

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

FILED

OCT 29 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05014

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 12 Sarasota
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on September 2, 2009, at 3:15 p.m. The petitioner was not present. She was represented by her mother. 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 July 28, 2009 for the respondent's action to reduce the petitioner's companion service received through the Traumatic Brain and Spinal Cord Injury Waiver Program from four hours a day to two hours a day.

FINDINGS OF FACT

1. The petitioner is 39 years old. The petitioner is eligible for Medicaid and the Traumatic Brain and Spinal Cord Injury Waiver Program. The petitioner was receiving personal care assistance and companion services through the Traumatic Brain and Spinal Cord Injury Waiver Program. The four hours of personal care assistance and the four hours of companion services are provided by the same certified nursing assistant. The petitioner resides with her mother and her father. The mother is the petitioner's primary caregiver. The mother is disabled and has health issues with her right shoulder, back, sacral tumor and left thumb tendinitis. The mother has difficulty lifting and rotating her arm. The mother is unable to do laundry. The father works during the week and assists with the care for the petitioner in the evenings and on weekends.

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 four hours of personal care assistance and four hours of companion service. The respondent considered that the petitioner lives with her mother and

father, the father works and the mother is disabled. The respondent did not reduce the four hours a day of personal care assistance. The documentation the respondent received for the notes of the certified nursing assistant services did not specifically define the all services performed for the hours companion services were billed. The notes indicated that that companion services were being used for hands on care to assist the parent with such tasks as diapering. The respondent determined that diapering is not the intent of companion services. The respondent reduced the petitioner's companion services from four hours a day to two hours a day. A Notice of Decision was sent to the petitioner on July 28, 2009.

4. The petitioner's mother opined that the petitioner is doing well with the services provided for eight hours a day and the petitioner needs companion service. The mother attested as follows. The hours of companion service is needed to assist the mother with lifting the petitioner so that the petitioner's diaper can be changed. The personal care and companion services are intermingled throughout the eight hour day. During the eight hours, the petitioner is feed breakfast, lunch and snacks. The mother feeds the petitioner dinner. Feeding the petitioner takes half hour to three-quarters of an hour for each meal for an average of about one and half hours daily. Laundry is done daily and takes about one and half hours to complete. It was undisputed that personal care assistance takes at least four hours daily.

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...

Personal care services provider qualifications are set forth in the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook on page 1-15:

...At the time of enrollment, providers of this service must demonstrate training or validation of skills competency in all of the following areas:

1. Assisting with activities of daily living to include bathing, dressing, toileting, feeding, eating, bed making, ambulating and body mechanics...

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.

At issue is the reduction of companion services from four hours a day to two hours a day. The rule sets forth that companion services are to assist the recipient in performing household or personal tasks and providing social stimulation to relieve the negative effects of loneliness and isolation. The handbook sets forth that companion service non-medical care, supervision and socialization.

To determine the number of hours of companion services that should be provided, it must first be determined which of the activities that the current provider delivers to the petitioner. Of the activities listed by the petitioner that are done on a daily basis, only two activities are companion services. Those activities are laundry and meal preparation. The meal preparation and feeding

were estimated to take an average of one and half hours daily. Laundry was estimated as taking one and half hours daily. Since feeding is a personal care service, the time for eating must be removed.

Companion services were decreased from four hours a day to two hours a day. It appears that the current companion is spending about two hours a day doing companion services. The rest of the time is spent on personal care services. Four hours a day of personal care services is the maximum number of services hours allowed for personal care services set forth in Appendix a TBI/SCI Waiver Services Procedure Codes, Reimbursement and Maximum Limits. Unfortunately, since this service is limited to four hours a day, it cannot be increased.

The action taken by the respondent must be upheld. Since the petitioner has needs, she should contact her community support coordination to apply for other services in the Traumatic Brain and Spinal Cord Injury Waiver or any other Waiver Program.

DECISION

This appeal is denied.

NOTICE OF RIGHT TO APPEAL

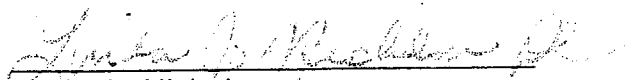
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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

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this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 29th day of October, 2009,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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850-488-1429

Copies Furnished To