



STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION  
OFFICE OF FAIR HEARINGS

FILED

Jun 30, 2023, 11:19 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0766

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 1, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner/Petitioner's Authorized Representative

For the Respondent:

Michael Moens  
Grievance and Appeals Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for surgery ([REDACTED]) was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

Michael Moens (“Mr. Moens”), Grievance and Appeals Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Anne Brady (“Dr. Brady”), Medical Director for Humana, attended as a witness for Respondent.

Dr. Srujan Gaddam, Medical Director for Humana, appeared as an observer. Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and nineteen (219)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “Evidence Packet.pdf”. Absent an objection from the Petitioner undersigned admitted the two hundred and nineteen (219)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana MMA plan. See RCE 1 at page 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] ([REDACTED]-years old. As of [REDACTED], Petitioner weighs [REDACTED] pounds, is [REDACTED] tall, and has a [REDACTED] (“[REDACTED]”) of [REDACTED]. *Id.* at 29. Petitioner takes no prescribed or over-the-counter medications. *Id.* at 28. Petitioner’s medical history includes [REDACTED]. *Id.* at 28 – 29.

3. Petitioner requested a Surgery procedure ( [REDACTED] ) for [REDACTED]. Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD") dated February 10, 2023. *Id.* at 8 – 12. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule 59G-1.010*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;  
*(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)*

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

The facts that we used to make our decision are: We received a request for your child to have a [REDACTED] ( [REDACTED] ) for [REDACTED] [REDACTED] on [REDACTED]. The medical records provided by your child's doctor were reviewed and did not show that it is medically necessary for [REDACTED] to have a [REDACTED] for [REDACTED]. Your child's medical records show that [REDACTED] has [REDACTED].

In order for a [REDACTED] for [REDACTED] to be approved, your child would need all of the following:

- Documentation that your child is unable to perform activities of daily living such as bathing and dressing because of pain, skin irritation that has been going on consistently for a longtime, or emotional problems being caused

by [REDACTED] that require your child to have therapy by a mental health provider

- Documentation that your child has had [REDACTED] for more than 2 years

Your child's medical records have been reviewed. Your child's medical records do not show documentation that your child has had [REDACTED] for more than 2 years. The medical records received do not support that it is medically necessary for your child to have a [REDACTED] for [REDACTED]. Please discuss this letter with your child's doctor to help get [REDACTED] the care that [REDACTED] needs.

This decision was made by a Humana physician based on:

- The definition of medical necessity as defined in Chapter 59G-1.010 (2.83) Florida Administrative Code
- MCG care guidelines, 26th Edition – [REDACTED] ACG: A-0273 (AC)

...

*Id.* at 8 – 9.

4. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated March 21, 2023, upholding the denial. *Id.* at 18 – 20. The NPAR explained as follows:

The reason for the decision was based on the information received. You have request that we approve a [REDACTED] ([REDACTED]) for [REDACTED] ([REDACTED]) on [REDACTED] for your child. We have reviewed your child's medical records and/or the records in your system. For us to approve a [REDACTED] for [REDACTED] for your child, we would need to see all of the following:

- Documentation that your child is unable to perform activities of daily living such as bathing and dressing because of pain, skin irritation that has been going on consistently for a long time, or emotional problems being caused by [REDACTED] that require your child to have therapy by a mental health provider.
- Documentation that your child has had [REDACTED] for more than 2 years

Your child's medical records have been reviewed. The medical records do not show that your child has had [REDACTED] for more than 2 years or that [REDACTED] is unable to perform activities of daily living because of pain. The medical records received do not support that it is medically necessary for your child to have a

██████████ for ██████████ Please discuss this letter with your child’s doctor to help get the care that ██████████ needs.

This decision was made by a Humana physician based on:

- The definition of medical necessity as defined in Chapter 59G-1.010 (2.83) Florida Administrative Code
- MCG care guidelines, 26th Edition – ██████████ for ██████████ ACG: A-0273 (AC)

...

*Id.* at 18 – 19.

5. On April 6, 2023, Petitioner requested a Fair Hearing to challenge the denial of surgery.

On April 28, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 30, 2023, at 1:00 p.m. EST. On May 31, 2023, the undersigned issued an Order Granting Continuance of the May 30, 2023, Fair Hearing and issued a Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 1, 2023, at 1:00 p.m. EST.

6. ██████████ testified to the following:

- a. ██████████ argues that Petitioner has had this condition since ██████████ when the first surgery request was made. ██████████ believes the underlying cause of the condition is hereditary from Petitioner’s ██████████ ██████████ has two other ██████████ who were previously diagnosed with this condition and approved for this surgery procedure.
- b. To address the childhood ██████████ concern, Petitioner’s ██████████ have changed. Petitioner is very ██████████ and plays basketball and football.
- c. This condition affects Petitioner physically and socially in that ██████████ is self-conscious of ██████████ body image, and it affects ██████████ self-confidence. The summary of the last visit with the surgeon, ██████████, outlined Petitioner’s conditions which

include [REDACTED] and [REDACTED]. See RCE 1 at page 36. [REDACTED] asserts that Petitioner is constantly [REDACTED] which [REDACTED]. Petitioner has not been evaluated by a therapist or mental health expert due to this condition. Petitioner has not had physical therapy to correct [REDACTED] posture.

7. Dr. Brady testified to the following:

- a. Dr. Brady reviewed this request along with a board-certified pediatrician, Dr. Lorena Aliaga Deza, to determine whether it was medically necessary. Petitioner is a [REDACTED] [REDACTED] child. Based on the photos and documentation provided, Petitioner's condition is not such that would cause [REDACTED] and [REDACTED] and [REDACTED] [REDACTED].
- b. Dr. Brady contends that the underlying reason for this condition is [REDACTED] [REDACTED] which should be addressed first before Petitioner undergoes surgery. [REDACTED] would pose a high risk of recurrence of [REDACTED] as Petitioner's medical records were negative for genetic factors.
- c. It is very likely to have psychological distress from this condition, but the medical necessity of this [REDACTED] procedure does not outweigh the risks of surgery, complications with anesthesia, infection, and long-term effects.

#### **CONCLUSIONS OF LAW**

8. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

9. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

10. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

11. Petitioner’s request for a mastectomy procedure is governed by the MCG care guidelines, Ambulatory Care (26th Edition) – Mastectomy for ██████████ ACG: A-0273 (AC) (“Ambulatory Care”). Ambulatory Care provides the following:

**Clinical Indications for Procedure**

- Mastectomy for gynecomastia may be indicated for 1 or more of the following (1)(2)(3):
  - Postpubertal male and ALL of the following (6)(7)(8)(9):
    - Functional impairment (e.g., chronic skin irritation, pain, related psychological disorder requiring therapy) (11)
    - Gynecomastia did not regress after cessation of medications (e.g., calcium channel blockers, cimetidine, phenothiazines, spironolactone, theophylline) known to cause condition, medications cannot be discontinued, or no medications that induce gynecomastia are being used.
    - No evidence of breast cancer<sup>(A)</sup>(3)(12)
    - No evidence of other medical causes for gynecomastia, as indicated by normal results for ALL of the following (13):
      - Hormone evaluation (i.e., testosterone, luteinizing hormone, follicle-stimulating hormone, estradiol, prolactin, beta-human chorionic gonadotropin)
      - Liver enzymes
      - Serum creatinine
      - Thyroid function tests
  - Pubertal male and ALL of the following (4)(5)(14)(15):
    - Functional impairment (e.g., chronic skin irritation, pain, related psychological disorder requiring therapy)
    - Gynecomastia present for 2 or more years

**Alternatives to Procedure**

- Alternatives include (3):
  - For postpubertal male: evaluation for underlying endocrine disorder (e.g., adrenocortical tumor, congenital adrenal hyperplasia, testicular failure, Klinefelter syndrome) or withdrawal of causative agents (e.g., anabolic steroids, cannabis)
  - For prepubertal male: evaluation for underlying endocrine disorder in patients with abnormal phenotype or hypogonadism

## Evidence Summary

...

### Criteria

For postpubertal males, evidence demonstrates a net benefit, but of less than moderate certainty, and may consist of a consensus opinion of experts, case studies, and common standard care. **(RG A2)** Postpubertal male patients with gynecomastia are treated by withdrawing medications known to cause the condition, by diagnosing and managing hormonal abnormalities, or by treating the underlying systemic disease; most patients are treated with watchful waiting. Surgery is reserved for failure of nonoperative treatment. (3) **(EG 2)** Any breast mass suspicious for malignancy should be biopsied prior to consideration of mastectomy for gynecomastia. (3)(10) **(EG 2)**

For pubertal males, evidence demonstrates a net benefit, but of less than moderate certainty, and may consist of a consensus opinion of experts, case studies, and common standard care. **(RG A2)** A 3-year study of 377 boys age 1 to 15 years demonstrated that the prevalence of gynecomastia was 48.5%; the majority of cases spontaneously resolved by age 18 years.(16) **(EG 2)** A study of 219 boys with adolescent gynecomastia reported that all patients regressed spontaneously in 3 to 27 months.(14) **(EG 2)** An observational study of 196 males with pubertal onset gynecomastia found that 7% of the patients had an underlying cause (e.g., anabolic steroid use, karyotype abnormality) identified during the evaluation.(17) **(EG 2)**

...

*Id.* at 46 – 47.

12. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

13. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d).

14. Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

15. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care,

goods or services medically necessary or a medical necessity or a covered service.

16. Petitioner requested a surgery procedure ( [REDACTED] ) for [REDACTED]. See ¶ 3. In the NABD, Respondent denied Petitioner's request for surgery citing the lack of medical necessity. See ¶ 3. Specifically, *supra*, Respondent explained that Petitioner's medical records do not show the presence of [REDACTED] for more than 2 years and that [REDACTED] "is unable to perform activities of daily living because of pain" or "emotional problems being caused by [REDACTED] that require...therapy by a mental health provider." As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect.

17. The Definitions Policy requires that medically necessary services be "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs" and "reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide." See ¶ 15. According to Ambulatory Care, the clinical indications for [REDACTED] for [REDACTED] in a [REDACTED] requires a functional impairment (e.g., chronic skin irritation, pain, related psychological disorder requiring therapy) and [REDACTED] present for 2 or more years. See ¶ 11.

18. In the instant case, Petitioner is [REDACTED] ([REDACTED]-[REDACTED]) old. See ¶ 2. Petitioner's medical history includes [REDACTED] [REDACTED]. See ¶ 2. Dr. Brady testified at Fair Hearing that the request for the [REDACTED] procedure and the submitted photos and medical records were reviewed by medical professionals including Dr. Brady and Dr. Lorena Aliaga Deza. See ¶ 7. Respondent used the Definitions Policy and Ambulatory Care guidelines in making their decision whether the request for a [REDACTED] was

medically necessary. See ¶ 3 – 4, 7. The request was denied after determining that the required conditions and medical necessity were not met. See ¶ 3 – 4, 7.

19. At Fair Hearing, ██████████ argued that Petitioner has had this condition since ██████████ when the first surgery request was made. See ¶ 6. ██████████ testified that ██████████ believes the underlying cause of the condition is hereditary from Petitioner's ██████████ as ██████████ has ██████████ who were previously diagnosed with this condition. See ¶ 6. Dr. Brady testified that Petitioner's medical records were negative for genetic factors. See ¶ 7. The evidence record in this case does not include any medical records in ██████████ or a surgery request made in ██████████ that specifically supports a diagnosis of ██████████ at or before that time. Since ██████████ is not a medical doctor or other qualified medical professional and Dr. Brady provided contrary testimony, absent the appropriate documentation, the undersigned cannot find that ██████████ existed prior to the commencement of this denial of surgery.

20. The record along with ██████████ testimony reflect Petitioner's symptoms include ██████████. See ¶ 6. ██████████ also testified that Petitioner has experienced psychological distress, although ██████████ has not been evaluated by a therapist or mental health expert due to this condition. See ¶ 6. Petitioner did not introduce any evidence to demonstrate that Petitioner has suffered from functional impairments in performing ██████████ activities of daily living due to the pain. See ¶ 6. Dr. Brady provided opposing testimony indicating that based on the photos and documentation provided, Petitioner's condition is not such that would cause ██████████ and ██████████ and ██████████. See ¶ 7. Although ██████████ provided credible testimony of Petitioner's psychosocial distress from having this condition, as agreed by Dr. Brady's testimony, the record does not appear to sufficiently demonstrate the Ambulatory Care

requirement that a functional impairment be met. As such, Petitioner has not satisfied the required conditions for [REDACTED].


21. Further, Dr. Brady provided persuasive testimony that the medical necessity of this [REDACTED] procedure does not outweigh the several risks of surgery. See ¶ 7. Dr. Brady contends that the underlying cause of the condition is [REDACTED] and/or [REDACTED] [REDACTED] related factors which should be addressed first before Petitioner undergoes surgery. See ¶ 7. Petitioner has not had physical therapy to correct [REDACTED] posture. See ¶ 6. [REDACTED] presented testimony that Petitioner has tried alternative treatments to address the [REDACTED] [REDACTED] concern by changing [REDACTED] [REDACTED] and being [REDACTED]. See ¶ 6. The record lacks support of these changes and how they are effectively diminishing the presence of [REDACTED] [REDACTED] and its related risk factors. As such, the undersigned finds that there exists equally effective and more conservative or less costly treatment to address Petitioner's [REDACTED] symptoms rather than a [REDACTED] procedure. Therefore, Petitioner did not demonstrate that the request for this [REDACTED] procedure is medically necessary at this time.

19. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of surgery ([REDACTED]) was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's denial of surgery (mastectomy) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of surgery (mastectomy) is **DENIED**.

**DONE AND ORDERED** this 30th day of June, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
23-FH0766  
2023.06.30 11:12:16  
-04'00'

---

**KIMBERLY ROCHE, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**



**Humana Medical Plan, Inc.**  
**GAMedicaidRightFax@humana.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**