

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NICOLE DEMOTT VUGTEVEEN,)
)
 Petitioner,)
)
 vs.) Case No. 12-0513
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on September 4, 2012, in Viera, Florida, before J.D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Nicole Vugteveen, pro se
700 North Atlantic Avenue, No. 112
Cocoa Beach, Florida 32931

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

STATEMENT OF THE ISSUE

Whether Petitioner, Nicole Demott Vugteveen (Petitioner), is entitled to reimbursement for a medical device that Respondent, Department of Management Services, Division of State

Group Insurance (Department or Respondent), maintains is not covered under the State of Florida PPO self-insured medical plan.

PRELIMINARY STATEMENT

On October 12, 2011, Respondent issued a letter advising Petitioner that a medical device known in this record as a Bioness L300 is not covered under the state's medical plan and that reimbursement for the purchase of the device would not be made. Petitioner promptly challenged that decision. The case was referred to the Division of Administrative Hearings (DOAH) for formal proceedings on February 7, 2012. Although initially set for hearing for April 17, 2012, the case was continued on three occasions to accommodate the parties.

At the hearing on September 4, 2012, Petitioner testified on her own behalf and presented the testimony of Michelle Demott. Petitioner's Composite Exhibit 1 was admitted into evidence. Respondent presented the testimony of Kellette Register, Kathy Flippo, Daniel Hudec, Mark A. Phelps, and Georgianne Grant. Respondent's Exhibits 1, 10, 11, 12, 13, and 26 were admitted into evidence. A transcript of the proceeding was not filed.

Respondent's Proposed Recommended Order was filed on September 18, 2012. It has been considered in the preparation

of this Recommended Order. Petitioner did not file a proposed order.

FINDINGS OF FACT

1. At all times material to this case Petitioner was a participant in the State of Florida's Group Health Insurance Plan. This plan is managed by Florida Blue, formerly known as Blue Cross and Blue Shield of Florida. The plan is administered by Respondent. It is Respondent's duty to oversee the administration of the plan and to assure that it complies with all applicable regulatory and medical guidelines.

2. As a participant of the plan, Petitioner was entitled to the benefits of the plan. Accordingly, medical services and certain durable medical equipment covered by the plan are reimbursable.

3. Typically, individuals or companies who provide medical services or products for participants' illnesses are known as "providers." These providers may seek payment or reimbursement for their efforts, either directly from the insurance plan or from the patient to whom services are rendered. In the case of the latter situation, the patient is required to file the claim form for reimbursement from the plan.

4. At all times material to this case, a company known as Mid-Florida Prosthetics and Orthotics (Mid-Florida) was a provider of medical devices. Mid-Florida files medical claims

for its patients when the devices provided are covered by insurance but will not file claims for devices that are not. After doing extensive research into products offered by Mid-Florida, Petitioner approached the company with the notion of purchasing a device to assist her condition.

5. Petitioner's long-term medical history has resulted in a profound weakness on one side of her body. Gait and ambulatory issues have impaired progress in recovery. Petitioner sought to purchase a medical device from Mid-Florida in order to provide stimulation to her muscles on the weak side. It is undisputed that Petitioner met all medical prerequisites for the purchase of the device. Petitioner was allowed to test the device to verify it would help.

6. At the time of the purchase, Mid-Florida knew the device was not covered by Petitioner's insurance. Mid-Florida did not file for payment from Petitioner's insurance plan. Instead, Petitioner purchased the device from Mid-Florida and filed for reimbursement. Although Petitioner knew Mid-Florida would not file the claim, it is disputed whether Petitioner knew or should have known that the device would not be covered by insurance.

7. At the heart of this dispute, is the device itself: a Bioness L300. This device is a neuromuscular stimulator that sends impulses to the area where it is attached (in this case

the leg) to improve mobility. Petitioner maintains and Respondent does not dispute whether the device has been medically helpful.

8. At all times material to the allegations of this case, however, the state's insurance plan did not cover the Bioness L300. The Bioness L300 is considered an experimental or investigative product by the insurance plan.

9. Petitioner maintains that, if that were true, the claim should have been denied and that requests for additional information should not have been issued. Petitioner argues that it took an inordinate amount of time for the claim to be processed and then denied, if all along it could not be approved.

10. To review this matter, the claims process must be described. In this (and all claims) a form is used to process claims for payment or reimbursement. That form describes the patient's medical condition and the types and amounts of services or the device intended to treat the medical condition. Whether or not the claim can be approved is governed by guidelines established by the insurance plan. The guidelines include claim codes that are assigned to each type of condition and service that might be rendered. For a given medical

condition, treatment may be appropriate but the type of treatment requested may not be approved.

11. In this case, had Petitioner's claim been correctly coded from the beginning, it would have been denied. Instead, Petitioner's claim had incorrect codes that required further explanation. In simplistic terms, Petitioner has a medical condition that warrants medical care, but the device she bought, the Bioness L300, is not an approved, reimbursable device for that care. Under the guidelines that govern this matter, the Bioness L300 is described as a functional neuromuscular stimulation that is experimental and investigational for all diagnosis codes.

12. The state health insurance plan does not cover devices that are deemed experimental and investigational.

13. Had the forms been correctly coded, Petitioner's claim for reimbursement would have been disallowed or denied at the time of its submission. The delay in resolving the claim resulted from the confusion and miscoding of the claim form.

14. The request for additional information regarding the claim does not constitute an approval of the claim.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2012).

16. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent should have reimbursed the cost for the purchase of the Bioness L300.


17. The preponderance of the evidence standard requires proof by the greater weight of the evidence, or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276 (Fla. 2000).

18. In this case, Petitioner has failed to meet that burden. Respondent has articulated a complete explanation regarding why Petitioner's claim was denied. Petitioner has not presented any evidence to support the approval of the claim. It is undisputed the Bioness L300 is a functional neuromuscular stimulation device. The plan that governs payment for medical devices does not cover the Bioness L300.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of State Group Insurance, enter a final order denying Petitioner's request for reimbursement for the Bioness L300, as it is not covered by the plan guidelines.

DONE AND ENTERED this 26th day of September, 2012, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of September, 2012.

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.