

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

CAROLE DICKSON,

Petitioner,

Final Order No. DMS – 18-0006

v.

DMS Case No. 15-31303

DOAH Case No. 16-1724

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF STATE
GROUP INSURANCE,

Respondent.

FINAL ORDER

THIS MATTER has come before the undersigned for the purpose of issuing a Final Order, in accordance with Section 120.569(1), Florida Statutes. On August 17, 2016, Administrative Law Judge William F. Quattlebaum issued a Recommended Order recommending that the Department of Management Services, Division of State Group Insurance (Respondent), enter a final order granting the Petitioner reimbursement for durable medical equipment costs as set forth in the Recommended Order, and otherwise denying Petitioner's claims for reimbursement. Respondent filed two exceptions to the Recommended Order. Petitioner did not file any exceptions to the Recommended Order.

RULING ON EXCEPTIONS

Standard of Review: A Final Order shall include an explicit ruling on each exception. *See* § 120.57(1)(k), Fla. Stat. An agency may not reject or modify an ALJ's findings of fact unless the agency first determines after a review of the entire record that the findings were not supported by competent substantial evidence. *See* § 120.57(1)(l), Fla. Stat. The agency may reject or modify an ALJ's conclusions of law over which it has jurisdiction, but if it does so, it must state with

particularity why it is doing so and why its conclusion is more reasonable than that in the recommended order. *See id.*

Respondent's Exception 1.

Respondent takes exception to paragraphs 43 and 46 of the ALJ's Findings of Fact, wherein the ALJ uses the term "applicable policy limits" to specify the amounts that Petitioner should be reimbursed for "the wheelchair charge" (paragraph 43) and "the related oxygen charge" (paragraph 46). Respondent argues that this term is unclear and not supported by competent substantial evidence. Respondent does not take issue with the ALJ's finding that Respondent should be reimbursed, but argues that the Summary of Benefits in the State Employees' PPO Plan dictates the reimbursement amount, rather than "applicable policy limits."

In paragraph 4 of his Findings of Fact, the ALJ finds: "The insurance benefits available under the Plan are set forth in the 'Plan Booklet and Benefits Document'..." Respondent is correct that the definitions in the Plan Document do not include "applicable policy limits," but do set forth a Summary of Benefits in Section 1, found on pages 1-1 through 1-7. Since the record does not contain competent substantial evidence to support the phrase "applicable policy limits," the Summary of Benefits calculations set forth in Section 1 of the Plan Document should be employed.

On page 1-2 of the Summary of Benefits found in Section 1 of the Plan Document, the amount of reimbursement set forth for Durable Medical Equipment supplied by a non-network provider is "60% of Allowed Amt after [Calendar Year Deductible]." The only competent substantial evidence in the record performing this calculation with respect to the durable medical equipment claims at issue is found in Respondent's Exhibit 8, which sets forth reimbursement amounts of \$117.17 for the reclining wheelchair and \$51.63 for the related oxygen equipment. As set forth in the discussion of Respondent's exception number 2 below, the ALJ's Recommendation

recommends reimbursement as set forth “herein,” but never makes a Finding of Fact as to a specific amount. These reimbursement amounts should therefore be set forth in the Findings of Fact in the Recommended Order

Respondent’s Exception number 1 is sustained. The relevant section of paragraph 43 of the Findings of Fact is amended to read: “The Respondent has stipulated to reimbursing the wheelchair charge according to the ‘Summary of Benefits’ schedule set forth in the Plan Document. The reimbursement amount according to the Summary of Benefits schedule for the wheelchair charge is one-hundred seventeen dollars and seventeen cents (\$117.17).”

The relevant section of paragraph 46 of the Findings of Fact is amended to read: “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 ‘Summary of Benefits’ schedule set forth in the Plan Document. The reimbursement amount according to the Summary of Benefits schedule for the related oxygen charge is fifty-one dollars and sixty-three cents (\$51.63).”

Respondent’s Exception 2.

Respondent takes exception with the ALJ’s Recommendation in that it recommends “reimbursing the Petitioner for durable medical equipment costs referenced herein,” but does not set forth a specific amount that must be reimbursed. Respondent further argues that the ALJ’s Recommendation is ambiguous taking into account the ALJ’s use of the undefined term “applicable policy limits” set forth in paragraphs 43 and 46, as argued in Exception number 1, above.

Respondent's Exception number 2 is sustained. Paragraphs 43 and 46 will be amended as set forth above to include specific Findings of Fact to support the ALJ's Recommendation of reimbursement for the durable medical equipment claims.

FINDINGS OF FACT

With incorporation of the amendments to paragraphs 43 and 46 as set forth herein, Respondent hereby adopts the Findings of Fact contained in the Recommended Order as its findings in this Final Order.

CONCLUSIONS OF LAW

The Respondent hereby adopts the Conclusions of Law contained in the Recommended Order as its conclusions in this Final Order.

ORDERED AND ADJUDGED:

1. The Recommended Order issued in this case is adopted as described herein and is incorporated herein by reference.

2. Based upon the Findings of Fact and Conclusions of Law contained in the Recommended Order and adopted by the Respondent in this Final Order, Petitioner Carole Dickson's request under the State Employees' Preferred Provider Organization insurance plan for reimbursement for the durable medical equipment costs of a reclining wheelchair and related oxygen equipment is **GRANTED** and the Department of Management Services, Division of State Group Insurance shall reimburse Petitioner the total of one-hundred sixty-eight dollars and eighty cents (\$168.80). Petitioner's additional claims for reimbursement are otherwise **DENIED**.

3. This final order shall become effective on the date of filing with the agency clerk of the Respondent.

DONE and ORDERED on this 3 day of January, 2018.



ERIN ROCK, Secretary
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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, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes.

Certificate of Clerk:

Filed in the Office of the Agency
Clerk of the Department of Management
Services on this 3RD day of
JANUARY, 2018.
Celyna Southall
Agency Clerk Deputy Clerk