

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

FILED

OCT 22 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04874

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 20 Lee
UNIT: BSCP

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on September 9, 2009, at 9:45 a.m. The petitioner was not present. She was represented by her guardian,

The respondent was represented by Dennis Cole, program administrator. Witnesses for the respondent appearing by telephone were Kris Russell, program administrator for the Brain and Spinal Cord Traumatic Injury Waiver Program and Phyllis Rothman, 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 terminate the petitioner's service through the Brain and Spinal Cord Traumatic Injury Waiver Program.

FINDINGS OF FACT

1. The petitioner was receiving services through the Brain and Spinal Cord Traumatic Injury Waiver Program. The petitioner has been in the hospital or receiving skilled care since January 2009. The petitioner was diagnosed with acute respiratory failure. At the end of July 2009 there was some improvement in the petitioner's condition. Then, the petitioner developed a serious infection while at a skilled facility. The petitioner is considered not medically stable to return to her home. At the time of the hearing, the petitioner was in total isolation on a trach tube with oxygen. Her discharge to home is not eminent. She requires total isolation indefinitely with professional care twenty-four hours a day, seven days a week.

2. The Agency for Health Care Administration authorizes the Department of Health to operate and oversee the Brain and Spinal Cord Traumatic Injury Waiver Program. As the authorizing agency, the Agency for Health Care Administration is the respondent in this case.

3. The respondent attested as follows. Generally after 90 days of hospitalization, a case is closed due to the limited number of Program openings in the waiver. The waiver specialist kept the petitioner's case open for months hoping that the petitioner would return home. An individual must be medically stable and residing outside of a skilled facility to receive these waiver services. As of the date of the hearing, the petitioner was not yet medically stable to return home. The petitioner has both acute infection and respiratory failure. The respondent determined that the petitioner was not medically stable for Home and

Community Based Care through the Brain and Spinal Cord Traumatic Waiver Program. The respondent terminated the petitioner's services. A Notice of Decision was sent to the petitioner on July 20, 2009.

4. The petitioner's guardian wants the petitioner to remain on the waiver. He does not want to have the petitioner wait for years to be reinstated once she is able to return home.

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 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 service requirements on page 2-3 "Who Can Receive Services" and states in relevant part:

...Be medically stable, which is defined as the absence of any of the following: (1) active, life threatening condition (e.g. sepsis; respiratory or other condition requiring system therapeutic measures)...

The "Plan of Care Redetermination" is set forth in the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook on page 2-17 and states:

The plan of care must be reviewed at least every six months. At the time of the review, all authorized services are examined to determine their effectiveness and benefit to the recipient.

The Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook sets forth the "Termination of Services: on page 2-17 which states in relevant part:

Termination of waiver services can occur when it is determined that:
...The recipient is no longer medically stable...

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 has an acute infection and respiratory failure. With these life threatening conditions, the petitioner does not meet the definition of medically stable. The petitioner's condition has not been medically stable since at least January 2009. As the petitioner is not medically stable, the petitioner does not meet the criteria for services through the Brain and Spinal Cord Traumatic Injury Waiver Program. As of the date of the hearing, the petitioner has not met the criteria for a period of at least nine months. The petitioner has not benefited from the services for at least nine months. The handbook set forth the requirement to review the services every six month through a Plan of Care. There can be no Plan of Care when the petitioner is not receiving the services. Based upon the above cited authorities, the respondent's action to terminate the petitioner's

services through the Brain and Spinal Cord Traumatic Injury Waiver Program 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 22nd day of October, 2009,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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Copies Furnished To