

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

FILED
DEC 21 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06569

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 October 29, 2009, at 8:35 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her daughter, The respondent was represented by Ken Hamblin, program operations administrator. Present from the Channeling Program was Mari Ann Walzer, community services program director, Alina Cruz-Ekanayake, assistant project director, and Rosemary Ocasio, case manager.

ISSUE

At issue is the Agency's August 10, 2009 action of cancelling the petitioner's participation in the Channeling Program, due to not allowing the case manager from conducting a home visit to see the petitioner. The respondent has the burden of proof.

FINDINGS OF FACT

1. The Channeling Waiver Program is a Home and Community Based Service (HCBS) program operated through the Agency for Health Care Administration (AHCA). Services provided through the Channeling Program are for individuals age 65 or older.
2. Included in the evidence is a copy of a notice dated August 10, 2009, stating that the petitioner was disenrolled from the Channeling Program because of non compliance by her refusal to allow the case manager to conduct a home visit to see the petitioner.
3. The Miami Jewish Home and Hospital for the Aged contracts with the state of Florida AHCA to coordinate Home and Community Based Services for eligible individuals in the Channeling Program. The August 10, 2009 notice was sent to the petitioner from the Miami Jewish Home and Hospital for the Aged.
4. Included in the evidence is a copy of a Case Summary log stating that on June 11, 2009, the channeling case manager conducted an initial home visit for the petitioner for the Channeling Program. The petitioner and her daughter, [REDACTED] were present.
5. Services agreed to be provided by the Channeling Program, and accepted by her caregiver include Adult Day Health Care five times per week, and consumer supplies, which were serenity under pads. No other services were identified as an unmet need.
6. According to the Case Summary, Channeling services were authorized for the petitioner effective June 11, 2009. [REDACTED] notified the case manager on July 9, 2009, that the petitioner did not attend day care since June 22, 2009. She was not planning to return to day care until August 2009 because her relatives were visiting, and they would take care of the petitioner while [REDACTED] works.

7. According to the Case Summary, on July 23, 2009, the case manager confirmed with [redacted] that a second home visit would be conducted on July 30, 2009. The petitioner was not present for the home visit on July 30, 2009.
8. According to the Case Summary, the petitioner was not present for the home visit on July 30, 2009, because she was staying with her cousin for the month, and at that time she was out with her cousin. The case manager informed [redacted] that the petitioner needed to be present for the July 30, 2009 home visit.
9. According to the Case Summary, on August 7, 2009, the case manager explained to the caregiver, [redacted] that another home visit was required because the petitioner was not present for the July 30, 2009 home visit. At that time, the caregiver denied that the petitioner was out of the area.
10. According to the Case Summary, on August 7, 2009, the case manager tried to schedule another home visit for the petitioner, however the caregiver did not agree to another date for the home visit.
11. According to the Case Summary on October 22, 2009, and according to the caregiver, the petitioner did not need the services provided through the Channeling Program for another month.
12. According to the caregiver at the hearing, she did not schedule another home visit because of the petitioner's Alzheimer's condition, she gets upset.
13. According to the caregiver at the hearing, before the petitioner would start receiving services from the Channeling Program, she would check with the petitioner's doctor. Also according to the caregiver, background checks need to be done before strangers enter the petitioner's home.

14. The caregiver explained in her letter dated September 24, 2009, "unless FDLE background checks are provided for the assistance, we do not know who is spending time with our family members and getting access to our home. With all respect, this is an area with a fairly high crime rate and we have to be careful before we allow any strangers in."

15. According to the caretaker at the hearing, when it was offered to her to get the petitioner back into the Channeling Program, she did not want to start the process at that time, and she indicated that she would call the Channeling Program at a later date.

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.

Fla. Admin. Code 59G-8.5 states in part:

(11) Channeling Waiver.

(a) Program Summary. The Channeling program is directed toward a group of seriously impaired, aged Medicaid eligible individuals. The core functions of outreach, screening, assessment, care planning, and case management focus community services on program participants as an alternative to institutional care.

(b) Covered Services and Provider Qualifications. The Agency contracts with qualified entities for the provision of these services to enrolled recipients. The standards applicable to the contractor's selection of vendors and providers of covered services are outlined in the contract between the Agency and the contractor. The following services are available:

1. Adult Day Health Care;
2. Caregiver Training and Support;
3. Companion Services;
4. Consumable Medical Supplies;
5. Financial Education and Protection Services;
6. Home Health Aide Services;
7. Homemaker and Personal Care Services;

8. Housekeeping/Chore Services;
9. Medical Alert and Response Service;
10. Mental Health Services;
11. Minor Physical Adaptations to the Home/Home Modification;
12. Occupational Therapy;
13. Physical Therapy;
14. Respite Care;
15. Skilled Nursing;
16. Special Home Delivered Meals;
17. Special Drug and Nutritional Assessments;
18. Speech Therapy; and
19. Waiver Case Management.

(c) Recipient Eligibility. Recipients eligible for services under this waiver must be Broward or Dade County residents, 65 years of age or older, and eligible under the HCB services waiver optional coverage groups as defined by 42 CFR section 435.217, or otherwise be Medicaid eligible. Recipients must be assessed as meeting level of care criteria for skilled or intermediate nursing home care as defined in Rules 10C-7.032 and 10C-7.033, F.A.C. The contractor may refuse participation in the program to otherwise qualified recipients whose estimated cost of community care exceeds 85 percent of the cost of institutional care in that recipient's county of residence.

The petitioner's participation in the Channeling Program was cancelled because of non compliance by her caregiver's refusal to allow the case manager to conduct a home visit to see the petitioner. A home visit was required because the petitioner was not present for the July 30, 2009 home visit. On August 7, 2009, the case manager tried to schedule another home visit for the petitioner, however her caregiver did not agree to another date for the home visit.

On October 22, 2009, and according to the caregiver, the petitioner did not need the services provided through the Channeling Program for another month. According to the caregiver at the hearing, before the petitioner would start receiving services from the Channeling Program, she would check with the petitioner's doctor, and conduct background checks before strangers enter the petitioner's home. When offered to get

back into the Channeling Program, her caretaker asserted that she did not want to start the process at that time, and that she would call the Channeling Program at a later date. After careful consideration, it is concluded that the Agency's action to cancel the petitioner's participation in the Channeling Program, is upheld.

DECISION

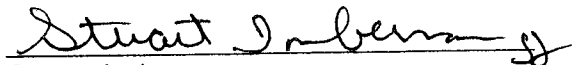
The appeal is denied, and the Agency's action is affirmed.

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 21st day of December, 2009,

in Tallahassee, Florida.



Stuart Imberman
Hearing Officer
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Copies Furnished To