

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KARLA MILLS,

Petitioner,

vs.

Case No. 15-5663

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF STATE
GROUP INSURANCE,

Respondent,

and

UNITEDHEALTHCARE, INC.,

Intervenor.

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter on December 21, 2015, at the Division of Administrative Hearings in Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge.

APPEARANCES

For Petitioner: Karla Mills, pro se
7004 Starfish Court
Panama City Beach, Florida 32407

For Respondent: Gavin D. Burgess, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner's request for the State Employee's HMO Group Insurance Plan to cover an OmniPod insulin pump should be granted.

PRELIMINARY STATEMENT

On October 30, 2014, Petitioner received a letter from her insurer denying her request for coverage of durable medical equipment, namely, the OmniPod insulin pump. Petitioner filed a level one appeal of the decision, which was upheld by the insurer. Petitioner requested a level two appeal of the insurer's decision with the Division of State Group Insurance, which denied her appeal as untimely, but gratuitously included reasons for denial of coverage. The letter informed Petitioner of her right to request either an informal or formal hearing contesting the denial.

Petitioner timely filed with the Department of Management Services a Petition challenging the denial, which was referred to the Division of Administrative Hearings ("Division") on October 13, 2015, and assigned to the undersigned. A final hearing was scheduled for December 21, 2015, in Tallahassee, Florida.

UnitedHealthcare Inc. ("United") moved to intervene for the limited purpose of protecting proprietary and trade secret

information, namely, the pricing structure of available insulin pumps, which motion was granted.

The final hearing commenced as scheduled. Petitioner testified on her own behalf and Petitioner's Exhibits 1 through 5 were admitted into evidence. The Respondent presented the testimony of Kathy Flipppo and Dr. Cathy Palmier, and Respondent's Exhibits 1, 2, and 4 through 7 were admitted into evidence. Intervenor offered neither testimony nor exhibits.

A two-volume Transcript of the proceedings was filed on January 11, 2016.^{1/} Respondent timely filed a Proposed Recommended Order on January 21, 2016, which has been considered in preparation of this Recommended Order. Petitioner did not make any post-hearing filing, and upon inquiry by Division staff, Petitioner indicated she would not submit a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, Karla Mills, was at all times relevant hereto, an employee of the State of Florida and received medical benefits under the State Employees' HMO Plan ("the Plan").

2. Respondent, Department of Management Services, Division of State Group Insurance, is the agency responsible for the administration of the state group insurance program and the Plan. See § 110.123, Fla. Stat.

3. Respondent has contracted with United to provide third-party administrative services for the Plan.

4. Petitioner has Type I diabetes mellitus and requires insulin to control the disease.

5. In October 2014, Petitioner's physician prescribed the OmniPod insulin pump to treat Petitioner's condition.

6. Petitioner submitted a request with United to cover the OmniPod pump. On October 30, 2014, United denied Petitioner's request for coverage of the subject medical equipment. The denial letter reads, in pertinent part:

Here is the specific clinical reason for our decision. Your doctor has asked [for] an insulin pump called the Omnipod for you. We looked at your doctor's notes. You have type 1 diabetes mellitus. You have elevated tests for your diabetic control. We looked at your health plan on insulin pumps. If more than one pump is available the plan will cover the most cost effective pump. The pump your doctor requested is not the most cost effective. Therefore, the asked insulin pump is not a covered benefit under your health plan.

7. In the denial letter, United referenced its policy 2014T0347P, "Continuous Glucose Monitoring and Insulin Delivery for Managing Diabetes."

8. Neither party introduced the relevant policy into evidence. Petitioner introduced a version of the policy which took effect on April 22, 2015.

9. Petitioner's physician filed with United a level one appeal of the denial, which upheld the denial of coverage.^{2/}

10. On July 13, 2015, Petitioner exercised her option to file with Respondent a level two appeal of United's decision.

11. On August 21, 2015, Respondent denied Petitioner's level two appeal as untimely.

12. In the denial letter, Respondent gratuitously added the following: "As a courtesy to you, I would like to address the primary reasons that UnitedHealthcare will not cover the Omnipod insulin pump." The letter referred to United's Durable Medical Equipment, Orthotics, Ostomy Supplies, Medical Supplies, and Repairs/Replacements Coverage Determination Guideline, effective May 1, 2015, as follows:

When more than one piece of medical equipment can meet the enrollee's functional needs, benefits are available only for the equipment that meets the minimum specifications for enrollee needs. Examples include but are not limited to: standard electric wheelchair vs. custom wheelchair; standard bed vs. semi-electric bed vs. fully electric or flotation system. This limitation is intended to exclude coverage for deluxe or additional components of a DME item, not necessary to meet the enrollee's minimal specifications to treat an injury or sickness.

* * *

Additional accessories to DME items or devices which are primarily for the comfort or convenience of the enrollee are not covered.

13. The letter concluded, "The Omnipod is not a basic insulin pump, and is therefore not covered by your Plan."

14. Petitioner was understandably frustrated by receipt of a different reason for denial of coverage in response to her level-two appeal than in the original denial letter.

15. Petitioner's frustration was exacerbated when, at hearing, Respondent withdrew, as grounds for denial, both the untimeliness of Petitioner's level-two appeal and the assertion that the Omnipod was not a basic insulin pump. However, Petitioner was prepared to go forward on the issue of cost-effectiveness, as well as the other grounds.

16. The only disputed fact at issue in this proceeding was whether the Omnipod was the most cost-effective treatment for Petitioner's condition.

17. A typical insulin pump has a computer controller, approximately the size of a cell phone, which delivers insulin via a clear tube that connects to a port on the skin where the insulin is delivered.

18. The OmniPod is an insulin pump with a unique functionality.

19. While the OmniPod has a controller similar to typical insulin pumps, the controller does not contain insulin and has no tubing. Instead, the controller communicates wirelessly with a pod that attaches directly to the skin and contains insulin. Once the pod is attached to the skin, a small catheter inserts into the skin for the delivery of insulin.

20. Under the 2014 United Summary Plan Description (SPD), which governed the health benefits available to members of the Plan, coverage was provided for only "the most [c]ost-[e]ffective piece of equipment." The 2014 SPD defined "cost-effective" as "the least expensive equipment that performs the necessary function."

21. Insulin pumps have both an up-front cost to purchase the pump device, and recurring costs for maintenance supplies, such as tubing, over the lifetime of the pumps.

22. To determine cost-effectiveness, United considers both the up-front cost and the cost of supplies over the lifetime of the pump, which is typically four to five years.

23. United does not contract with any vendor to supply OmniPod pumps, thus the only cost information available at the final hearing was the retail pricing.

24. The up-front retail cost to purchase the OmniPod is \$500 and supplies cost \$300 per month. The total retail cost of the Omnipod for the lifetime of the product is \$21,000.

25. The record contains no competent, non-hearsay evidence to establish the retail price of insulin pumps comparable to Omnipod.^{3/} Thus, the evidence was insufficient to establish cost of the Omnipod relative to pumps available from other vendors. As such, there is no basis for a determination whether or not the Omnipod was "the least expensive equipment to form the necessary function."

26. Thus, the undersigned cannot determine from the record whether the Omnipod pump is the most cost-effective method to treat Petitioner's condition.

CONCLUSIONS OF LAW

27. The Division has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat (2015).^{4/}

28. Section 110.123(5), Florida Statutes, assigns responsibility to render final decisions on matters of enrollment, the existence of coverage, or covered benefits under the Plan to Respondent.

29. Absent a contrary directive, the general rule is that the burden of proof in an administrative hearing is on the party

asserting the affirmative of an issue. Young v. Dep't of Cmty. Aff., 625 So. 2d 831 833-34 (Fla. 1993); Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). As the party asserting the right to coverage of the Omnipod, Petitioner had the initial burden of demonstrating by a preponderance of the evidence that the equipment qualifies for coverage. Assuming Petitioner met her burden, the burden would have shifted to the Respondent to prove that the requested relief did not qualify for coverage under the terms of the policy. Herrera v. C.A. Seguros Catatumbo, 844 So. 2d 664, 668 (Fla. 3d DCA 2003); State Comprehensive Health Ass'n v. Carmichael, 706 So. 2d 319, 320 (Fla. 4th DCA 1997).

30. In this case, Petitioner has failed to establish that the Omnipod is the most cost-effective method to treat her condition, thus, should be covered under the Plan.

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 coverage of the OmniPod insulin pump.

DONE AND ENTERED this 19th day of February, 2016, in
Tallahassee, Leon County, Florida.

Suzanne Van Wyk

SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 2016.

ENDNOTES

^{1/} Portions of the Transcript containing information deemed confidential by the undersigned, were sealed in a separate folder.

^{2/} Neither party introduced the level one denial letter from which the undersigned could make a finding as to the reasons for denial.

^{3/} Respondent's Exhibit 7 contained retail pricing of three insulin pump brands other than Omnipod, which constituted hearsay for which no exception exists under Section 90.803. The pricing information in Exhibit 7 conflicted with, rather than corroborated, the pricing information in Respondent's Exhibit 4 which was admissible as an admission, relative to the comparable pumps.

^{4/} All references herein to the Florida Statutes are to the 2015 version, unless otherwise noted.

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.