

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUNE SLOTE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-4561  
 )  
 DEPARTMENT OF MANAGEMENT )  
 SERVICES, DIVISION OF STATE )  
 GROUP INSURANCE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing in the above-styled matter was held on January 30, 2003, by video teleconference between West Palm Beach and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: June Slote, pro se  
423 Fourth Terrace  
Palm Beach Gardens, Florida 33418

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 claim against her state group health insurance company for services related to a Magnetic Resonance Imaging examination (MRI) should be granted or denied.

PRELIMINARY STATEMENT

During a physical examination, Petitioner's physician detected a suspicious mass in her right breast. The physician thereafter ordered a series of diagnostic examinations, including an MRI examination on Petitioner's right breast. At issue is whether an MRI used as a diagnostic tool for breast cancer is excluded from the state group health insurance contract as being an "experimental or investigational" service.

There are two components of the MRI examination at issue in this proceeding. The first is the professional services component charged by the doctor who read the MRI. The second is the facility fee charged by the facility at which the MRI was performed. Petitioner's claim letter, Respondent's denial, and the request for a formal hearing to challenge the denial of the claim pertain only to the first item. Respondent has paid the second item and announced at the final hearing that it would seek reimbursement, if it prevails in this proceeding. Petitioner agreed that both items should be decided in this one proceeding. With the consent of both parties, this Recommended Order pertains to both items.

At the hearing, Respondent presented its case first to expedite the proceeding. Respondent offered five sequentially numbered exhibits, each of which was admitted into evidence. Respondent presented the testimony of Melody Bartela (a registered nurse employed by Respondent as a benefit determination and appeal coordinator) and Dr. William S. Wood (medical director of Blue Cross Blue Shield of Florida). Petitioner testified on her own behalf, but she presented no additional testimony. 1/

No transcript of the proceedings has been filed. Respondent filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order. Petitioner did not file a proposed recommended order.

#### FINDINGS OF FACT

1. At all times material hereto, Petitioner was employed by the State of Florida and was a participant in the State of Florida group health insurance plan, which is a self-insured plan administered by the State of Florida in conjunction with the plan's third party administrator, Blue Cross Blue Shield of Florida (BCBSF). This plan is frequently referred to as the PPO Plan, an acronym for preferred provider organization.

2. Prior to April 26, 2002, Petitioner's physician detected a lump in Petitioner's right breast. Petitioner's

physician ordered mammography and ultrasound examinations to be performed on Petitioner's right breast. Those examinations were performed on April 1, 2002. Following those tests, Petitioner's physician ordered an MRI examination of the right breast, which was performed on April 26, 2002, and is the procedure at issue in this proceeding. Following that MRI, Petitioner had another mammography and ultrasound for the diagnosis and treatment of breast cancer.

3. Respondent has paid Petitioner's claims for coverage of the mammography and ultrasound examinations.

4. Respondent has denied payment for the professional fee associated with the MRI in the amount of \$215.00.

5. Respondent has paid the facility fee associated with the MRI in the amount of \$1,705.00. Respondent asserts that the payment of that fee was in error and intends to seek reimbursement for that payment if it prevails in this proceeding.

6. The terms of coverage of the state group health insurance plan are set forth in a document entitled "State Employees' PPO Plan Group Health Insurance Plan Booklet and Benefit Document" (Benefit Document).

7. The Benefit Document (at page 31, paragraph 47 of the section entitled "Services Not Covered By The Plan") specifically excludes the following from coverage:

47. Services and procedures considered by BCBSF to be experimental or investigational, or services and procedures not in accordance with generally accepted professional medical standards, including complications resulting from these non-covered services.

8. The Benefit Document has a section entitled "Definitions of Selected Terms Used By The Plan" beginning at page 49. The definition of the phrase "experimental or investigational services", found at page 51, includes, in pertinent part, the following:

. . . any evaluation, treatment, therapy, or device that:

\* \* \*

is generally regarded by experts as requiring more study to determine maximum dosage, toxicity, safety or efficacy, or to determine the efficacy compared to standard treatment for the condition

has not been proven safe and effective for treatment of the condition based on the most recently published medical literature of the U.S., Canada or Great Britain using generally accepted scientific, medical or public health methodologies or statistical practices

is not accepted in consensus by practicing doctors as safe and effective for the condition

is not regularly used by practicing doctors to treat patients with the same or a similar condition

9. The Benefit Document provides at page 51 that BCBSF and the Division of State Group Insurance determine whether a service is experimental or investigational.

10. The testimony of Dr. Wood established that an MRI of the breast is experimental or investigational within the meaning of the Benefit Document. 2/ MRI examinations of the breast are not reliable diagnostic tools because such examinations result in an unacceptable number of cases where an MRI produces false negative findings that reflect the absence of cancer where cancer is, in fact, present in the breast. According to Dr. Wood, an MRI cannot be relied upon and should not be used to avoid a biopsy of a suspicious mass because a patient would run an unacceptable risk that the detection of cancer may be delayed or missed.

11. Dr. Wood also testified that radiologists in Florida performing services for the state group insurance health plan have been informed of BCBSF's position. Petitioner's doctors did not inform her prior to the examination that the MRI examination would not be covered by her insurance plan.

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of these proceedings pursuant to Sections 120.569 and 120.57, Florida Statutes.

13. Pursuant to Section 110.123, Florida Statutes, the Division of State Group Insurance is created within the Department of Management Services and is responsible for administering the state group insurance program to which Petitioner subscribes.

14. Respondent has the burden of proving that the claimed services are excluded from the state group insurance plan. Comprehensive Health Association v. Carmichael, 706 So. 2d 319 (Fla. 4th DCA 1997). Respondent has met that burden in this proceeding.

RECOMMENDATION

Based on the foregoing, it is RECOMMENDED that Respondent enter a final order denying coverage for the MRI claims submitted by Petitioner.

DONE AND ENTERED this 17th day of February, 2003, in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of February, 2003.

ENDNOTES

1/ Petitioner presented no expert testimony in this proceeding and the opinions expressed by Respondent's witnesses were not contradicted. Because the expert testimony was one-sided, the findings and conclusions reached in this proceeding as to the efficacy of MRI examinations of the breast should be limited to this case only.

2/ In making the findings contained in this Recommended Order, the undersigned has considered Respondent's Exhibit 1, which is a letter from Petitioner's physician. The letter is inconsistent with the competent evidence presented in this proceeding to the extent the letter infers that the subject MRI was the diagnostic tool that detected the suspicious lump. The letter is irrelevant to the extent that it argues that the ultrasound examination was appropriate.

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.