

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KARINA VELASQUEZ,)
)
 Petitioner,)
)
 vs.) Case No. 10-0036
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge Eleanor M. Hunter held a final hearing in this case by video teleconference between sites in Miami and Tallahassee, Florida, on June 16, 2010.

APPEARANCES

For Petitioner: Jay Levy, Esquire
Jay M. Levy, P. A.
9150 South Dadeland Boulevard,
Suite 1010
Miami, Florida 33156

For Respondent: Sonja P. Mathews, Esquire
Department of Management Services,
Division of State Group Insurance
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue is whether the MRI of Petitioner's cervical spine performed on April 8, 2009, was medically necessary and, therefore, covered under the state employee group health plan.

PRELIMINARY STATEMENT

During a neurological physical examination, Petitioner's physician ordered an MRI of her cervical spine. Petitioner was billed \$5,174.31 for the MRI. Petitioner's level one appeal to the third party administrator of the plan and her level two appeal to the Respondent were denied. Respondent's denial letter of September 24, 2009, notified Petitioner of her right to request a hearing within 21 days, which she did on October 15, 2009. The request was referred to the Division of Administrative Hearings on December 11, 2009. After two continuances, one at the request of the Respondent and one by Joint Motion, the hearing was scheduled for and held on June 16, 2010.

At the hearing, in addition to testifying on her own behalf, Petitioner presented the testimony of Basil M. Yates, M.D. Petitioner's Exhibits 1¹ (R-4, p. 5, 6, and 11); 2 (R-4, p. 12 and 13); 3 (a jointly introduced R-1); 4 (R-9, p. 3); and 5 (R-9, p.1 and 2) were received in evidence. Respondent presented the testimony of Edward H. Cottler, M.D.; and Kathy Flippo, a legal nurse specialist employed by the Respondent; Diane Hallenbeck, Senior Manager in Clinical Operations at BCBSF; and, by deposition, Constantine Morros, M.D. Respondent's Exhibits 1-5, 8, 10, and 12 were received in evidence. The Transcript of the hearing was received on

June 16, 2010. After two extensions of time were granted, Proposed Recommended Orders were filed on August 2, 2010. Unless otherwise indicated, citations to Florida Statutes are to the 2009 publication.

FINDINGS OF FACT

1. Petitioner Karina Velasquez ("Petitioner") is employed by the State of Florida. She has participated in the State of Florida Group Health Insurance Plan ("the Plan") since January 1, 2009, including on all dates that are relevant to this proceeding.

2. Respondent Department of Management Services, Division of State Group Insurance ("Respondent") operates the Plan through a third party administrator, Blue Cross and Blue Shield of Florida, Inc. ("BCBSF").

3. On April 1, 2009, Petitioner, then 24 years old, was examined by Basil M. Yates, M.D., a board-certified neurologic surgeon. When Dr. Yates took Petitioner's medical history, he learned that Petitioner had fallen backward striking the back of her head in 2006. She did not lose consciousness and did not see a doctor. She had also been in a car accident in January 2003, but also did not see a doctor then because she did not have insurance. Around August of 2008, Petitioner began to have occipital cervical headaches (meaning, in the back of neck) and to experience dizziness. Thinking that her symptoms were

related to her eyes, she had her eyes examined but they were normal. Petitioner occasionally swims and exercises four times a week at a gym. She jogs, lifts weights, and does aerobics.

4. Dr. Yates' physical examination of Petitioner showed no major discomfort from palpitation of the paracervical musculature (muscles in the area of the cervical spine around the vertebrae) and greater occipital notches (base of the brain). Petitioner has one shoulder slightly higher than the other, but the physical examination was otherwise normal.

5. Following the examination, Dr. Yates ordered a computed tomography ("CT") scan of Petitioner's brain and an magnetic resonance imaging ("MRI") of her cervical spine.

6. The CT was ordered to rule out evidence of a prior contusion, hemorrhage, or tumor. The Plan covered the cost of the CT.

7. Dr. Yates ordered an MRI to determine if there was damage to the cervical spine that could be causing muscle spasm or strain resulting from her fall.

8. On April 8, 2009, Petitioner checked in for the MRI at the outpatient clinic at Baptist Hospital. She presented her driver's license and insurance card, and paid a \$25 co-pay. Petitioner was later billed \$5,174.31 by Baptist Hospital. BCBSF contracts with hospitals to provide services and requires

pre-certification, or prior approval, for in-patient services but not for outpatient services.

9. In December 2007, BCBSF mailed a letter to its participating physicians, including Dr. Yates, informing them that, effective January 21, 2008, Magellan Health Services/National Imaging Associates ("NIA") would be the vendor to determine medical necessity for advanced imaging procedures. The letter notes that a voluntary pre-service review process is available, although it is not binding upon BCBSF when it subsequently reviews a claim after a service has been provided.

10. Dr. Yates did not know whether, in addition to the letter, any NIA guidelines were ever sent to his office. He does know that you need permission for "everything" and his staff "automatically" requests prior approval for procedures he orders.

11. BCBSF sent NIA a form requesting a retrospective review of Dr. Yates' request for authorization for Petitioner's MRI. NIA received the form on April 17, 2009, and made the decision to deny coverage on April 22, 2009.

12. The applicable NIA guidelines for cervical spine MRI are, in relevant part, as follows:

AUTHORIZE:
CHRONIC OR DEGENERATIVE CHANGES (i.e.,
osteoarthritis, degenerative disc disease)

Chronic or degenerative changes with any of the following new neurological deficits: Extremity weakness; abnormal gait; asymmetric reflexes. (Document which neurological finding.)

Chronic or degenerative changes with changing or new onset of radiculopathy or radiculitis (not radicular pain).

Chronic or degenerative changes with new abnormal EMG or nerve conduction study.

Chronic or degenerative changes with new extremity numbness or tingling AND trial of conservative treatment for at least six (6) weeks.

Chronic or degenerative changes with new extremity numbness or tingling AND failed PT.

Exacerbation of chronic back pain unresponsive to trial of conservative treatment, including PT/HEP (home exercise program), for at least six (6) weeks.

Chronic or degenerative changes AND RECENT (<4 months) failed PT/HEP (home exercise program) See General Information for HEP requirements.

* * *

NEW ONSET OF NECK PAIN (Use this section ONLY if no other category is appropriate, check all other categories first.)

New onset of neck pain with any of the following neurological deficits: extremity weakness; abnormal gait; asymmetric reflexes. (Document which neurological finding.)

New onset of neck pain with radiculopathy or radiculitis (not radicular pain) with no

improvement after trial of conservative treatment for at least six (6) weeks.

New onset of neck pain with progression or worsening of symptoms during the course of conservative treatment.

New onset of neck pain persisting with failed PT.

13. On August 6, 2009, BCBSF denied Petitioner's first level appeal for payment. BCBSF reached its decision after Petitioner's medical records were reviewed by Alan Feren, M.D., a physician employed by NIA who is not licensed in Florida. Dr. Feren's work was reviewed by Constantine Morros, M.D. Dr. Morros is licensed in Florida and is board certified in radiology and nuclear medicine. He has worked for NIA as an independent contractor for eleven years, reviewing non-Florida physicians' recommendations to deny coverage for imaging services ordered by Florida physicians.

14. Dr. Morros considered it important that Petitioner had neck and head headaches without motor or sensory abnormalities. There was no indication of muscle weakness or neurological findings. He noted that the cervical spine films showed degenerative changes, but Petitioner had no documented course of physical therapy or home exercise therapy. Under either category of the guidelines, new onset of neck pain or chronic or degenerative changes, Dr. Morros agreed with Dr. Feren that the MRI was not medically necessary and coverage should have been

denied. The category that Dr. Morros relied on in reaching his decision was new onset of neck pain.

15. If Dr. Morros had seen evidence of a four-to-six week trial of physician-assisted physical therapy or a home exercise plan, he would have approved the MRI. Dr. Morros did not have an opinion whether ordering the MRI for Petitioner was reasonable or necessary under the circumstances absent consideration of the guidelines.

16. After the denial of the claim at the first level review by NIA for BCBSF, Respondent also denied Petitioner's second level appeal on September 24, 2009. Its decision was based on the findings of NIA and its conclusion that the MRI was not medically necessary. The terms of coverage of the Plan are set forth in the "State Employees' PPO Plan Group Health Insurance Plan Booklet and Benefits Document" ("the Benefits Document"). The Benefits Document provides that, as determined by BCBSF clinical staff and Respondent, services that are not medically necessary are excluded from coverage.

17. The Benefits Document includes the following definition:

Medically necessary . . . services required to identify or treat the illness, injury, condition, or mental and nervous disorder a doctor has diagnosed or reasonable suspects.

The service must be:

1. consistent with the symptom, diagnosis and treatment of the patient's condition;
2. in accordance with standards of good medical practice;
3. required for reasons other than convenience of the patient or the doctor;
4. approved by the appropriate medical body or board for the illness or injury in question; and
5. at the most appropriate level of medical supply, service, or care that can be safely provided.

The fact that a service is prescribed by a doctor does not necessarily mean that the service is medically necessary. BCBSF and DSGI determine whether a service or supply is medically necessary.

18. In addition to relying on the results of the NIA/BCBSF review, Respondent, at level two, relied, in part, on Dr. Yates' notes from his examination of Petitioner on April 1, 2009, as follows:

Discussion: A scan of the brain and MRI of the cervical spine would be appropriate. This is most likely a[n] occipital headache from muscle sprain from the fal[l] back. It would be best benefited by a cervical, shoulder exercise program. (Emphasis added.)

19. Because he suggested that the condition that most likely causing headaches could improve with exercise, Respondent takes the position that Dr. Yates should have prescribed a six-week trial of the cervical, shoulder exercise program before he decided to order an MRI. Dr. Yates however, who has fifty years

of experience as a neurologic surgeon, believed that he might have been wrong and that the cervical spine could have been damaged when Petitioner fell. That condition could not have been helped by physical therapy and could only be determined by an MRI.

20. It was Dr. Yates' opinion that the fact that Petitioner had been exercising regularly for several years indicated that physical therapy would not be effective. The point of physical therapy after one assumes that muscles have been damaged by an acute injury is to reactivate and stimulate the muscles, and to increase range of motion so that the muscles can be exercised. Dr. Yates initially determined that Petitioner was past the point of physical therapy. There is no evidence whether Dr. Feren or Dr. Morros knew about Petitioner's exercise routine and how that might have affected their opinions.

21. The NIA Authorization Detail form supports Dr. Yates' decision to take into account Petitioner's exercise routine² and contradicts the decisions of Dr. Feren and Dr. Morros. The following are questions and answers concerning medical necessity:

MEDICAL NECESSITY EVALUATION

QUESTION

ANSWER

Why is this study being ordered?

Trauma/Injury	Yes
What was the date of initial onset?	3 years ago
Has there been any treatment or conservative therapy?	Yes
What treatment or conservative therapy was given?	Home therapy, medication
What are the primary symptoms?	HA/cervical pain
Please provide additional clinical reasons for this study.	None

22. On May 5, 2009, Dr. Yates reviewed the results of the tests with Petitioner and her husband. The MRI was unremarkable other than showing mild degenerative changes with minimal bulges of three discs and tiny herniation of another disc. The brain scan was unremarkable. From this Dr. Yates concluded that the headaches are not caused by "an organic basis from the spinal cord, nerve roots, but are more related to muscular tension and inadequacy." He reported further that:

The only correction for this is to strengthen the supra and parascapular and paracervical musculature. We have sent the patient to therapy for a month to get her some relief and teach her the exercises she should be doing. We gave the patient Naprosyn and Darvocet for discomfort. No other care or treatment should be required.

23. To Dr. Yates, it was unusual to find degeneration of the cervical spine in a 24-year-old. Without the MRI, Dr. Yates would not have known of that condition or that Petitioner, although already exercising regularly, needed to be taught to the best exercises to strengthen muscles in her spine.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

25. Respondent, the Department of Management Services, Division of State Group Insurance, administers the state group insurance program, referred to in this Order as the Plan. §§ 110.123(3)(c) and (5), Fla. Stat.

26. Subsection 110.123(5)(c), Florida Statutes, gives Respondent the authority to contract with private entities in the administration of the health insurance program, as it has done with BCBSF, which has, in turn, contracted with NIA.

27. Petitioner has the burden of proving by a preponderance of the evidence that her claim qualifies for coverage. See State Comprehensive Health Ass'n v. Carmichael, 706 So. 2d 319 (Fla. 4th DCA 1997). Respondent "bears the burden of proving the applicability of a claimed policy exclusion." See Herrera v. C.A. Seguros Catatumbo, 844 So. 2d 2003).

28. In this case, Petitioner has met the burden of proving that the NIA medical necessity evaluation form is consistent with her doctor's testimony and meets the NIA guidelines for approval of a cervical spine MRI.

29. Respondent's sole reason for the exclusion, the absence of six weeks of home exercise therapy, is not supported by the NIA evaluation of medical necessity or the unrebutted testimony of Petitioner's doctor.

RECOMMENDATION

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

DONE AND ENTERED this 31st day of August, 2010, in Tallahassee, Leon County, Florida.



ELEANOR M. HUNTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of August, 2010.

ENDNOTES

1/ Petitioner used and introduced into evidence some of Respondent's Exhibits. The original exhibit number is indicated by the symbol "R-#."

2/ See Respondent's Exhibit 2.

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.