

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

FILED

SEP 08 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04192

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 06 Pasco  
UNIT: AHCA

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on July 29, 2009, at 1:24 p.m. The petitioner was not present. He was represented by his mother . . . . . The respondent was represented by Joyce Carpenter, senior human program specialist. Witnesses for the respondent appearing by telephone were Kris Russell, program administrator for the Brain and Spinal Cord Traumatic Injury Waiver Program and Manuel Gomez, waiver specialist with the Brain and Spinal Cord Traumatic Injury Waiver Program.

**ISSUE**

The petitioner is appealing the notice of June 16, 2009 for the respondent's action to reduce the petitioner's companion services from 21 hours a week to 15 hours a week.

**FINDINGS OF FACT**

1. The petitioner is eligible for Medicaid and the Traumatic Brain and Spinal Cord Injury Waiver Program. The petitioner's date of birth is . . . . . The petitioner was receiving personal care services and 21 hours a week of companion service as part of the services he received through the Traumatic Brain and Spinal Cord Injury Waiver Program. The petitioner's personal care service and companion service are provided by a friend of the petitioner's mother who resides with the petitioner and his mother.

2. The Agency for Health Care Administration authorizes the Department of Health to operate and oversee the Traumatic Brain and Spinal Cord Injury Waiver Program. As the authorizing agency, the Agency for Health Care Administration is the respondent in this case. In November 2008, the respondent was notified the community support coordinator that all services were to be reduced due to budget availability consistent with handbook. The respondent reviewed the cases of all individuals receiving services through the Traumatic Brain and Spinal Cord Injury Waiver Program at each individual's review date.

3. The respondent reviewed the petitioner's case. The petitioner was receiving companion service three hours a day seven days a week. The respondent considered the following. The petitioner lives with his mother who stays at home and is the petitioner primary caregiver. The petitioner's personal care service and companion service are provided by a friend of the mother who also lives in the home. The petitioner has had good improvement. The petitioner has a primary and a secondary insurance coverage for inpatient and outpatient

care. The petitioner has a trust fund of funds from settlement resulting from the cause of his injury. The petitioner recently purchased a new home and his trust is modifying the home to accommodate his needs. The respondent determined that the hours on Saturdays and Sundays were a duplication of services. The respondent reduced the petitioner's companion services to three hours a day Monday through Friday for a total of 15 hours per week. A Notice of Decision was sent to the petitioner on June 16, 2009. The notice informed the petitioner that the reduction would be effective July 2009.

4. The petitioner mother opined that the petitioner needs companion service. She attested that the companion is needed to take the petitioner out for activities.

#### **CONCLUSIONS OF LAW**

By agreement between the Agency for Health Care Administration and the Department of Families and Children, 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.

The Florida Administration Code at 59G-8.200, defines companion service:

(g) Companion Services include those activities necessary to assist the recipient in performing household or personal tasks and providing social stimulation to relieve the negative effects of loneliness and isolation.

The Florida Administrative Code at 59G-13.130 "Traumatic Brain and Spinal Cord Injury Waiver Services" states:

(1) This rule applies to all traumatic brain and spinal cord injury waiver services providers enrolled in the Medicaid program.

(2) All traumatic brain and spinal cord injury waiver services providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook, April 2006, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, Non-Institutional 081, which is incorporated by reference in Rule 59G-13.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

(3) The following forms that are included in the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook are incorporated by reference: Appendix C contains the Home and Community-Based Waiver Referral Agreement, April 2006, seven pages; Appendix D contains the Brain and Spinal Cord Injury Program Request for Level of Care, April 2006, two pages; Appendix E contains the Notification of Level of Care, which is incorporated by reference in Rule 59G-13.030, F.A.C.; Appendix F contains the Brain and Spinal Cord Injury Program Waiting List Policy for the Traumatic Brain/ Spinal Cord Injury Medicaid Waiver Program, April 2006, five pages, and Home and Community-Based Medicaid Waiver Prioritization Screening Instrument, April 2006, four pages; Appendix G contains the Notice of Decision, April 2006, two pages; and Appendix H contains the Brain and Spinal Cord Injury Program Medicaid Home and Community-Based Waiver Service Plan, April 2006, one page.

The Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook sets forth the description and service requirements on page 2-27:

#### Companion Services

Description Companion services are non-medical care, supervision and socialization, provided to a functionally impaired adult.

Companions may assist or supervise the recipient with such tasks as meal preparation, laundry and shopping as specified in the plan of care. The provision of companion services does not entail any invasive hands-on nursing care. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the recipient.

#### Service Requirements

Companion services are provided in accordance with a therapeutic goal in the plan of care, and cannot be purely diversional in nature...

Florida Administrative Code 59.G-1.010, "Definitions", states for medical necessity:

(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; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider...

(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.

The petitioner's mother attested that the companion is needed to take the petitioner out for activities. The handbook sets forth that companion service cannot be purely diversional in nature. The petitioner lives with his mother who stays at home and is the petitioner primary caregiver. A friend of the mother is the petitioner's personal care service and companion service provider. The personal care service and companion service provider resides with the petitioner and the petitioner's mother. This indicates that the petitioner is not alone in the home and is not isolated. The evidence demonstrates that the three hours of

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companion service on Saturdays and Sundays for six hours a week does not meet the definition of medical necessity. Based upon the above cited authorities, the respondent's action to reduce companion services from 21 hours a week to 15 hours a week was within the rules of the Program.

**DECISION**

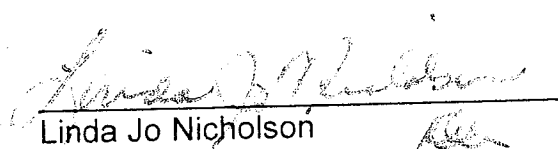
This appeal is denied.

**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 8<sup>th</sup> day of September, 2009,

in Tallahassee, Florida.



Linda Jo Nicholson  
Hearing Officer  
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Copies Furnished To