

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

FILED

AUG 14 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-3261  
09F-3621

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 Dade  
UNIT: AHCA

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on June 3, 2009, at 10:40 a.m., in Miami, Florida. The petitioner was present and was represented by his mother, Present, representing the respondent was: Martha M. Govea, Medicaid Waiver specialist with the Florida Department of Health (DOH) Traumatic Brain & Spinal Cord Injury Program (TBSCIP) and Phyllis Bentil, program specialist with the Agency for Health Care Administration (AHCA). Appearing telephonically as a witness for the respondent was Kristen Russell, administrator of the BSCIP. : served as translator.

**ISSUE**

The petitioner is appealing the number of personal care and companion hours that are authorized by BSCIP and Medicaid, and the hours that are actually being provided. The respondent has the burden of proof.

The petitioner is appealing the respondent's action of placing a hold on his supplies. The respondent has the burden of proof.

**FINDINGS OF FACT**

1. The TBSCIP is a Waiver Program operated by the Department of Health, under agreement with the Agency for Health Care Administration. It provides home and community based services, allowing individuals who would otherwise require nursing home care or other institutional care, to receive services in their own home or in home-like setting.
2. The petitioner is a Medicaid and BSCIP recipient that resides with his mother. The petitioner receives assistance with activities of daily living from both Programs.
3. At the hearing the petitioner's representative stated that the supplies that had not been received for March 2009 and April 2009; however they started to receive them again in May 2009. The petitioner's representative contends that there is no remedy that the hearing officer could provide. Therefore, the issue on the supplies not being provided is moot.
4. The petitioner was previously (December 2008) receiving 3 hours (10am-1pm) daily, 7 days a week of personal care and 6 hours (1pm-7pm) daily, 6 days a week of companion care, through BSCIP. Paid companion care services are provided by the petitioner's mother.
5. The petitioner was also receiving 2 hours (8am-10am) of personal care services through the Medicaid Program.

6. In December 2008 the respondent issued a notice to the petitioner informing him that services were being reduced. A hearing was convened on January 21, 2009 and a Final Order (08F-8688) issued affirming the respondent's action to reduce BSCIP services. The Final Order strictly ruled on personal care (reduced to 1 hour daily in PM); companion care (reduced to 5 hours daily); and on supplies, received through BSCIP. No ruling on Medicaid personal care hours of 2 hours daily was made.
7. The respondent states that no new notice has been issued to the petitioner or any further reduction in hours other than the implementation of the Final Order as their action was upheld.

#### **CONCLUSIONS OF LAW**

Fla. Stat. 408.301 states as follows:

Legislative findings--The Legislature has found that access to quality, affordable, health care for all Floridians is an important goal for the state. The Legislature recognizes that there are Floridians with special health care and social needs which require particular attention. The people served by the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, and the Department of Elderly Affairs are examples of citizens with special needs. The Legislature further recognizes that the Medicaid program is an intricate part of the service delivery system for the special needs citizens. However, the Agency for Health Care Administration is not a service provider and does not develop or direct programs for the special needs citizens. Therefore, it is the intent of the Legislature that the Agency for Health Care Administration work closely with the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, and the Department of Elderly Affairs in developing plans for assuring access to all Floridians in order to assure that the needs of special citizens are met.

Fla. Admin. Code Rule 65-2.042 sets forth applicant/recipient Fair Hearings and states in part:

The Department of Children and Family Services, hereinafter referred to as Department or Agency, is required to provide notice and an opportunity of a hearing to any applicant or recipient when the Department's action, intended action or failure to act would adversely affect the individual's or family's eligibility for an amount or type of Financial Assistance, Medical Assistance, Social Services, or Food Stamp Program Benefits, or where action on a claim for such assistance or services is unreasonably delayed.

Fla. Admin. Code Rule section 65-2.057 sets forth the Conduct of Hearings and states in part:

(11) A Hearing Officer shall not grant a motion for rehearing or reconsideration.

Fla. Admin. Code Rules section 65-2.056 Basis of Hearings states as follows:

The Hearing shall include consideration of:

(1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.

(2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.

(3) The Hearing Officer shall determine whether the action by the agency was correct at the time the action was taken.

The petitioner's representative states that she and the petitioner left Miami to visit family in Gainesville on March 19<sup>th</sup> and returned approximately May 1<sup>st</sup>. She states that there is some confusion between what the hearing officer ruled on in Final Order 08F-

8688; information from the provider on the hours available; and the actual amount of hours being received for personal care services which is "zero."

The respondent states that the reduction of hours (for personal care and companion) were as a result of the implementation of Final Order (08F-8688). She states that services for personal care are not being provided to the petitioner, not because the hours are not authorized, but because the provider is not accepting the petitioner back as a customer after almost a two month absence. She states that it is a provider issue of staff availability. The Medicaid representative offered to provide a listing of Medicaid providers for personal care services to the petitioner.

The evidence shows that no new notice or reduction of person care hours has been issued by the respondent, other than the implementation of the Final Order. The petitioner is basing her allegations of reduction of hours beyond what the Final Order rules on, because of information received by the provider and, as of the day of the hearing personal care services were not being received however, this was due to a provider issue. The petitioner's representative also stated that she had not received payment for companion services that she has provided to her son. The hearing officer finds that this is a contractual matter with the provider on assigning staff and payments and not on the eligibility of benefits. The appeal is dismissed based on no new notice issued through the BSCIP or Medicaid and the issue being one of a provider contract issue is non-jurisdictional.

As stated in the Findings of Fact, the undersigned did not make a ruling on personal care hours received through the Medicaid Program. Additionally, the hearing

officer noted that information that was being offered during testimony was being extracted from the Final Order and not from their business record. Any action taken by the Medicaid Program on personal care hours received through them must have a notice issued to the petitioner with appeal rights.

**DECISION**

The appeals are denied as stated in the Conclusions of Law.

**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 4<sup>th</sup> day of August, 2009,

in Tallahassee, Florida.

  
A. G. Littman  
Hearing Officer  
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