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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05759

PETITIONER,

Vs.

CASE NO. 148403656

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Wakulla
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on January 22, 2010, at 12:30 p.m., in Tallahassee, Florida. The petitioner was present and was represented by _____ Testifying on behalf of the petitioner was his neighbor and friend, _____ The Agency was represented by Debora Fridie, assistant general counsel. Testifying on behalf of the respondent was Ernest Brewer, field office manager, Agency for Health Care Administration (AHCA). Also testifying on behalf of the respondent was R. H. Carter, executive director, Wakulla Senior Citizens Center, Inc., Cathy Mathews, lead case manager, Wakulla Senior Citizens Center, Inc. and Jessica Reeves, direct service worker, Wakulla Senior Citizens Center, Inc. Observing the proceeding was Sheryl Rosen, law student, AHCA.

The hearing was originally scheduled to be held on October 28, 2009 but was rescheduled at the request of the petitioner to permit him to obtain legal counsel. The hearing was rescheduled for December 15, 2009 and again on January 14, 2010 at the request of the petitioner.

ISSUE

At issue is the respondent's action of August 27, 2009 to suspend homemaking services effective September 7, 2009 under the Home and Community Based Services (HCBS) Medicaid Aged and Disabled Adult Waiver Program.

The respondent bears the burden of proof.

FINDINGS OF FACT

1. Through an interagency agreement and under applicable rules and regulations AHCA, the Department of Elder Affairs and the Department of Children and Families (DCF) jointly administer the Florida Medicaid Aged and Disabled Adult Waiver Program through the Medicaid HCBS program according to 1915 (c) SSA which is governed by title 42, Code of Federal Regulations, Part 441.302.
2. Eligible elderly and disabled adults receive an array of goods and services under the HCBS Aged and Disabled Adult Waiver Program that allows them to remain in their homes and to prevent institutionalization. The Waiver allows services that are not typically provided under state-plan Medicaid. The Aged and Disabled Adult Waiver is a Medicaid program that provides home

and community based services to eligible recipients who, but for the provision of these services, would require nursing facility placement. This waiver serves recipients who are 60 years or older or who are ages 18-59 and determined disabled according to Social Security Administration standards.

3. The AHCA is responsible for ensuring compliance with federal and state laws, rules and regulations governing the Medicaid Program, developing and implementing Medicaid policy and reimbursing Medicaid providers among other duties.
4. The Department of Elder Affairs (DOEA) is responsible for administering the Waiver for Medicaid recipients 60 years and older and for completing a Plan of Care for Medicaid Waiver recipients.
5. The DCF is responsible for determining the eligibility of Medicaid Waiver recipients.
6. The DOEA contracts with the Area Agency on Aging for North Florida, Inc. to provide case management to Waiver recipients. The Area Agency on Aging for North Florida, Inc. is affiliated with Wakulla County Senior Citizens Council, Inc. who in turn, provides both case management and homemaker services to the petitioner.
7. Prior to the issue under appeal, the petitioner (aged 62) was enrolled in the HCBS Aged and Disabled Adult Medicaid Waiver Program. He received case management services, emergency alert response, meals on wheels and

homemaker services under his plan of care from Wakulla county Senior citizens council, Inc.

8. An employee of the Wakulla County Senior Citizens Council, Inc (WCSCC) assigned to provide homemaking services to the petitioner notified her employer that she “never wanted to go back there” after her second visit. This employee was taken off the petitioner’s schedule
9. On August 19, 2009, the case manager advised the petitioner by telephone that the previous employee would no longer provide housekeeping services. The WCSCC was unable to furnish any other employees willing to work with the petitioner. The service provider, WCSCC determined it would be unable to continue providing homemaking services. On August 27, 2009, the WCSCC’s Lead Case Manager, Cathy L. Mathews, mailed the petitioner a letter informing him that the homemaking services were to be suspended effective September 7, 2009. The letter included fair hearing rights.
10. WCSCC’s case manager attempted to find other providers willing to provide homemaking services to the petitioner. Of the 12 providers of service, four were no longer in business, two no longer provided homemaker services and four refused to accept him. There are currently no providers willing to provide homemaking services to the petitioner.
11. The petitioner continues to be eligible for the HCBS Aged and Disabled Adult Medicaid Waiver Program. There has been no action taken to terminate him

from the Medicaid Waiver Program. In addition, the WCSCC clarified at the hearing the homemaker service is actually not suspended as they were searching for providers willing to continue this service.

12. The petitioner believes that homemaker services are necessary. He disagrees with WCSCC's action to suspend that service.

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 Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

Florida Administrative Code 65-2.060, Evidence, state in part:

(1) The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action which would reduce or terminate the benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

The above rule explains that the burden of proof is on the agency when action is taken to reduce or terminate benefits. In this case, the agency holds the burden of proof.

The Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, March 2004, pages 2-28 and 2-42 informs:

Description Homemaker services consist of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the person regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home...

Suspension of Services Where the recipient does not cooperate with the approved plan of care or is abusive toward service providers, the case manager can suspend services.

When either of these situations is present, the case manager will contact the recipient about the situation or behavior and possible consequences if the situation or behavior continues. These contacts must be documented in the case record.

If this action does not result in improvement, the case manager will inform the recipient that a behavior management contract is necessary and the timeline involved. The recipient, the case manager and the case manager supervisor must sign the contract. If the executed behavior management contract does not result in improvement, the case manager can suspend services after giving the recipient ten days advance written notice, including fair hearing rights. If the recipient is suspended, the length of the suspension should be stipulated in the notice.

Subsequent to the suspension period, if the recipient's behavior does not improve or a new behavioral condition as described above emerges and a second contract is negotiated with continued recipient noncompliance, the case manager may take action to terminate the recipient from the program. Documentation of the situation or behavior and corrective steps taken must appear in the case narrative. The recipient must be given a ten day written notification of the proposed termination and right to a fair hearing.

The findings show that the WCSCC was providing both case management and homemaker services to the petitioner. As a result of an incident between the petitioner and an employee of WCSCC providing the homemaker service, the case manager of WCSCC issued a letter to the petitioner informing him of the suspension of his

homemaker services. However, at the hearing, it was clarified that the service was actually not suspended as other providers were contacted to determine if they had anyone available to continue to provide this service to the petitioner. Therefore, the undersigned concludes that the agency has not taken any action to reduce or terminate the petitioner's homemaker service; if a provider is found, the agency will continue to pay for the service. Accordingly, the appeal is denied.

DECISION


The 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 4th day of February, 2010,

in Tallahassee, Florida.


Linda Garton
Hearing Officer
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850-488-1429

FINAL ORDER (Cont.)
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