

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**TAYNA ALEXANDER,**

**PETITIONER,**

Final Order No. DMS – 14-0001

**v.**

**DOAH CASE NO. 13-2095**

**DEPARTMENT OF MANAGEMENT  
SERVICES, DIVISION OF STATE  
GROUP INSURANCE,**

**RESPONDENT.**

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**FINAL ORDER**

**PRELIMINARY STATEMENT**

After being formally notified of the Department of Management Services, Division of State Group Insurance's (the Respondent) denial of her request for health benefits to cover lodging while undergoing treatment in Baltimore, Maryland, Tayna Alexander, (the Petitioner), timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings.

Pursuant to a notice of hearing issued on June 18, 2013, the final hearing in this case was heard on August 16, 2013, by video-conference, with sites in St. Petersburg, Florida and Tallahassee, Florida, before Administrative Law Judge Lawrence P. Stevenson.

This matter is now before the undersigned Secretary of the Department of Management Services for the purpose of issuing a final order, as required by section 120.569 (1), Florida Statutes.

The recommended order issued by the Administrative Law Judge on November 18, 2013, is incorporated by reference into this Final Order, except as stated herein.

## STATEMENT OF THE ISSUE

Whether pursuant to the State Employees' PPO [preferred provider organization] Group Health Insurance Plan, the Respondent properly denied payment for the Petitioner's lodging at the Hackerman-Patz Pavilion in Baltimore, Maryland, from December 30, 2011, through January 31, 2012.

## STANDARD OF REVIEW

Subsection 120.57(1)(l), Florida Statutes, provides that an agency reviewing a Division Of Administrative Hearings recommended order may not reject or modify the findings of fact of an Administrative Law Judge, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Further, in the absence of a transcript of the proceedings in question, the findings of fact of an Administrative Law Judge must be sustained. *See National Industries, Inc. v. Commission on Human Relations*, 527 So.2d 894 (Fla. 5 Dist., 1988). In this case, neither party has filed a transcript of the proceedings.

Subsection 120.57(1) (l), Florida Statutes, provides that an agency may reject or modify an Administrative Law Judge's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction," whenever the agency's interpretations is "as or more reasonable" than the interpretation made by the Administrative Law Judge. Florida courts have consistently applied this subsection's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the Administrative Law Judge's application of legal concepts such as collateral estoppel and hearsay; but not from reviewing conclusions of law containing the Administrative Law Judge's interpretation of a statute or rule over which the Legislature has provided the agency administrative authority. *See Deep Lagoon*

Boat Club Ltd. v. Sheridan, 784 So. 2d 1140, 1141-42 (Fla. 2d DCA 2001) and Barfield v. Department of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2001).

### **STATEMENT OF THE CASE**

The State Group Insurance Program (the Program), as defined in section 110.123 (2) (k), Florida Statutes, is a benefit available to State of Florida officers, employees, retirees and their dependents. As provided in section 110.123(3) (c), Florida Statutes, the Department of Management Services (DMS), through its administrative entity is responsible for contract management and day-to-day administration of the Program. DMS and the Division of State Group Insurance have contracted with BlueCross BlueShield of Florida, Inc. (BCBSF, now Florida Blue), to provide professional administrative services for the PPO Plan.

By letter dated December 12, 2012, the Respondent denied the Petitioner's request for payment of her lodging while in Baltimore, Maryland, undergoing treatment at Johns Hopkins Hospital. By letter dated January 3, 2013, the Petitioner timely requested an informal hearing. Prior to the informal hearing the Petitioner submitted a Statement for Informal Hearing, in which Petitioner provided a more detailed statement of her case. During the course of the informal hearing, the presiding officer determined the case involved disputed issues of material fact and referred the matter to the Division of Administrative Hearings for a formal hearing. The Statement for Informal Hearing was filed with the Order of Referral.

### **STATEMENT OF THE FACTS**

As an employee of the State of Florida, during all times relevant to these proceedings and continuing, the Petitioner has participated in the Program. The benefits and the terms and conditions of participation in the PPO Plan are contained in the "State Employees' PPO Group Health Insurance Plan Booklet and Benefits Document" (Benefits Document).

On November 15, 2011, the Petitioner traveled to Baltimore, Maryland, to receive medical treatment at Johns Hopkins Hospital, where she remained until December 30, 2011. Prior to traveling to Johns Hopkins Hospital for treatment, the Petitioner was aware that after her release from the hospital she would need to undergo further daily treatment as an out-patient and that she needed to make arrangements for housing accordingly.

When released from Johns Hopkins Hospital on December 30, 2011, the Petitioner remained in Baltimore for several more weeks for follow-up care. She moved into the Hackerman-Patz Patient and Family Pavilion (Hackerman-Patz), in Baltimore, and resided there through January 31, 2012, when she returned to the State of Florida.

Hackerman-Patz is a residential complex that provides lodging for patients that are undergoing treatment at Johns Hopkins Hospital, as well as their caregivers and families.

The Petitioner is seeking payment for lodging for a total of 32 days, December 30, 2011, through January 31, 2012. The Department maintained that because Hackerman-Patz is a "hotel/motel," payment for lodging is specifically excluded under the Benefits Document, which during the time period relevant to these proceedings read:

**Section 5: Exclusions**

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. R. Exh. 1, p. 5-1

**Custodial care** including, but not limited to, assistance with the activities of daily living. See section 15 for a definition of Custodial Care. R. Exh. 1, p. 5-1

**Personal comfort, hygiene or convenience items** and services deemed to be not Medically Necessary and not directly related to your treatment including, but not limited to:

1. beauty and barber services;
2. clothing including support hose;
3. radio and television;
4. guest meals and accommodations;

5. telephone charges;
6. take-home supplies;
7. travel expenses (other than Medically Necessary Ambulance services);
8. motel/hotel accommodations;
9. equipment which is primarily for your convenience and/or comfort, or the convenience of your family or caretakers; modifications to motor vehicles and/or homes such as wheelchair lifts or ramps; electric scooters; water therapy devices such as Jacuzzis, hot tubs, swimming, lap pools or whirlpools; membership to health clubs, exercise, physical fitness and/or massage equipment; hearing aids; air conditioners and purifiers, furnaces, air filters, humidifiers; water softeners and/or purifiers; pillows, mattresses or waterbeds; escalators, elevators, stair glides; emergency alert equipment; blood pressure kits, handrails and grab bars; heat appliances and dehumidifiers, vacuum cleaners or any other similar equipment and devices used for environmental control or to enhance an environmental setting;
10. heating pads, hot water bottles, or ice packs; and
11. massages except as described in section 3.

The exclusion as set out above continued to be effective through December 31, 2012.

#### **SUMMARY OF RECOMMENDED ORDER**

The Administrative Law Judge found that the listed items were not automatically excluded by the fact of being listed. He found the exclusions applicable only if proven by the Respondent not to be medically necessary, as the term is defined in the Benefits Document, and not directly related to the medical treatment. The Administrative Law Judge determined that in as much as the treatment protocol of Johns Hopkins Hospital included lodging within 30-60 minutes travel time (including traffic) of the hospital, the lodging was necessary for and directly related to the Petitioner's medical treatment. The Administrative Law Judge also found that the accommodations chosen by the Petitioner were not "hotel/motel accommodations," within the common meaning of the terms.

#### **CONCLUSION**

Given the facts of this case and the applicable provisions of the Benefits Document as written at the time the Petitioner herein received the services in question, within 30 days of the date of this Order, the Respondent will pay the Petitioner \$2,912.00.

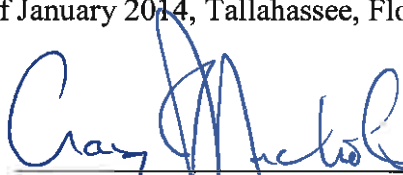
**ORDER**

It is hereby ORDERED and Directed:

1. Based upon the applicable provisions of the Benefits Document at the time the Petitioner received the services in question, the Division of State Group Insurance shall pay the Petitioner \$2,912.00, to cover lodging.

2. This decision is limited to the instant case only, in consideration of the applicable provisions of the Benefits Document as written at the time the Petitioner herein received the services in question and does not establish precedent regarding payment of costs of lodging or any other service or supply in any of the plans under the State Group Insurance Program. The coverage for lodging and all benefits shall be determined based upon the plan document that is applicable at the time services and/or supplies are provided.

**DONE and ORDERED** this 9th day of January 2014, Tallahassee, Florida.



**CRAIG J. NICHOLS**, Agency Secretary  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, FL 32399

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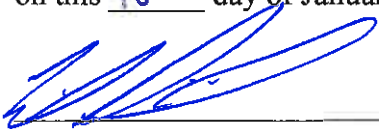
Tayna Alexander, Petitioner  
Sonja Mathews, Assistant General Counsel

**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 with the Agency Clerk of the Department of Management Services, and a copy, accompanied by filing fees prescribed by law, with the Clerk of the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days of 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 10<sup>th</sup> day of January, 2014.



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Michael Sivilla, Agency Clerk