stated provision for glasses or contact lenses following cataract surgery or following an accident that affected vision.

19. State employees may purchase supplemental insurance that covers vision care and provides reimbursement for LASIK surgery.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.569 and 120.57, Florida Statutes.

21. Exclusions from coverage in insurance policies are strictly construed against the insurer. Comprehensive Health Ass'n v. Carmichael, 706 So. 2d 319 (Fla. 4th DCA 1997).

22. The State Plan excludes from coverage all treatments for refractive disorders of the eyes. The only exception to the exclusion is not relevant to the facts of this case, since the evidence of all the health care professionals herein is persuasive that Petitioner's vision was correctable and functional with glasses, even though inconvenient.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Department of Management Services, Division of State Group Insurance, issue a final order determining that Petitioner is not entitled to payment for LASIK surgery and dismissing his petition.

DONE AND ENTERED this 11th day of December, 2000, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of December, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.