STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Sandra Hanna, Appellant, v. South Carolina Public Employee Benefit Authority, Employee Insurance Program, Respondent.	)	Docket No: 15-ALJ-30-0350-AP **FINAL ORDER**

This case comes before the South Carolina Administrative Law Court ("ALC" or "Court") as an appeal of a decision of the Health Appeals Committee of the South Carolina Public Employee Benefit Authority, Insurance Benefits ("Respondent" or "PEBA") denying coverage for certain medical services requested by Sandra Hanna ("Appellant").

FACTUAL/PROCEDURAL HISTORY

Appellant retired from Dorchester County School District 2 and receives disability retirement benefits from the South Carolina Retirement System. Appellant participates in the South Carolina Health Insurance Plan ("Plan").

Appellant suffers from right occipital headaches. She claims these headaches started in 2007 after she had lumbar surgery. Appellant reported no improvement from traditional treatment with medications indicated for pain relief and migraine headaches. In July 2014, Appellant was referred to a neurosurgeon, Dr. Alejandro Spiotta, at the Medical University of South Carolina ("MUSC"). He reported that Appellant complained of right-sided headaches, was not bothered by light or noise, had tried medication for both migraines and pain relief, as well as physical therapy without improvement. Appellant underwent Magnetic Resonance Imaging of the brain and neck and a routine eye exam, neither of which revealed increased pressure behind the eye. At that time, she had not had a lumbar puncture, or angiogram/venogram. Dr. Spiotta tried an occipital nerve block, but

there was no improvement. After performing a cerebral angiogram/venogram and obtaining pressure measurements, Dr. Spiotta diagnosed Appellant with *pseudotumor cerebri*[1] and recommended stenting.

Following medical reviews, coverage for the procedure was denied. Although the first reviewer, Dr. Les Cahan, agreed that intracranial balloon angioplasty with stenting was an appropriate treatment for intractable pseudotumor cerebri (benign intracranial hypertension), he did not find that the clinical information provided established that diagnosis. He listed the diagnostic criteria as papilledema,[2] raised pressure on lumbar puncture, and headaches. Treatments for this diagnosis include medications, such as Diamox[3] and other drugs used to reduce intracranial pressure, surgery, shunting procedures, as well as stenting.

Based on Dr. Cahan's review, Respondent notified MUSC, Appellant, and Appellant's physician of its denial of benefits. Appellant authorized her physician to appeal on her behalf. The case was then referred to an independent medical reviewer, Dr. Todd Samuels.

Dr. Samuels identified the diagnostic criteria in a typical patient to include "evidence of papilledema, imaging that does not suggest a structural lesion, and a CSF [cerebrospinal fluid] examination that shows both normal composition and elevated intracranial pressure (ICP). The diagnostic criteria for children and adults continue to rely on a CSF lumbar opening pressure of 250 mm H2O or greater." Based on his review, Dr. Samuels concluded that the available medical records did not establish a diagnosis of pseudotumor cerebri. Respondent notified Appellant of its continued denial on September 2, 2014, and of her right to appeal.

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[1] Pseudotumor cerebri is benign intracranial hypertension characterized by moderately severe headaches accompanied with papilledema and markedly elevated cerebrospinal pressures as measured by lumbar puncture. Other terms used to refer to this condition include *idiopathic intracranial hypertension* and *benign intracranial hypertension*. *See Owen v. Handyside*, No. 01-12-01108-CV, 2015 WL 5893464, at *4 (Tex. App. Oct 8, 2015).

[2] Papilledema is an inflammation of the optical nerve where it enters the retina, caused by intracranial pressure. Blindness may follow quickly if pressure is not relieved. *See* TABER'S CYCLOPEDIC MEDICAL DICTIONARY 1584 (20th ed. 2005).

[3] Diamox is the brand name for acetazolamide, which is a diuretic prescribed to treat fluid build-up in the eye, altitude sickness, and certain seizure disorders as well as pseudotumor cerebri, under an off-label indication.

On September 11, 2014, Dr. Spiotta performed a lumbar puncture and recorded an opening pressure of 28 cm of water. On October 11, 2014, Dr. Spiotta reported these results to Respondent featuring the elevated pressures in Appellant's venous sinus system.[4] These medical records were submitted in support of Appellant's further appeal dated October 2, 2014.

Respondent again referred Appellant's clinical file for a final independent medical review. Dr. Nalini Mehta found that Appellant did not have any symptoms that would indicate that her headaches are the result of pressure behind her eye. They do not worsen "with eye movement, [or progress to] nausea and vomiting, dizziness, ringing in the ears, blurred or double vision, [or] photopsia." Dr. Mehta concluded that a diagnosis of pseudotumor cerebri has not been established, nor have "all conservative treatment/therapies ... been exhausted."[5]

The Health Appeals Committee issued its final decision on July 1, 2015, determining that no preauthorization of benefits is available for Appellant's request for an intracranial stent under the terms of the Plan.

ISSUE ON APPEAL

Whether the treatment requested for Appellant is experimental or investigational and is medically necessary under the terms of the Plan.

SCOPE OF REVIEW

The enabling statute for the Plan provides:

> Notwithstanding Sections 1-23-310 and 1-23-320 or any other provision of law, claims for benefits under any self-insured plan of insurance offered by the State to state and public school district employees and other eligible

[4] In his report, Dr. Spiotta noted an elevated opening pressure of **28 mm** Hg. This contrasts with **28 cm** recorded on the procedure notes. One of these numbers is an error. The doctors who evaluated the claim have analyzed the opening pressure as **28 mm**, as noted on the procedure notes. If **28 cm** is correct, Appellant's opening lumbar puncture pressure, **280 mm**, exceeds the diagnostic criteria of **250 mm** and might require Respondent to revisit Appellant's request.

[5] The Court has concerns with the medical review conducted by Dr. Mehta. In her determination, Dr. Mehta found that Appellant did not have pseudotumor cerebri, but has idiopathic intracranial hypertension. The Court is of the understanding that pseudotumor cerebri and idiopathic intracranial hypertension are different names for the same disorder. *See supra* note 1.

> individuals must be resolved by procedures established by the board, which shall constitute the exclusive remedy for these claims, subject only to appellate judicial review consistent with the standards provided in Section 1-23-380.

S.C. Code Ann. § 1-11-710(C) (2005).

Accordingly, the Administrative Procedures Act's standard of review governs appeals from decisions of PEBA. *See* S.C. Code Ann. §§ 1-23-380 (Supp. 2014), 1-23-600(D) (Supp. 2014). The Court's review is governed by S.C. Code Ann. § 1-23-380 (Supp. 2014) and is limited to the record before the agency. As provided in S.C. Code Ann. § 1-23-380(5),

> The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Substantial evidence, as referenced in this provision, is evidence which would allow reasonable minds to reach the conclusion reached by the administrative agency. *Roper Hosp. v. Bd. of S.C. Dept. of Health and Envtl. Control*, 306 S.C. 138, 410 S.E.2d 558 (1991); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. *Sharp v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999). An abuse of discretion is shown when a decision is controlled by an error of law or a factual finding is without evidentiary support. *Eason v. Eason*, 384 S.C. 473, 682 S.E.2d 804 (2009).

DISCUSSION

Appellant contends that Respondent's decision denying coverage was erroneous in light of the reliable, probative, and substantial evidence in the record as a whole, that the

decision was arbitrary and capricious, and that it was an abuse of discretion. While these are separate grounds for reversal, Appellant argues only that "despite the reliable, probative, and substantial evidence in the record, Respondent instead relied upon clearly erroneous and unsubstantiated opinions by its reviewing physicians."

Appellant's physician, Dr. Spiotta, diagnosed her as suffering from pseudotumor cerebri and proposed treating her with an intracranial stent to reduce the pressure causing her headaches. Further, Appellant had tried traditional migraine medications without effect. There was no evidence of increased pressure behind the eye.

Article 2.52 of the Plan defines Medical Necessity, Medically Necessary or Necessary Service and Supply as follows:

A procedure, service or supply that meets all of the following criteria:

A. Is required to identify or treat an existing condition, illness or injury; and
B. Is prescribed or ordered by a Physician; and
C. Is consistent for treatment of the Covered Person's illness, injury, or condition, and is rendered in accordance with recognized, appropriate medical and surgical practices prevailing in the medical specialty or field of medicine at the time rendered; and
D. Is required for reasons other than the convenience of the patient; and
E. Results in measurable, identifiable progress in treating the Covered Person's condition, illness, or injury.

The fact that a procedure, service or supply is prescribed by a Physician, or that a Physician asserts that a procedure, service or supply is necessary to avoid the potential onset of a condition or abnormality in the future, does not automatically mean that such procedure, service or supply is Medically Necessary or meets the definition of Medical Necessity in this Plan.

In addition, the Plan, under Article 7.3, provides that "[t]he Subscriber is responsible for any other charges for goods or services that are not Medically Necessary or not covered by the Plan that were incurred with the specific consent of the Covered Person."

Finally, the Plan sets out in Article 9 certain Exclusions and Limitations.

No benefits will be provided under any Article of this Plan for any service, supply or charges for the following:

A. Any service or charge for service which is not Medically Necessary as defined in paragraph [2.52]; any service or charge for service which is performed in a more costly setting than that required by a Covered Person's condition, in which case benefits will be limited to the benefits due had the services been performed in the least costly setting required by the Covered Person's condition.

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G. Any surgical or medical procedures determined by the medical staff of the Third Party Claims Processor, with appropriate consultation, to be experimental or investigational or not accepted medical practice. Experimental or investigational procedures are those medical or surgical procedures, supplies, devices, or drugs, which at the time provided, or sought to be provided:

1. Are not recognized as conforming to accepted medical practice in the relevant medical specialty or field of medicine; or
2. The procedures, drugs or devices have not received final approval to market from appropriate government bodies; or
3. Are those about which the peer-reviewed medical literature does not permit conclusions concerning their effect on health outcomes; or
4. Are not demonstrated to be as beneficial as established alternatives; or
5. Have not been demonstrated, to a statistically significant level, to improve the net health outcomes; or
6. Are those in which the improvement claimed is not demonstrated to be obtainable outside the investigational or experimental setting.

After considering Appellant's medical records, Respondent's Health Appeals Committee determined that the requested intracranial stent did not meet the criteria for medical necessity under the terms of the Plan and was found to be investigational. Appellant's provider, Dr. Spiotta, performed a cerebral angiogram/venogram with pressure measurements. Although the results were normal, they showed positive venous gradients and bilateral transverse sinus stenosis (narrowing of both of the transverse sinuses). Dr. Spiotta diagnosed Appellant as suffering from pseudotumor cerebri and recommended blood thinners and a stenting procedure on both of the transverse sinuses. The Health Appeals Committee determined that Appellant's medical records did not support this diagnosis and denied preauthorization. This determination was reached after three independent medical reviews (Dr. Cahan (who reviewed the records three times), Dr.

Samuels, and Dr. Mehta). Additionally, Dr. Neal (on behalf of the Plan) and Dr. Spiotta conducted a peer-to-peer review.

In this case, the essential question before the Court is what is required to establish a diagnosis of pseudotumor cerebri. Appellant's treatment using an intracranial stent can only be medically necessary if this specific diagnosis is established and traditional medication and noninvasive procedures have failed. The diagnostic criteria, for pseudotumor cerebri require evidence of papilledema and raised lumbar puncture pressure.

Appellant's records show no symptoms connected with her vision as her physician reports. Appellant is not bothered by light or noise, and a recent eye examination was normal with no signs of increased pressure behind the eye. Likewise, an occipital nerve block, recommended by Dr. Spiotta, did not provide any relief for Appellant's symptoms. Therefore, one of the essential factors for the diagnosis of pseudotumor cerebri is missing, as there is currently no danger to Appellant's vision that would require more immediate treatment.

The lone factor possibly supporting the diagnosis, cerebrospinal fluid lumbar opening pressure of 250 mm of water or greater (on lumbar puncture), is questionable. Respondent's Health Appeals Committee, based on the analysis of independent medical reviewers, believed that Appellant's pressure was well below this threshold. Dr. Spiotta's procedure notes and report are inconsistent. *See supra* note 4.

Therefore, the diagnosis of pseudotumor cerebri is not established where the criteria, both papilledema and cerebrospinal fluid lumbar opening pressure of 250 mm of water or greater, are not present.

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. *See* S.C. Code Ann. § 1-23-380. Based on the evidence in the record, the Health Appeals Committee found Respondent did not have pseudotumor cerebri; therefore, an intracranial stent would be investigational and not

medically necessary. Accordingly, the Health Appeals Committee's decision was supported by substantial evidence in the record and was not an abuse of discretion.

ORDER

IT IS THEREFORE ORDERED that Health Appeals Committee's decision is **AFFIRMED.**

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

December 15, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Julia M. Miller, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

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December 15, 2015
Columbia, S.C.

Julia M. Miller
Judicial Law Clerk