

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
JUL 16 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03334

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 16, 2009, at 8:30 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his daughter, The respondent was represented by Ken Hamblin, program operations administrator, and Lisa Galati, human services program analyst. Present from American Eldercare was Robert Schemel, president. Present on the telephone from Department of Elder Affairs was Joyce Spyrcula, contract manager.

ISSUE

At issue is the Agency's April 6, 2009 action of decreasing the petitioner's home health aide services from 56 hours weekly to 28 hours weekly. He is requesting 40 hours of weekly services. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, who lives with his daughter _____ receives home health aide services. He received a notice from American Eldercare dated March 31, 2009, stating that the home health aide services was being decreased from 56 hours weekly to 28 hours weekly.
2. The petitioner received another notice from American Eldercare dated April 6, 2009, stating that upon a re-evaluation, it was determined that he would receive home health aide services of 28 weekly, which is 4 hours per day, 7 days per week.
3. The petitioner is appealing the reduction of home health aide services. He is requesting 40 hours of weekly services.
4. The petitioner's daughter asserted at the hearing that she pays for a private home health aide to take care of her father for about 9 to 10 hours daily.
5. According to the petitioner's daughter, between the home health aide services that her father receives from American Elder Care, her private aide, and herself, someone is with her father 24 hours per day 7 days per week.
6. Included in the evidence are copies of statements from four doctors stating that the petitioner needs at least 40 hours of weekly home health care services. They are dated April 27, 2009 from Dr. _____; April 29, 2009 from Dr. _____; May 15, 2009 from Dr. _____, and June 4, 2009 from Dr. _____.
7. According to the May 15, 2009 statement from Dr. _____, the petitioner has a history of normal pressure hydrocephalus, a history of VP shunt placements, pulmonary embolism, anemia, and chronic kidney disease.

8. According to the June 4, 2009 statement from Dr. _____, the petitioner has a diagnosis of Parkinson's disease, normal pressure hydrocephalus, he had a VP shunt, he is incontinent, pulmonary embolus, anemia, and chronic renal disease.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S. Fla. Admin. Code 59G-1.010 states in part:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. 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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(c) 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.

Fla. Admin. Code at 59G-4.130 explains home health services. The Home Health Services Coverage and Limitations Handbook explains on page 2-14 that home health

services must be ordered by the attending physician and be medically necessary. The petitioner's home health aide services was reduced from 56 hours weekly to 28 hours weekly, which is 4 hours per day, 7 days per week, and he is requesting 40 hours of weekly home health aide services.

The findings show that there are four doctors who state that the petitioner needs at least 40 hours of weekly home health aide services, and he gets more than that from the petitioner's private aide, plus the services provided by American Eldercare. After careful consideration, it is determined that the action to reduce American Eldercare home health aid services from 56 hours to 28 hours weekly, which is four hours per day, is upheld.


DECISION

The appeal is denied and the Agency's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of July, 2009,
in Tallahassee, Florida.

Stuart Imberman 

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