8-14-01

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

AT

SARAH C. NUDING,

Petitioner,

v.

DOAH Case No. 01-1804 FLB-CLOS
DMS Final Order No. 01-22

DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF STATE GROUP INSURANCE,

Respondent.
_____/

FINAL ORDER

The Department of Management Services, pursuant to section 120.57(1), Florida Statutes, enters its Final Order in the above-captioned matter. On August 14, 2001 Administrative Law Judge Fred L. Buckine, Division of Administrative Hearings, entered his Recommended Order denying Petitioner's Request for Coverage from the Division of State Group Insurance, a copy of which is attached hereto as Exhibit A. On August 28, 2001 Petitioner filed her Exceptions to Recommended Order, a copy of which is attached hereto as Exhibit B.

An agency reviewing a recommended order is not authorized to reevaluate the quantity and quality of the evidence presented at a DOAH final hearing beyond a determination of whether the evidence is competent and substantial. Brogan v. Carter, 672 So. 2d 822 (Fla. 1st DCA 1996). Competent substantial evidence is defined as "such evidence that will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence that is "sufficiently

relevant and material that a reasonable mind would accept [it] to support the conclusion reached." Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985) citing De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957). If the record contains any competent substantial evidence to support the findings of fact made by the Administrative Law Judge in the Recommended Order, the agency is bound by such factual findings. Florida Power & Light v. State Sitting Board, 693 So. 2d 1025 (Fla. 1st DCA 1997). Finally, an agency need not make explicit rulings on "exceptions" that merely reiterate positions that have been previously asserted. Britt v. Department of Professional Regulation, 492 So. 2d 697 (Fla. 1st DCA 1986) disapproved on other grounds Department of Professional Regulation v. Bertel, 531 So. 2d 967 (Fla. 1988).

Rulings On Petitioner's Exceptions To Recommended Order

First Exception: In her first exception, Petitioner excepts to Finding of Fact No. 5 in which the Administrative Law Judge (ALJ) found that "the admitting and treating physicians, after review of Petitioner's hematocrit and hemoglobin levels, determined that the Petitioner should be treated for the anemia condition before her discharge on December 13, 1999." Petitioner argues that the "ALJ failed to note that but for the anemia, she would not have been confined for the extended stay at the Hospital pursuant to the Baker Act, but would have been almost immediately sent to a subsequent facility equipped for the care of the mentally ill."

In her exception, Petitioner does not challenge the ALJ's finding of fact. Rather, she argues that he did not go far enough in finding that her anemia was the reason why hospital personnel kept her under observation for most of the time she was admitted to Town and Country Hospital. The record establishes that Petitioner's treating physicians determined that she should be treated for her

anemic condition prior to her discharge. Petitioner's anemia, however, was ancillary to the reasons why she remained in the hospital for three days. The record reflects that Petitioner was admitted to Town & Country Hospital pursuant to the requirements of section 394.463, Florida Statutes, as a result of a suicide attempt. Petitioner remained at Town & Country Hospital from December 11 to December 13, 1999 during which time she stayed in the intensive care unit. The hospital's records reflect that Petitioner was placed in the ICU on suicide precaution or suicide watch; to treat her for and to monitor her recovery from the suicide attempt, and out of concern for Petitioner's susceptibility to seizure, the likelihood of which was enhanced by the drugs Petitioner ingested. It was Petitioner's suicide attempt that mandated her seventy-two hour stay. Petitioner's anemia had no bearing on the length of time or reasons why Petitioner remained at Town & Country Hospital. Rather, while she was present her physicians decided to treat her for it and her insurance provider covered all of the anemia-related treatment. Accordingly, Petitioner's first exception is without merit and is, therefore, denied.

Second Exception: In her second exception, Petitioner excepts to Finding of Fact No. 6 in which the ALJ found that the State of Florida Employees Group Health Self Insurance Plan Booklet and Benefit Document excludes coverage for services rendered for the treatment of self-inflicted wounds. Petitioner argues that the ALJ apparently did not note that the Plan Document also provides that "plan participants are not required to obtain permission for admission to a network hospital and that participants will not be penalized if a hospital fails to pre-certify their admission" and that the hospital did not pre-certify her extended stay with Blue Cross and Blue Shield of Florida, Inc.

The plain reading of the Plan Booklet supports the ALJ's finding of fact. While Petitioner's argument is correct about certification, in this case admission to Town & Country Hospital was

initiated pursuant to section 394.463, Florida Statutes, which mandates involuntary admission to a receiving facility not to exceed seventy-two hours except in instances of involuntary placement subsequent to examination for persons suspected of mental illness or suspected of having suicidal tendencies. Certification of admission is, therefore, not relevant in this matter. Accordingly, Petitioner's second exception is denied.

Third Exception: In her third exception, Petitioner excepts to Finding of Fact No. 7 in which the ALJ found that "of the Hospital's statement of services and supplies totaling $8,244.00, only $1,030.25 were directly related to the diagnosis of "anemia." Petitioner argues that the ALJ "failed to distinguish between that part of the treatment necessitated by the drug overdose and that part of the treatment necessitated by either the treatment of the pre-existing depression, public policy or the completely unrelated anemia."

To the extent that Petitioner argues that the Hospital did more than just "diagnose" her anemia or "diagnose" her drug overdose she is correct. The hospital billing records entered into evidence are clear that of the $8,244.00 for services rendered to Petitioner, the Hospital incurred $1,030.25 for diagnosing and treating her anemia. The remaining charges relate to treatment for Petitioner's suicide attempt. The ALJ's use of the phrases "diagnosis" and "directly related to the diagnosis of anemia" may be confusing, but his finding is based on competent, substantial evidence. Accordingly, Petitioner's third exception is denied.

Fourth Exception: In her fourth exception, Petitioner excepts to Finding of Fact No. 8 in which the ALJ found that the decisions of Blue Cross and Blue Shield of Florida, Inc. and Respondent to only pay for those charges related to Petitioner's diagnosis and treatment for anemia and not to pay those related to Petitioner's suicide attempt are supported by a preponderance of the

evidence; and Finding of Fact No. 9 in which the ALJ found that in her argument Petitioner ignores the facts that her hospital admission was the result of a suicide attempt and that her stay resulted from the requirements of section 394.463, Florida Statutes, "The Baker Act", which mandates involuntary placement for seventy-two hours. Petitioner argues that the ALJ failed to allow discussion of hospitalization at a subsequent provider, the charges of which were apparently covered without dispute by Blue Cross.

It is the ALJ's function as the finder of fact to consider all the evidence, resolve conflicts, judge credibility of witnesses, and draw permissible inferences from the evidence; a reviewing agency is not authorized to perform these functions or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985). Petitioner has failed to point to anything in the record to support this exception that the ALJ erroneously disallowed discussion of hospitalization at a subsequent provider. Accordingly, Petitioner's fourth exception is denied.

Having considered the Recommended Order, Petitioner's Exceptions, the record, and being otherwise fully advised in the premises it is, hereby, **ORDERED:**

1. The Administrative Law Judge's August 14, 2001 Recommended Order is adopted in toto as the Final Order of this Agency.

2. Petitioner's May 10, 2000 Petition for Administrative Review is **DISMISSED.**

3. This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Management Services.

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DONE AND ORDERED this 3rd day of October, 2001.

Cynthia A. Henderson, Secretary
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Tallahassee, Florida 32399-0950

Copies furnished to:

Office of the Clerk
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Merrill Moody, Assistant Director
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Julie Forrester, Assistant General Counsel
Office of the General Counsel

NOTICE OF RIGHT TO APPEAL

Unless expressly waived by a party such as in a stipulation or in other similar forms of settlement, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal and a copy of the notice with the Clerk of the Department of Management Services within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

Certificate of Clerk:

Filed in the office of the Clerk of the
Department of Management Services
on this 3rd day of October 2001.

Agency Clerk