

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14INS00273

<p>SANDRA LOMAX HONEYCUTT PETITIONER,</p> <p>V.</p> <p>NORTH CAROLINA STATE HEALTH PLAN RESPONDENT.</p>	<p>FINAL DECISION</p>
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Respondent, the North Carolina State Health Plan for Teachers and State Employees (“State Health Plan”), by and through its counsel, Roy A. Cooper, Attorney General of the State of North Carolina, and Heather H. Freeman, Special Deputy Attorney General, filed a Motion to Dismiss and Motion to Stay. On March 6, 2014 the undersigned entered a Request for Response to Motion to Dismiss and an Order for Stay Pending Ruling on Motion to Dismiss. No response was received from Petitioner.

UPON CONSIDERATION of the pleadings and Respondent’s Motion to Dismiss, the undersigned hereby finds the following:

FINDINGS OF FACT

1. On September 4, 2013, Petitioner’s provider submitted a request for prior approval and certification to the Plan’s claims processor Blue Cross Blue Shield of North Carolina (“BCBSNC”) for durable medical equipment, specifically a negative pressure wound therapy (“NPWT”) device. BCBSNC reviewed the request and determined that the request did not meet the Plan’s criteria for medical necessity as described in the applicable medical policy. On September 6, 2013, BCBSNC denied the certification request for the NPWT device as not medically necessary.

2. On September 6, 2013, Petitioner’s provider submitted a request for prior approval and certification on behalf of Petitioner for skilled nursing services related to the NPWT to BCBSNC. BCBSNC found that the skilled nursing services related to management of the non-covered NPWT device were excluded under the Plan according to a benefit exclusion stated in the Benefits Booklet. On September 10, 2013, BCBSNC denied the request as a benefit exclusion under the Plan.

3. On October 30, 2013, Petitioner submitted a first level internal appeal to BCBSNC regarding the denial of certification for the NPWT device as not medically necessary. During the first level internal appeal, BCBSNC upheld the denial for the NPWT device as not

medically necessary pursuant to Plan benefits described in medical policy. On November 27, 2013, BCBSNC provided Petitioner with a first level adverse determination letter that notified her that during first level internal appeal BCBSNC upheld the denial of the NPWT device as not medically necessary. BCBSNC further notified Petitioner of : (1) her right to file a second level internal appeal at BCBSNC within 180 days of the date of the letter; (2) her right after the second level internal appeal decision to appeal that second level internal appeal decision through an independent external review with the North Carolina Department of Insurance (NCDOI); and, (3) her right to seek a waiver of the second level internal appeal at BCBSNC and go directly to NCDOI for external review within 120 days after receiving written notification of waiver of second level internal appeal.

4. On January 2, 2014, BCBSNC received Petitioner's request for a second level internal appeal with BCBSNC regarding denial of the NPWT device. On February 4, 2014, the panel meeting for her second level internal appeal panel meeting was held. BCBSNC submitted Petitioner's case to an independent external reviewer board certified in surgery as part of Petitioner's second level internal appeal. The independent external reviewer determined that the NPWT device was not medically necessary based on the applicable medical policy. Based on the determination by the independent external reviewer, BCBSNC upheld the denial of the NPWT device as not medically necessary based on the applicable medical policy. On February 10, 2014, BCBSNC provided Petitioner with notification that BCBSNC upheld the denial of the NPWT device as not medically necessary based on the applicable medical policy and notified Petitioner of her right to seek further review through an independent external review with the NCDOI. Petitioner failed to request an external review with the NCDOI.

5. Petitioner submitted a separate internal appeal to BCBSNC regarding denial of the skilled nursing services related to management of the non-covered NPWT device. BCBSNC upheld the denial of coverage for skilled nursing services as a benefit exclusion under the Plan. On November 27, 2013, BCBSNC provided Petitioner with notification of the denial of skilled nursing services as a benefit exclusion and notified Petitioner of her right to request further review or appeal of the benefit exclusion through the Office of Administrative Hearings ("OAH").

6. On January 13, 2014, Petitioner filed a Petition for Contested Case in OAH challenging the denials of coverage by BCBSNC.

7. On March 3, 2014, Respondent filed a "Motion to Dismiss and Motion to Stay" Petitioner's claim regarding denial of the NPWT device for lack of jurisdiction and failure to state a claim.

8. On March 6, 2014, this Court issued a "Request for Response to Motion to Dismiss and Order for Stay Pending Ruling on Motion to Dismiss" giving the Petitioner until March 17, 2014 to respond and object to Respondent's Motion to Dismiss. No response was received from Petitioner.

CONCLUSIONS OF LAW

1. Respondent moved to dismiss Petitioner's claims regarding denial of the NPWT device pursuant to North Carolina Rules of Civil Procedure 12(b)(1), (b)(2), and (b)(6) for lack of jurisdiction and failure to state a claim due to Petitioner's failure to request external review with the NCDOI regarding the denial of certification for the NPWT device.

2. A motion to dismiss under N.C. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction may be raised at any time. Bryant v. Hogarth, 127 N.C. App. 79, 83, 488 S.E.2d 269, 271 (1997). Subject matter jurisdiction is a prerequisite for the exercise of judicial authority over any case or controversy. Id. A condition of OAH subject matter jurisdiction is that the subject matter before the administrative law judge must be within the purview of the OAH. "When reviewing a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), a trial court may consider and weigh matters outside the pleadings." Department of Transportation v. Blue, 147 N.C. App. 596, 556 S.E.2d 609 (2001).

3. Under Rule 12(b)(2), "[t]he trial judge must decide whether the complaint contains allegations that, if taken as true, set forth a sufficient basis for the court's exercise of personal jurisdiction." Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc., 169 N.C. App. 690, 693, 611 S.E.2d 179, 18 (2005). Affidavits and other matters outside the pleadings may be presented to the court in support of a motion to dismiss for lack of personal jurisdiction, and such affidavits do not convert the jurisdiction motion to a summary judgment motion. Data General Corp. v. County of Durham, 143 N.C. App. 97, 545 S.E. 2d 243 (2001).

4. On a motion under Rule 12(b)(6), "dismissal is proper (1) when the complaint on its face reveals that no law supports plaintiff's claim; (2) when the complaint reveals on its face that some fact essential to plaintiff's claim is missing; and (3) when some fact disclosed in the complaint defeats the plaintiff's claim." Signature Dev., LLC v. Sandler Commer. at Union, L.L.C., 207 N.C. App. 576, 582, 701 S.E.2d 300, 305 (2010), rev. denied, 365 N.C. 211, 710 S.E.2d 33 (2011) (citations and quotation marks omitted).

5. A condition of OAH subject matter jurisdiction is that the subject matter before the administrative law judge must be within the purview of the OAH. N.C.G.S. 150B-1(e)(13) states that the contested case provisions of Chapter 150B do not apply to the State Health Plan for Teachers and State Employees with respect to determinations..."that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated."

6. The external review process applicable to State Health Plan members is described in Chapter 58, Art. 50, Part 4 of the North Carolina General Statutes and applies to "noncertifications" or determinations "that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level

of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.” See N.C.G.S. § 58-50-75 et al; N.C.G.S. § 58-50-61(13).

7. Further appeal by Petitioner of the denial of certification and coverage for the NPWT device as not medically necessity should have been submitted to the NCDOI for external review. The contested case provisions in Chapter 150B do not apply to the portion of Petitioner’s claims regarding denial of the NPWT device and therefore the claims regarding denial of the NPWT device in her Petition for Contested Case Hearing must be dismissed for a lack of jurisdiction and failure to state a claim upon which relief may be granted.

FINAL DECISION

Petitioner’s claims in this contested case regarding denial of the NPWT device are hereby DISMISSED with prejudice. This Order does not affect Petitioner’s remaining claims.

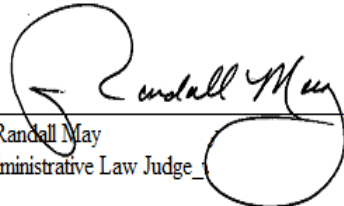
NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision.** In conformity with the Office of Administrative Hearings’ rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 22nd day of April, 2014.


J. Randall May
Administrative Law Judge