

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

FILED
FEB 11 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09f-08718

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 9, 2010, at 10:20 a.m., in Lake Worth, Florida. The petitioner was present and was represented by her husband

Also present was the petitioner's caretaker, Representing the Agency was David King, management analyst, Agency for Health Care Administration (AHCA). Present as witnesses were Gregory Schemel, chief compliance officer, American Eldercare and Phyllis Davis and Cliff McMullen, both from the Department of Elder Affairs. All three witnesses appeared telephonically at their request.

ISSUE

At issue is whether the Agency was correct in denying the petitioner's request for home delivered meals, particularly lunch. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner receives benefits through the Agency's Nursing Home Diversion Program. One of the eligible benefits is home delivered meals.
2. The administrator of the Program, in this instance, is American Eldercare. This became effective October 1, 2009.
3. Prior to joining American Eldercare, the petitioner was receiving lunches delivered to the home. After joining American Eldercare, this service was denied based upon medical necessity considerations.
4. The petitioner is presently not eligible for food stamp benefits. The household assets exceed the eligibility limits of \$3,000.
5. American Eldercare reviewed the household circumstances of the petitioner when considering eligibility for home delivered meals. The petitioner's caretaker is available in the home six days a week. The husband is the caretaker the other day.
6. American Eldercare determined that with the caretaker in the home, she would be able to prepare meals. This would no longer allow eligibility for home delivered meals.

7. explains that without the delivered lunch, a financial burden is being placed upon him. He presently pays the caretaker approximately \$780 per week, with funds coming from his available assets.
8. American Eldercare explains that their decisions are based upon a totality of needs and that when the petitioner can no longer afford the caretaker, it will address the delivery of meals.

CONCLUSIONS OF LAW

The following federal and state laws govern Florida Medicaid:

- Title XIX of the Social Security Act,
- Title 42 of the Code of Federal Regulations,
- Chapter 409, Florida Statutes, and
- Chapter 59G, Florida Administrative Code.

The specific Federal Regulations, Florida Statutes, and the Florida Administrative Code, for each Medicaid service are cited for reference in each specific coverage and limitations handbook.

Fla. Admin. Code 59G-1.010 Definitions states in part:

(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 (emphasis added)

5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

Florida Medicaid Aged and Disabled Adult Waiver Services Coverage

and Limitations Handbook August 2005 states in part:

Home Delivered Meals

Home delivered meal services provide meals delivered to the recipient's home for those who have difficulty shopping for groceries or preparing nutritious meals.

The case manager must:

Ensure that the home delivered meals provider gives the recipient a choice of meals from a menu provided in advance. Meals listed on the advance meal menus must satisfy at least one-third of the Recommended Daily Allowance (RDA) nutritional requirements.

Verify and document that recipient cannot shop for groceries and prepare meals **and** has no caregiver capable of shopping for groceries and preparing meals. (emphasis added)

Verify the home delivered meals are appropriate for the recipient and the recipient's satisfaction with the home delivered meals.

As noted, there is a requirement that there is no caregiver capable of shopping for groceries and preparing meals. In this instant case a caretaker is present. Therefore, American Eldercare correctly denied the home delivery service.

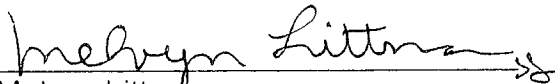
DECISION

The appeal is denied. 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 11th day of February, 2010,
in Tallahassee, Florida.



Melvyn Littman
Hearing Officer
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Copies Furnished To