STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MONICA CRONIN,

Petitioner,

vs. Case No. 16-2182

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF STATE
GROUP INSURANCE,

Respondent.
_______________________________/

RECOMMENDED ORDER

This case was heard before Administrative Law Judge Robert L. Kilbride of the Division of Administrative Hearings, via video teleconference on June 15, 2016, with sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Monica T. Cronin, Esquire, pro se
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For Respondent: Brittany B. Griffith, Esquire
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STATEMENT OF THE ISSUE

The threshold issue in the case is whether Respondent's denial of Petitioner's Level II appeal concerning partial

hospitalization coverage ("PHP") for her daughter, M.S., should be upheld.

PRELIMINARY STATEMENT

On December 11, 2015, New Directions, which manages behavioral health care services on behalf of Florida Blue, sent the patient, M.S. ("the patient" or "M.S."), a letter notifying her of its decision to deny continued payment or treatment for her at the partial hospitalization level of care.

Nonetheless, the patient and her family chose to have her continue at the partial hospitalization level of care from December 11, 2015, through approximately February 9, 2016.

Petitioner's insurer, Florida Blue, subsequently denied payment of the partial hospitalization coverage expenses incurred by Petitioner for M.S. from December 11, 2015, through February 9, 2016.

Petitioner appealed this denial to Respondent by filing a Level II appeal.

By letter dated February 9, 2016, Respondent notified Petitioner that after reviewing the matter, her Level II appeal was denied. Petitioner thereafter filed a request for a formal administrative hearing.

As requested, Respondent submitted the dispute to the Division of Administrative Hearings on April 19, 2016, which

conducted a final hearing before the undersigned Administrative Law Judge on June 15, 2016.

During the hearing, Petitioner testified on her own behalf. Respondent presented the live testimony of several witnesses: Dr. John Emerick, Kathy Flippo, Jessica Bonin, and Tarra Adams.

Exhibits 1 through 21 were offered by Respondent. All these exhibits, with the exception of 7 and 21, were admitted by stipulation. (Petitioner objected to Respondent's Exhibits 7 and 21, and they were not admitted.) Petitioner offered Exhibits 1 and 2, both of which were admitted.

A Transcript of the hearing was filed on July 21, 2016. Petitioner and Respondent filed proposed recommended orders, which were reviewed and considered in the preparation of this Recommended Order.

References to Florida Statutes are to the 2015 version, unless otherwise indicated.

FINDINGS OF FACT

The undersigned makes the following findings of material, relevant, and probative facts:

Findings of Fact From Parties' Pre-hearing Stipulation of Fact and Law Filed June 14, 2016

1. On December 11, 2015, New Directions sent the patient a letter.

2. New Directions is Florida Blue's subcontractor and third party administrator for the purpose of mental health coverage reviews and authorizations.

3. The patient continued at the partial hospitalization level of care after December 11, 2015.

4. At some time between December 11, 2015, and December 16, 2015, Petitioner, Monica Cronin, submitted a Level I appeal.

5. On January 13, 2014, Ms. Cronin filed a timely Level II appeal.

6. At all times material hereto, the patient was subject to either the 2015 or 2016 State Employees' PPO Plan documents.

7. On March 3, 2016, Respondent, Department of Management Services, Division of State Group Insurance, received a timely request for a formal hearing and request for external review by an independent review organization ("IRO") from Petitioner.

8. At all times material hereto, the "medical necessity" determination was subject to the 2015 or 2016 Medical Necessity Criteria from New Directions.

9. At all times material hereto, the patient and Petitioner were members of the State Employees' PPO Plan.

10. Respondent is the state agency charged with administering the state employee health insurance program pursuant to section 110.123, Florida Statutes.

Findings of Fact From Hearing

11. Petitioner is a State of Florida employee and was insured through the State of Florida. The patient, M.S., is Petitioner's adult child who was eligible for coverage under Petitioner's health insurance.

12. As general background, M.S. suffers from an eating disorder commonly known as anorexia nervosa with comorbid depression and anxiety. Pet. Ex. 2. During the relevant time period, M.S. was approximately 21 years of age.

13. From approximately September 24, 2015, through November 24, 2015, M.S. was admitted and involved in residential, in-patient treatment at the Oliver Pyatt Center for her eating disorder. This residential inpatient treatment was approved and covered by Florida Blue for that period of time.

14. However, in a letter dated November 24, 2015, New Directions informed the patient that continuation of her "Residential Care--Psych (1001)" was not medically necessary and would be discontinued. This determination was made, in part, based on the review and evaluation of her medical records by Dr. Lawrence Erlich, a board-certified psychiatrist employed by an IRO. Resp. Ex. 4, p. 6 of 29.

15. Shortly thereafter, however, New Directions changed its position and approved M.S. for a "step down" or reduced level of care described as PHP through December 11, 2015.[1/]

16. PHP was authorized for this limited period of time because, although the patient's vital signs were stable and the patient had started to participate in group therapy, there were still family concerns and some non-compliance with treatment. Additionally, New Directions wanted to make sure that the patient was able to portion at least some of her food and continue to show stability. Resp. Ex. 9, p. 131.

17. Dr. John Emerick testified on behalf of Respondent to explain his involvement and medical opinion concerning the patient's diagnosis, treatment, prognosis, and issues raised by Petitioner's appeals--namely, the medical necessity of continued PHP for M.S. after December 11, 2015.

18. Dr. Emerick is a licensed medical doctor in the state of Florida. He specializes and is board-certified in general psychiatry by the American Board of Psychiatry and Neurology. Petitioner stipulated that Dr. Emerick is an expert in the area of psychiatry.[2/]

19. Dr. Emerick has approximately 15 years in the field of "utilization management" and has been a medical director for New Directions since 2011.[3/] In his position as one of the senior medical directors at New Directions, Dr. Emerick oversees utilization management decisions for the Florida Blue account, which includes the State of Florida's State Employees' PPO Plan.

20. Since M.S.'s approval for PHP was for a limited period of time and a service request had been made, a review and evaluation of her need for continued PHP was undertaken by New Directions. This also included a referral and independent review by Dr. Michael Cesta, a board-certified psychiatrist employed by Prest and Associates Inc., an IRO.

21. Dr. Emerick testified that as of December 11, 2015, criteria 6 of the Eating Disorder Partial Hospitalization Continued Stay Criteria was not met. In his medical opinion, PHP was no longer necessary to treat the patient's symptoms as of December 11, 2015.

22. Dr. Emerick explained that an evaluation of criteria 6 cannot be based on one particular symptom, such as self-portioning or body weight, but must be based on "the overall complex symptomatology," which included a variety of different medical, health, and social factors.

23. Dr. Emerick testified that, on December 10, 2015, he relied upon a variety of factors to conclude that PHP was no longer medically necessary for M.S. The clinical information suggested that the patient was stable, "had continued to gain weight," and had made progress with self-feeding.

24. Furthermore, on December 10, 2015, the patient was at 99 percent of her ideal body weight.

25. On December 10, 2015, the patient was also "plating [the patient's] own food for snacks and breakfast" and had been self-portioning meals without losing weight since the end of the patient's residential treatment.

26. There was also a decrease in the patient's non-compliance with treatment as of December 10, 2015, that Dr. Emerick felt was important.

27. These conclusions and medical opinions by Dr. Emerick concerning M.S.'s mental and health condition as of December 11, 2015, were based on, and supported by, a series of findings and observations documented in New Directions' "Contact Notes" dated December 10 and 11, 2015. Resp. Ex. 9, p. 143.

28. More specifically, the Contact Notes (repeated verbatim) dated December 11, 2015, state the following details:

> Based on the available clinical information, Michael Cesta, M.D. has determined that the clinical information provided does not meet the NDBH Medical Necessity Criteria, Quality of Care Requirements, In the opinion of this reviewer, based on the New Directions Eating Disorder Partial Hospitalization Criteria-EDPH for the mental health/eating disorder partial hospitalization level of care, medical necessity would not be met as of 12/11/15, based on Continued Stay Criteria 5 and 6. The patient is 100% of her ideal body weight, is progressing appropriately, participating in treatment, compliant with her meal plan and stable. There is no indication the patient has laboratory abnormalities, EKG abnormalities, hemodynamic instability, or any other significant findings. The patient has a supportive home

> environment and there is no indication that the patient would deteriorate if monitored outside of 30-40 hours a week. The patient has progressed appropriately, clearly regained her weight, and the issues surrounding body image and urges to restrict will be present for an extended time frame and have to be addressed in a less restrictive setting of an outpatient environment. Informed Melanis NDBH is denying payment for cont stay at EDPH services beginning 12/10/15.

29. The Contact Notes dated December 10, 2015, state in pertinent part:

> Member completed 60 days at EDR and step-down to EDPH on 11/24/15, . . . IBW 99% no medical problems, vital [signs] normal, has improved psychiatrically, no more self-cutting behavior, no SI, no psychosis, is medication compliant, no behaviors that could prevent her from continuing TX [treatment] at LLOC[.][4/]

30. The denial of coverage by New Directions on December 11, 2015, for continued PHP commenced a series of appeals by Petitioner in an effort to secure continuation of the PHP coverage for her daughter.

31. Concomitantly, Petitioner's appeal triggered an additional review of M.S.'s mental health condition by other medical professionals, including two separate reviews by Prest and Associates Inc.

32. The renewed evaluation, concerning whether M.S. needed the PHP level of care after December 11, 2015, focused again on

whether or not PHP was "medically necessary" for her mental health and medical needs.

33. At this juncture, it is useful to review the terms and definitions applied by the medical professionals evaluating this question.

Applicable Plan Documents

34. The insurance plan and other relevant documents outlined the criteria and standards to determine whether a particular medical or mental health treatment was "medically necessary."

35. More specifically, several provisions from the following documents are pertinent:

I. State Employees' PPO Plan

> **Mental Health and Substance Dependency Services**
>
> Physician office visits, Intensive Outpatient Treatment, Inpatient and Partial Hospitalization and Residential Treatment Services are covered based on medical necessity.
>
> * * *
>
> **Section 15: Definitions**
>
> **Intensive Outpatient Treatment . . .** Treatment in which an individual receives at least three (3) clinical hours of institutional care per day (24-hour period) for at least three (3) days a week and returns home and/or is not treated as an inpatient during the remainder of that 24-hour period.

Medically necessary . . . services 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, prescription drug, or supply is prescribed by a Doctor does not necessarily mean that the service is Medically Necessary. Florida Blue, CVS/caremark, and DSGI determine whether a service, prescription drug, or supply is Medically Necessary.

* * *

Partial hospitalization . . . Treatment in which an individual receives at least six (6) clinical hours of institutional care per day (24-hour period) for at least five (5) days per week and returns home and/or is not treated as an inpatient during the remainder of the 24-hour period.[5/]

Resp. Ex. 1, pp. 26, 76-77.

II. New Directions, Medical Necessity Criteria 2015

Medical Necessity

New Directions defines "Medical Necessity" or Medically Necessary" as health care services rendered by a provider exercising prudent clinical judgment, which are:

A. Consistent with:

1. The evaluation, diagnosis, prevention, treatment or alleviation of symptoms of an illness, disease or injury defined by the current Diagnostic and Statistical Manual of Mental Disorders (DSM)[.]

2. Generally accepted standards of medical practice, as defined by credible scientific evidence published in peer-reviewed medical literature, which are generally recognized by the appropriate medical community, Physician Specialty Society recommendations and other relevant factors[.]

B. Clinically appropriate and designed to meet the individualized needs of the patient with regard to type, frequency, extent, site and duration of services[.]

C. Reasonably expected to improve symptoms associated with the patient's illness, disease, injury or deficits in functioning[.]

D. Provided at the least restrictive and most clinically appropriate service or level of care to safely, effectively, and efficiently meet the needs of the patient[.]

E. Required for reasons other than the convenience of the patient, family/support system, physician or other health care provider[.]

F. Not a substitute for non-treatment services addressing environmental factors[.]

G. Not more costly than an alternative service or services, which are at least as likely to produce equivalent diagnostic or therapeutic results for the patient's illness, disease or injury[.]

* * *

Eating Disorder Partial Hospitalization Criteria

* * *

Continued Stay Criteria **EDPH**[6/]

Must meet all of the following:

* * *

5. There is documentation of member progress towards treatment goals. If the member is not progressing appropriately or if the member's condition has worsened, evidence of active, timely reevaluation and change of the treatment plan to address the current needs and stabilize the symptoms necessitating the admission.

6. Despite intensive therapeutic efforts, this level of care is necessary to treat the intensity, frequency and duration of current behaviors and symptoms.

Resp. Ex. 10, pp. 4, 44-45.

36. Based on the more persuasive and compelling evidence at the hearing, the factual dispute centered on whether or not criteria 6 was satisfied, and whether, despite intensive therapeutic efforts, M.S. needed PHP to treat the intensity, frequency, and duration of her current behaviors and symptoms.

37. As previously mentioned, as a part of the appeal process pursued by Petitioner, several medical professionals were called to review the initial determination by New Directions that PHP was not medically necessary for the patient.

38. Prest and Associates Inc. is an IRO that provides physician review services. Dr. Michael Cesta performed an independent "non-appeal" review of the patient's clinical information for Prest and Associates Inc. Resp. Ex. 13.

39. Dr. Cesta found in his comprehensive Review Report dated December 11, 2015, that medical necessity was not met for the PHP level of care for M.S. Resp. Ex. 13, p. 18.

40. In support of this conclusion, Dr. Cesta found that, as of December 11, 2015, the patient was at 100 percent of the patient's ideal body weight, was appropriately eating the patient's meal plan, had no abnormalities in labs or vitals, and was medically stable. Resp. Ex. 13, p. 18. Additionally, the patient had a supportive family, was attending meetings and groups, and was participating in treatment. Resp. Ex. 13, p. 18.

41. Shortly thereafter, Dr. Lawrence Erlich, another independent reviewer for Prest and Associates Inc., conducted a separate, "expedited appeal" review. In his December 15, 2015, Review Report, he also concluded that PHP should be denied for

similar reasons as stated in Dr. Cesta's report. Resp. Ex. 14, pp. 2-3.

42. Dr. Emerick agreed with Dr. Cesta's and Dr. Erlich's findings and relied upon them in making his determination that M.S. did not qualify for coverage for PHP.

43. The denial for PHP was also upheld by another doctor at New Directions. On April 13, 2016, as a part of the standard appeal after discharge, Dr. Randy Rummler also concluded that PHP was not medically necessary. Resp. Ex. 9, pp. 157-159.

44. At Petitioner's request and as permitted by the plan documents, an external review by another independent medical organization was also completed in this case.[7/]

45. In a report dated April 6, 2016, the external reviewer, Medical Consultant's Network ("MCN"), also upheld Respondent's decision to deny coverage of the patient's PHP after December 11, 2015. Pet. Ex. 2.[8/]

46. MCN's report stated, in relevant part:

> This request is not recommended for approval, given the information provided, as it is noted that on 12/11/15, she had no type of objectively noted behavioral problems due her [sic] ED or any MH problems, nor did she have any type of ED/medical problems, that would have needed, for any reasons, continued 24 hour care, supervision, observation, management or containment. On 02/08/16, it is noted that the treatment team has not provided any clinical information indicating the objective medical need for this request

> and therefore it is not recommended for approval.

Pet. Ex. 2, p. 2.

47. Upon a Level II appeal to Respondent, Kathy Flippo, a licensed nurse in the state of Florida, reviewed the claim at issue on behalf of Respondent.

48. Ms. Flippo noted that the patient had achieved the patient's normal body weight, was stable physically and mentally, had normal vital signs, had improved psychiatrically, had no more self-cutting behavior, and "no behaviors that would prevent [the patient] from continuing treatment at [a] lower level of care." Based on these findings, Ms. Flippo found that criteria 6 of the Eating Disorder Partial Hospitalization Continued Stay Criteria was not met.

49. Based on the definitions of Intensive Outpatient Treatment ("IOP") and PHP care found in the State Employees' PPO Plan document, both methods of treatment involve clinical hours of institutional care at the facility. The primary difference between the two programs is that there are more hours and days per week with PHP (six hours a day/five days a week) versus IOP (three plus hours a day/three days a week).

50. Based on the benefit structure of Petitioner's insurance plan, pre-authorization for IOP for M.S. was not required. As a result, Petitioner could have sought IOP

Treatment for M.S. between December 11, 2015, and February 9, 2016; submitted those claims; and had them paid.

51. With substantial changes to their work and family schedules, Petitioner and her family would have been capable of utilizing IOP Treatment.

52. Likewise, based on the totality of the persuasive testimonial and documentary evidence presented, as well as the medical opinions of several medical doctors and psychiatrists, M.S. would have been able to participate in and benefit from IOP Treatment.

53. Nonetheless, Petitioner decided to keep M.S. in PHP at her own expense to ensure, in her mind, her daughter's physical safety, since Petitioner felt M.S. was incapable of caring for herself.

54. In addition, the family decided to keep M.S. in the PHP program based on the medical advice of the health care providers at the Oliver Pyatt Center.

55. The undisputed evidence revealed that the cost of PHP per day at the Oliver Pyatt Center was $800.00, and the cost of IOP Treatment per day was $300.00.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

57. Section 110.123(5), titled "State Group Insurance Plan," outlines the powers and duties of Respondent. The statute assigns responsibility and grants authority to Respondent to render final decisions on matters of enrollment, the existence of coverage, or covered benefits under the State Group Insurance Plan.

58. The crux of the issue in this case is whether PHP was medically necessary for Petitioner's daughter's eating disorder after December 11, 2015.

59. Absent a different statutory standard, 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). The general rule applies to this case.

60. Here, as the party asserting the right to payment of her coverage claim under the plan, Petitioner had the initial burden of demonstrating by a preponderance of the evidence that PHP for her daughter's condition was covered under the plan.[9/]

61. If applicable, the burden then shifts to Respondent to establish that Petitioner's claim for PHP is excluded from coverage under some term 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).

62. As a legal backdrop, it is useful to outline several principles of contract law which may apply. Insurance contracts are to be construed in accordance with the plain language of the policy, with any ambiguity construed against the insurance company, and in favor of coverage. U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871, 877 (Fla. 2007); Kohl v. Blue Cross & Blue Shield of Fla., Inc., 988 So. 2d 654 (Fla. 4th DCA 2008).

63. Insurance policy exclusionary clauses that are ambiguous or otherwise susceptible of more than one meaning must be liberally construed in favor of the covered employee and strictly against the insurance company. State Farm Mut. Auto Ins. Co. v. Pridgen, 498 So. 2d 1245 (Fla. 1986); Harnett v. Southern Ins. Co., 181 So. 2d 524 (Fla. 1965).

64. Ambiguity is not necessarily present in an insurance policy or plan simply because an analysis is required to interpret or understand the policy. Ambiguity exists in an insurance policy when its terms make the policy subject to different reasonable interpretations, one for coverage and one for exclusion. Traveler's Ins. Co. v. Gayfer's & Co., Inc., 366 So. 2d 1199 (Fla. 1st DCA 1979); Blue Shield of Fla., Inc. v. Woodlief, 359 So. 2d 883 (Fla. 1st DCA 1978).

65. In this case, no material arguments have been raised or advanced by either party that any of the applicable terms or definitions are ambiguous or susceptible of different interpretations. The undersigned agrees.

66. Rather, the central issue is a factual one. Whether the evidence adduced at the hearing proves that continued PHP was required as a "medical necessity" for M.S.'s condition as of December 11, 2105? More specifically, despite intensive therapeutic efforts, was this level of care necessary to treat the intensity, frequency, and duration of M.S.'s current behaviors and symptoms?

67. In this case, after carefully reviewing and weighing all the evidence, Petitioner has not established by a preponderance of the evidence that (1) her claim for PHP qualified for coverage or that (2) PHP was medically necessary for M.S. as of December 11, 2015.

68. More particularly, despite presenting in September 2015 with stark and debilitating symptoms of her eating disorder, M.S. made remarkable and well-documented progress over the next several months.

69. Her progression of recovery from her eating disorder was consistent and steady. The destructive behaviors associated with her eating disorder that plagued M.S., in September 2015, were markedly alleviated and reduced by December 11, 2015.

70. M.S. had progressed from residential inpatient therapy to PHP. She was ready, in the medical opinions of several doctors and psychiatrists, for a reduced level of care. PHP was no longer medically necessary. Dr. Emerick aptly summed up M.S.'s progress by characterizing it as "a little atypical, which is she has really done pretty well."

71. To conclude that PHP was medically necessary for M.S. after December 11, 2015, would require the undersigned to ignore an overwhelming, and essentially undisputed, amount of medical and psychiatric evidence which concluded otherwise.

72. In the absence of any credible and persuasive medical evidence to support the medical necessity of continued PHP after December 11, 2015, the uniform and consistent conclusions of several medical doctors and psychiatrists, carry the day.

73. There were no less than five well-informed mental health professionals who concluded that PHP was not medically necessary. They included Drs. Emerick, Cesta, Erlich, and Rummler and a registered nurse, Ms. Flippo. This conclusion was also supported by MCN, an IRO.

74. Further, the concept of medical necessity for a certain type of treatment resulting in coverage by the insurance plan should not be confused with the distinctly different concept of following the medical advice, preference, or direction of your doctor. Stated differently, "the fact that a service,

prescription drug, or supply is prescribed by a doctor does not necessarily mean that the service is medically necessary. Florida Blue, CVS\Caremark, and DSGI determine whether a service, prescription drug, or supply is medically necessary." See Resp. Ex. 1, definition of medical necessity, p. 76.

75. This is also explained in New Directions Medical Necessity Criteria 2015. The pamphlet explains "New Directions makes determinations of medical necessity for benefit determination purposes only. The treating provider, in collaboration with the member, is responsible for any treatment decisions regarding the initiation or continuation of a specific service." Resp. Ex. 10, p. 5.

76. Despite Petitioner's decision to keep M.S. in PHP, it is inexplicable that the medical professionals at New Directions did not actively encourage Petitioner to utilize IOP Treatment for M.S.[10/]

77. Based on the evidence presented and the normal progression of therapy for this type of eating disorder, the undersigned finds that IOP Treatment would have been a logical choice and the most appropriate mental health course of action immediately after December 11, 2015.

78. Under these unique and compelling facts, the undersigned concludes that an appropriate recommendation to Respondent is twofold: (1) The agency's decision to deny the

Level II appeal should be upheld; and (2) Petitioner should recover and be reimbursed for the daily, out-of-pocket cost of what IOP Treatment from December 11, 2015, through February 8, 2016, would have cost her.[11/]

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 Level II appeal and also directing that Petitioner be reimbursed for what the daily, out-of-pocket cost to her of Intensive Outpatient Treatment for M.S. would have been for those services from December 11, 2015, through February 8, 2016.

DONE AND ENTERED this 18th day of August, 2016, in Tallahassee, Leon County, Florida.

ROBERT L. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of August, 2016.

ENDNOTES

[1/] On November 25, 2015, New Directions authorized the patient to receive ten days of treatment at the PHP level of care. Resp. Ex. 9, p. 122. On December 4, 2015, New Directions approved seven additional days of PHP for the patient because New Directions wanted to make sure the patient was stable enough to move down to a lower level of care.

[2/] Petitioner noted, however, that she did not stipulate that he is "independent."

[3/] "Utilization management" involves making determinations as to whether clinical information presented allows for the approval of requested services, applying and using the medical necessity criteria. See also Resp. Ex. 12.

[4/] The evidence revealed that throughout her stay at Oliver Pyatt Center, M.S. had a team of medical professionals, including psychiatrists, treating her and monitoring her progress. These detailed progress or Contact Notes were kept over a series of several months.

[5/] This was the level of care sought by Petitioner for M.S. after December 11, 2015.

[6/] Since M.S. had been admitted to the PHP program for limited days in November and December 2015, and her continued stay in the PHP program was under evaluation, criteria 5 and 6 in this section were the focus of consideration by the medical professionals reviewing Petitioner's request.

[7/] An external review is conducted by an independent reviewer who is board-certified in the field at question. The external reviewer decides whether an appeal should be upheld and the prior decision overturned. If the external review organization determines that an appeal should be granted and overturned, that decision is binding on the plan, which means the plan must pay for the services in question.

[8/] Although the reviewer's name is not clear from the record, the review by MCN was conducted by a "board certified psychiatrist."

[9/] The proper analysis in this case also includes the question of whether PHP was "medically necessary" for her daughter based on her diagnosis and condition.

[10] It would hardly be fair to characterize Petitioner's decision to keep M.S. in PHP as "voluntary," in light of her understandable concern for M.S., particularly when the undisputed evidence showed that the psychiatric team at Oliver Pyatt Center had recommended that M.S. remain in PHP. It would be more accurate to characterize Petitioner's decision to keep M.S. in PHP as compelled by the circumstances of her daughter's condition on December 11, 2015. However, this is not the test or the standard the undersigned is charged to use.

[11] This recommendation is supported by evidence revealing that IOP Treatment was the next step after PHP and appeared to be supported by the medical staff at New Directions.

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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.