

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAROLE DICKSON,

Petitioner,

vs.

Case No. 16-1724

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF STATE
GROUP INSURANCE,

Respondent.

_____ /

RECOMMENDED ORDER

On June 29, 2016, an administrative hearing in this case was held by video teleconference in Orlando and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carole C. Dickson, pro se
Duncan R. Dickson, pro se
8539 Summerville Place
Orlando, Florida 32819

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

STATEMENT OF THE ISSUE

The issue in the case is whether certain expenses incurred by Carole Dickson (Petitioner or Mrs. Dickson), the spouse of

state employee Duncan R. Dickson, are covered benefits under the applicable health insurance plan.

PRELIMINARY STATEMENT

Blue Cross and Blue Shield of Florida (Florida Blue) denied payment of certain expenses incurred by the Petitioner. The Petitioner appealed the denial to the Department of Management Services, Division of State Group Health Insurance (Respondent).

By letter dated February 4, 2015, the Respondent notified the Petitioner that the appeal had been denied. By letter dated February 16, 2015, the Petitioner requested a hearing. The Respondent initially scheduled the matter for an informal hearing, but the Petitioner filed a Notice of Dispute of Material Facts, and, on May 27, 2015, the Respondent transferred the dispute to the Division of Administrative Hearings (DOAH), where it was designated as Case No. 15-3020. On June 1, 2015, the Respondent filed an unopposed Motion to Relinquish Jurisdiction, which was granted on that date.

On March 28, 2016, the Respondent returned the dispute to DOAH, where it was re-designated as Case No. 16-1724. The case was scheduled to be heard on May 20, 2016, and was subsequently rescheduled for June 29, 2016.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits 1, 5 through 7, 13 and 21 admitted into evidence. The Respondent presented the testimony

of two witnesses and had Exhibits 2, 4, 7 and 8 admitted into evidence. (Petitioner's Exhibit 21 and Respondent's Exhibit 2 were the same document.)

No transcript of the hearing was filed. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, Duncan R. Dickson was employed by the State of Florida and was insured through the State Employee PPO Plan (Plan). Carole Dickson, the spouse of Duncan R. Dickson, had insurance coverage through Mr. Dickson's family policy.

2. Florida Blue is the medical claims administrator for the Plan.

3. The Respondent, identified in the Plan as the "Plan Administrator," is the state agency responsible for resolving appeals of medical claims denied by Florida Blue.

4. The insurance benefits available under the Plan are set forth in the "Plan Booklet and Benefits Document" effective January 1, 2012, as amended by the "Summary of Plan Description and Material Modification" document effective January 1, 2013, and by the "Summary of Plan Description and Material Modification" document effective January 1, 2014 (collectively identified herein as the "Plan Document").

5. Section 15 of the Plan Document sets forth relevant definitions.

6. The Plan Document defines "ambulance" as "any licensed land, air or water vehicle designed, constructed, or equipped for and used for transporting persons in need of medical or surgical attention."

7. The Plan Document defines "custodial care or services" as follows:

[C]are or services that are maintenance in nature that serve to assist an individual in the activities of daily living, such as assistance in walking, getting in and out of bed, bathing, dressing, feeding, using the toilet, preparation of special diets, and supervision of medication that usually can be self-administered or administered by a trained home care giver. Custodial Care essentially is care that does not require the continuing attention of trained medical or paramedical personnel and that can be provided by or taught to home caregivers. In determining whether a person is receiving Custodial Care, consideration is given to the level of care and medical supervision required and furnished. A determination that care received is Custodial is not based on the patient's diagnosis, type of Condition, degree of functional limitation or rehabilitation potential.

Care or services that meet this definition are not covered by the Plan. See section 5 of this booklet.

8. The Plan Document defines the phrase "medically necessary" as follows:

[S]ervices required to identify or treat the Illness, injury, Condition, or Mental and Nervous Disorder a Doctor has diagnosed or reasonably 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. Florida Blue and DSGI determine whether a service or supply is Medically Necessary.

9. In relevant part, Section 3 of the Plan Document sets forth the following covered service categories:

Ambulance

Ambulance services must be Medically Necessary to transport:

1. from a Hospital unable to provide care to the nearest Hospital that can provide proper care;
2. from a Hospital to a home or nearest Skilled Nursing Facility; or
3. from the place of an emergency to nearest Hospital that can provide appropriate care.

Air, helicopter, and boat transport are covered if

1. the pick-up point is inaccessible by ground;
2. speed in excess of ground speed is critical; or
3. the travel distance is too far for medical safety.

* * *

Durable Medical Equipment (DME)

Durable Medical Equipment includes, but is not limited to, the following: wheelchairs, crutches, canes, walkers, Hospital beds, TENS units, CPAP devices and oxygen equipment. Repair or replacement of DME due to growth of a child or due to a change in your Condition may be covered. Supplies and service to repair DME may be covered only if you own or are purchasing the equipment.

1. Coverage is limited to the standard model unless an upgraded model is determined to be Medically Necessary.
2. Coverage for the purchase of equipment is limited to the Network Allowed Amount or Non-Network Allowance minus any amount already paid by the Plan for rental.
3. Coverage for the rental of DME will not exceed the Network Allowed Amount or Non-Network Allowance for the purchase of such equipment; if you continue to rent such equipment, no additional payments will be made by this Plan.
4. Coverage for DME purchased after being rented will be limited to the Network Allowed Amount or Non-Network Allowance less any amount already paid by the Plan for rental.

* * *

Nursing services

Nursing care by a Registered Nurse (R.N.) or Licensed Practical Nurse (L.P.N.) is covered, including inpatient private duty nursing only when Medically Necessary.

10. In relevant part, Section 5 of the Plan Document sets forth the following exclusions from coverage:

The following services and supplies are excluded from coverage under this Plan unless a specific exception is noted. Exceptions may be subject to certain coverage limitations.

* * *

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 or other housing accommodations or lodging (even if recommended or prescribed by a physician);
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.

In addition to the above, also excluded are other services not directly used to provide treatment.

11. Section 5 of the Plan Document additionally provides as follows:

Additional exclusions include, but are not limited to:

* * *

3. Services or supplies that are not Medically Necessary, as determined by Florida Blue and/or Express Scripts clinical staff and DSGI.

4. Services, supplies, care or treatment provided by:

- a. a person who usually lives in the covered person's home; or
- b. a person or facility that is not included as covered in this Plan Booklet and Benefits Document.

12. On May 12, 2014, Mrs. Dickson suffered a stroke and while the Dicksons were in Carcassonne, France.

13. Mrs. Dickson was transported to an emergency room at the local hospital. Mrs. Dickson was stabilized at the hospital, and remained hospitalized thereafter.

14. Florida Blue's "BlueCard Worldwide" service provides coordination of care for insureds such as the Petitioner, who require medical care while traveling outside the United States. In relevant part, Section 8 of the Plan Document provides as follows:

Worldwide Coverage

This Plan will pay benefits for covered services anywhere in the world you receive them. When you receive medical care while traveling in another country, you must submit a claim to receive benefits and the claim form must include a description of services in English and charges in US dollars.

For information on providers outside the U.S., contact the BlueCard Worldwide Service Center at (877) 547-2903 from within the U.S. or (collect) at (804) 673-1177, if calling outside the U.S. See section 11 for information on filing claims, including time limits.

15. According to the Florida Blue representative who testified at the hearing, BlueCard Worldwide case managers monitor the medical care being provided to insureds in foreign facilities, and make arrangements, including identification of alternative medical facilities and provider negotiation, to obtain required medical services.

16. According to Mr. Dickson, communicating with the hospital staff was difficult due to a language barrier, and he did not believe the rehabilitation services provided in the hospital were sufficient.

17. Mr. Dickson testified that he was advised by a doctor at the hospital that Mrs. Dickson needed "medical repatriation" to be returned to the United States for rehabilitation services.

18. According to Florida Blue, there were rehabilitation facilities within proximity to Carcassonne, France, to which Mrs. Dickson could have been transferred.

19. There is no evidence that Mr. Dickson inquired about, or was aware of, rehabilitation services available in the vicinity of Carcassonne, France.

20. Although Mr. Dickson was in communication with representatives from Florida Blue during Mrs. Dickson's hospitalization, the records of the communications between Mr. Dickson and Florida Blue indicate that Mr. Dickson's objective was to secure the return of his wife and himself to

the United States, so that she could obtain rehabilitation services close to their home.

21. Mr. Dickson asked Florida Blue about the possibility of transporting Mrs. Dickson from France to the United States.

22. The Plan Document specifically excludes travel expenses except for "medically necessary" ambulance transportation.

23. After reviewing Mrs. Dickson's medical records, Florida Blue determined that the requested transportation was excluded from coverage because Mrs. Dickson was receiving services in the hospital to which she had been admitted.

24. Mr. Dickson thereafter contracted with Flying Nurses International, LLC (Flying Nurses), to arrange for the return of the Dicksons to the United States.

25. Flying Nurses provides private nursing for persons seeking such services while traveling, and coordinates related transportation arrangements.

26. Flying Nurses arranged to transport the Dicksons from the hospital to Orlando, Florida, and provided a registered nurse, Sue Treseder, to assist Mrs. Dickson during the travel.

27. On or about May 23, 2014, Ms. Treseder traveled from her home base in Philadelphia, Pennsylvania, to Carcassonne, France, where she stayed overnight in a hotel.

28. On or about May 24, 2014, Ms. Treseder accompanied the Dicksons as they traveled by ambulance from the hospital in Carcassonne to an airport in Toulouse, France, where they boarded a commercial flight and flew to Orlando, Florida.

29. Ms. Treseder stayed overnight in an Orlando hotel and returned to Philadelphia the next day.

30. Upon arrival in Orlando, Mrs. Dickson was transported by a wheelchair van to a hospital and was eventually transferred from the hospital to a rehabilitation facility.

31. The total charge for the services provided by Flying Nurses was \$34,611.00. The Flying Nurses invoice itemized the expenses as follows:

Flight nurse fee and RN flight coordination	\$2,700
Patient airfare	\$7,944.55
RN airfare	\$11,993.45
Spouse airfare	\$7,944.55
Ground transport (France)	\$1,200.00
Ground transport (Orlando)	\$250.00
RN lodging (France and Orlando)	\$400.00

Equipment fee (reclining wheelchair & oxygen)	\$950.00
RN ground transportation (France and US)	\$250.00
RN per diem	\$300.00
Service charge	\$678.45

32. The Dicksons are seeking to be reimbursed for the total charge, payment of which Flying Nurses required in advance.

33. The evidence fails to establish that Mrs. Dickson's repatriation from France to Orlando, Florida, was "medically necessary."

34. Even assuming, as asserted by Mr. Dickson, that the services being provided by the hospital in Carcassonne were insufficient, alternative rehabilitation facilities were available within proximity to the Carcassonne hospital to which Mrs. Dickson could have been transferred.

35. The Plan Document authorizes coverage for the services of a registered nurse "only when medically necessary." The evidence fails to establish that Ms. Treseder's services were medically necessary. The charges for "flight nurse fee and RN flight coordination" and for Ms. Treseder's airfare are not reimbursable.

36. During the transport of Mrs. Dickson from the hospital to Orlando, Ms. Treseder monitored Mrs. Dickson's physical condition and blood pressure, delivered massage to address pain, provided personal comfort services, and was available to administer medication and oxygen, if needed. Such services are defined by the Plan Document as "custodial care or services," and are specifically excluded from coverage.

37. Other than medically necessary ambulance services, the Plan Document specifically excludes travel expenses. The Plan Document provides a definition of "ambulance." Mrs. Dickson's airfare is not reimbursable because the commercial passenger airplane utilized for travel from Toulouse to Orlando was not an ambulance.

38. Mrs. Dickson was transported by ambulance from the hospital to the Toulouse airport. The evidence fails to establish that transport by ambulance was medically necessary, and the related charge is not reimbursable.

39. A wheelchair van was used to transport Mrs. Dickson to the hospital upon her return to Orlando. A wheelchair van is not an ambulance, and the related charge is not reimbursable.

40. Mr. Dickson was not ill, and his return from France to the United States was not medically necessary. The charges for his travel are not reimbursable under the Plan.

41. The Plan Document specifically excludes expenses for ground transportation, lodging and per diem from coverage. The charges for Ms. Treseder's ground transportation, lodging and per diem are not reimbursable.

42. The itemized invoice included a "service charge" of \$678.45, which was described as an "overhead fee" imposed by Flying Nurses. There is no evidence that the service charge was medically necessary, and the charge is not reimbursable.

43. The itemized invoice included an "equipment fee" charge of \$950 for "reclining wheelchair & oxygen." During transportation, Mrs. Dickson required the use of a reclining wheelchair. The Respondent has stipulated to reimbursing the wheelchair charge according to applicable policy limits.

44. A portable oxygen supply was made available to Mrs. Dickson during transportation. The oxygen was precautionary, and, fortunately, Mrs. Dickson did not need access to the oxygen during travel. Had Mrs. Dickson needed oxygen during the flight, it would not have been available on the plane without the portable oxygen equipment that Flying Nurses supplied.

45. The Respondent asserts that durable medical equipment is covered only when medically necessary, and because the oxygen was not used during the flight, it was not medically necessary.

46. The Plan Document includes coverage for "durable medical equipment," including oxygen equipment. The Plan Document does not require that the equipment be in constant use, or be used at all in travel, to be medically necessary. Given the circumstances of Mrs. Dickson's transportation, the Respondent's assertion is unpersuasive, and the related oxygen charge should be reimbursed according to the applicable policy limits.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2015).^{1/}

48. 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 state group insurance program to the Respondent.

49. Absent a contrary statutory 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, 833-834 (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 payment of the claim under the Plan, the Petitioner had the initial burden of demonstrating

by a preponderance of the evidence that his claim is qualified for coverage. Assuming the Petitioner met the requirement to establish coverage, the burden then shifts to the Respondent to establish that the claim is excluded from 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).

50. Other than the durable medical equipment charges referenced herein, the evidence fails to establish that the charges for which the Petitioner seeks reimbursement were medically necessary or otherwise covered under the provisions of the Plan Document.

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 Health Insurance, enter a final order reimbursing the Petitioner for durable medical equipment costs referenced herein, and otherwise denying the Petitioner's claim for reimbursement.

DONE AND ENTERED this 17th day of August, 2016, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of August, 2016.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2015).

COPIES FURNISHED:

Carole C. Dickson
Duncan R. Dickson
8539 Summerville Place
Orlando, Florida 32819
(eServed)

Gavin D. Burgess, Esquire
Department of Management Services
Suite 160
4050 Esplanade Way
Tallahassee, Florida 32399-0950
(eServed)

J. Andrew Atkinson, General Counsel
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950
(eServed)

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.