

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

FILED

JAN 20 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07289

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 20 Charlotte
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened by telephone before the undersigned hearing officer on December 15, 2009, at 10:17 a.m. The petitioner was present. Present on behalf of the petitioner was _____, the petitioner's nurse, and _____, rehabilitation specialist. The respondent was represented by Pat Brooks, program operation administrator and Jodie Winters, physical therapy consultant.

ISSUE

The petitioner is appealing the respondent's action to deny the petitioner's August 14, 2009 request for a custom power wheelchair.

FINDINGS OF FACT

1. The petitioner is a 55 year old Medicaid eligible individual. The petitioner five foot eight inches and weighs 454 pounds. The petitioner had a stroke on March 4, 2008. The petitioner's diagnoses are status-post cerebral

vascular accident, diabetes, neuropathy, sleep apnea, hypertension, shortness of breath, leg edema and chronic pain. The petitioner is unable to walk and uses a manual wheelchair. The petitioner requested a custom power wheelchair with elevated leg rests for use in the home through Medicaid.

2. On April 20, 2009, Doctor [REDACTED] completed a Mobility Prescription Form for a power wheelchair for the petitioner. On July 27, 2009, [REDACTED], physical therapist, completed the Custom Wheelchair Evaluation. The evaluation indicated the medical history, currently mobility, home environment, cognitive status, activities of daily living status, mobility skills and sensation. [REDACTED] recommendation was for a power wheelchair. The evaluation indicated that the petitioner has a caregiver during the week for 12+ hours a day. The evaluation indicated that the petitioner is independent with dressing with the exception of needing assistance with socks, and is independent with eating and grooming. He needs assistance with bathing, toileting, meal preparation and home management. The evaluation indicated that the petitioner's home environment has some rooms that are not wheelchair accessible. The entrance is 30 inches and the bathroom doorway is less than 30 inches.

3. The petitioner requested a custom power wheelchair on August 14, 2009. The custom power wheelchair requested was a Jazzy 1420. The weight capacity is 500 pounds and the width is 27.25 inches.

4. The respondent reviewed all documentation and DVD submitted by the petitioner. The respondent denied the request on September 19, 2009. The

respondent determined that the criteria for custom power wheelchair had not been met.

5. A second level review was completed by [redacted] physical therapist. [redacted] reviewed the DVD and the prior authorization request.

[redacted] noted from her review of the wheelchair evaluation:

...Per the wheelchair evaluation, page 2, [redacted] rises to stand using (the arms of) a chair, then ambulates using his unlocked manual wheelchair as a walker. He tires with ambulation and ambulates limited distance. Page 3 reports that he has normal strength and function in his upper extremities...

[redacted] commented from her review of the DVD:

...Residential accessibility is questioned. The provider states that he will require a PWC 2" narrower than the one he is using in the video (Jazzy 614 HD is 25.125' in width) however the requested Jazzy 1420 is actually wider, 27.25". [redacted] would not be able to access bedroom or bathroom to accomplish basic ADLs (activities of daily living.) It is also noted the [redacted] body is wider than the power wheelchair that he is using in the video, which would also restrict residential access.

[redacted] transfers from the power wheelchair to the manual wheelchair safely and independently, without any apparent undue effort.

[redacted] states in the video that spending long periods sitting in his chair causes his back to hurt, and initiates leg cramps and headaches. There is no evidence that sitting in a power wheelchair all day would cause any different effect. Intermittent walking with a suitable gait aid could possibly ameliorate those effects of long-term sitting.

[redacted] concluded that her review supports the previous determination.

She recommended that the requested power wheelchair be denied as Medicaid criteria for power mobility is not met. The rationale were Medicaid will not approve a customized wheelchair without the medical necessity documentation

demonstrating the recipient's inability to perform activities of daily living (ADLs) within the home and detailed documentation of home accessibility is required for any extra-wide wheelchair or powered mobility device.

6. The petitioner attested as follows. He needs to use his left hand and left foot to propel himself. He cannot use his foot as he has an infection in his foot. He is not safe in his current manual wheelchair. He is in constant pain.

7. The petitioner's nurse, _____ opined that the petitioner needs that custom power wheelchair. She stated that the petitioner weighs 500 pounds. She observed that the petitioner cannot stand due to his neuropathy and is in constant pain.

8. _____, rehabilitation specialist, attested as follows. The petitioner has good and bad days. The petitioner needs assistance indoors. All documentation was submitted to the respondent. The petitioner has demonstrated pain on walking. The petitioner feet are numb and painful. A walker is not a safe means for the petitioner to ambulate. The petitioner has difficulty with his right hand. They could possibly remove some of the door jambs so the entries would be wide enough for the custom power wheelchair. As to the bathroom doorway, the petitioner could leave the custom power wheelchair at the door of the bathroom and ambulate from the door of the bathroom to inside the bathroom for grooming, toileting and bathing. He attested that the last time the petitioner was weighed six months ago the petitioner weighed 454 pounds.

8. The respondent noted that the rehabilitation specialist stated the petitioner has difficulty with his right hand but the petitioner has not submitted

any documentation of upper extremity weakness. The respondent noted that the petitioner would be unable to get the requested custom power wheelchair into the bedroom and bathroom. The trial power wheelchair was two inches less in width than the requested custom power wheelchair. The petitioner was unable to get the trial power wheelchair into his bedroom nor would he be able to get the requested custom power wheelchair into the bathroom where the doorway width is even less. As the petitioner is unable to drive the requested custom power wheelchair through the entire home, the respondent did not determine the home to be an accessible environment. The respondent determined that the requested custom power wheelchair did not meet all criteria of medical necessity. The respondent opined that the requested custom power wheelchair is in excess of the petitioner's needs as a less costly alternative is available, the home is not accessible and there was insufficient documentation that the petitioner could not use a stable bariatric walker in addition to his manual wheelchair.

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-1.010 "Definitions" defines 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 Florida Administrative Code at 59G-1.010 "Definitions" defines medical necessity and prior authorization:

(226) "Prior authorization" means the approval by the Medicaid office for a Medicaid provider, or by a prepaid health plan for its affiliated providers, to deliver Medicaid covered medical or allied care, goods, or services in advance of the delivery of the care, goods, or services.

The Florida Administrative Code at 59G-4.070 states in part:

- (1) This rule applies to all durable medical equipment and supply providers enrolled in the Medicaid program.
- (2) All durable medical equipment and supply providers enrolled in the Medicaid program must comply with the Florida Medicaid Durable Medical Equipment and Supply Services Coverage and Limitations Handbook, April 1998, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA 1500 and EPSDT 221, incorporated by reference in Rule 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Durable Medical Equipment/ Medical Supply Services Coverage and Limitations Handbook (June 2008) sets forth the service requirements for a power operated vehicle (page 2-94):

Service Requirements

A power-operated vehicle (POV) requires prior authorization.

The following criteria must be met for a POV:

- Recipient's medical necessity requires the use of a POV to independently move around his residence; and
- Recipient is physically unable to operate a manual wheelchair; and
- Recipient is capable of safely and independently operating the controls for the POV requested; and
- Recipient can transfer safely in and out of the POV and has adequate trunk stability to be able to safely ride in the POV; and
- An independent licensed physical therapist, occupational therapist or physiatrist has determined and documented his recommendation of the most appropriate and medically-necessary POV to meet the recipient's individual mobility needs; and
- The recipient does not have a wheelchair that was purchased by Medicaid within the past five years.

Durable Medical Equipment/ Medical Supply Services Coverage and Limitations Handbook (June 2008) sets forth the documentation requirements for a motorized wheelchair (page 2-93):

Documentation Required for Motorized or Power Wheelchair and Power-Operated Vehicle (POV)

Medicaid will not approve a power wheelchair (custom or non-custom), power operated vehicle (POV), or wheelchair power upgrade, without documentation from an independent licensed physical therapist or occupational therapist or physiatrist, which documents the recipient's inability to perform activities of daily living in the home and the medical consequences that will occur without the equipment requested.

When a motorized wheelchair (custom or non-custom) or power-operated vehicle is prescribed, the documentation must state that the recipient has successfully demonstrated his consistent ability to safely and independently operate a powered mobility device or wheelchair.

The recipient must meet all of the following conditions:

- Has documented, severe abnormal upper extremity dysfunction or weakness; and
- Has demonstrated that he possesses sufficient eye and hand perceptual capabilities and the cognitive skills necessary to safely operate and guide the chair or POV independently, and is capable of evacuating a residence or building with minimal or no verbal prompting in case of an emergency; and
- Currently resides in or will primarily use the equipment in an environment conducive to the use of a motorized wheelchair of the type and size wheelchair requested.

Clinical documentation of a power wheelchair trial, supervised by an independent licensed physical therapist or occupational therapist or physiatrist, must accompany any first request for a custom power wheelchair.

Documentation of the recipient's current activities of daily living capabilities, ambulation, and transfer skills must also be included in the physical therapist's, occupational therapist's, or the physiatrist's clinical documentation.

Prior authorization is required for authorization of a power wheelchair. For prior authorization, the request for a power wheelchair must meet all criteria for medical necessity, all Service Requirements and all documentation requirements. The evidence demonstrates that the petitioner needs assistance with ambulation and would be considered to have a mobility deficiency. Evaluations were done by a physical therapist and a physician. One of the documentation requirements for prior authorization for a power wheelchair is documentation of severe abnormal upper extremity dysfunction or weakness. There was no evidence of a severe abnormal upper extremity weakness submitted into record. The petitioner has not met all documentation requirements for prior authorization.

The petitioner has demonstrated the need for a wheelchair. The petitioner has demonstrated that the power wheelchair would be more convenient. Medical

necessity sets forth that the requested equipment is not primarily intended for the convenience of the recipient and that no equally effective and more conservative or less costly alternative be available. A manual wheelchair is a less costly alternative. The petitioner's requested power wheelchair does not meet the criteria for medical necessity. The petitioner has not met their burden of proof that it is medically necessary for the respondent to authorize a power wheelchair. Based upon the above cited authorities, the respondent's action to deny the power wheelchair was within the rules of the Program. The petitioner has the right to reapply at any time and provide to the respondent any further documentation including any worsening of his condition or change in his condition.

DECISION

This appeal is denied.

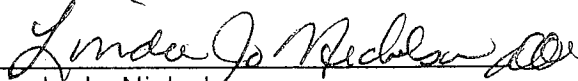
NOTICE OF RIGHT TO APPEAL

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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 20th day of January, 2010,

in Tallahassee, Florida.


Linda Jo Nicholson
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Copies Furnished To