

**FILED**

**APR 02 2014**

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-00525

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade


UNIT: AHCA

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 13, 2014, at 3:15 p.m., with all parties appearing telephonically.

**APPEARANCES**

For the Petitioner:  the petitioner's son.

For the Respondent: Luis Davilla, senior program specialist, Agency For Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency's action of January 6, 2014 to deny/reduce the petitioner's request for 2 Home Health Aide (HHA) services visits 7 days a week, for the period of December 30, 2013 through February 13, 2014. The petitioner was approved for 1 visit 7 days a week of the above service for the above time period. The petitioner has the burden of proof.

**PRELIMINARY STATEMENT**

Present as a witness for the respondent, was Dr. Rakesh Mittal, physician  
Reviewer, eQHealth Solutions.

A continuance was granted on behalf of the respondent for a hearing previously  
scheduled on February 25, 2014.

The petitioner's representative listed above lives out of State in Indiana.

**FINDINGS OF FACT**

1. The petitioner, who is eighty-six years of age and lives with his wife. He is currently in a rehabilitation center due to medical problems based on a "fall". He has been in this center about three months, but is expected to be released from this "center" in a couple of days. He has a diagnosis of obesity; diabetes; heart disease, hearing loss; glaucoma and has difficulties walking which requires an evaluation of services as provided through the Agency for Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) are outlined in Respondent Composite Exhibit 1. AHCA as noted above will be further addressed as the "Agency".

2. eQHealth Solutions has been authorized to make Prior (service) Authorization Process decisions for the Agency. The Prior Authorization Process was completed for the petitioner by eQHealth Solutions. A board certified physician is the consultant reviewer for eQHealth Solutions.

3. On January 6, 2014, eQHealth Solutions determined that the petitioner's request for 2 HHA service visit per day; 7 days a week, was going to be denied/reduced for the period of December 30, 2013 through February 13, 2014. The basis of the

reduction/denial of the service was because; "...Submitted information does not support the medical necessity for requested services....This is a 85 (petitioner is 86) year old male with functional limitations. The notes do not reveal clear changes in patient condition to support 2 times per day service. All requested visits are not approved as they are deemed excessive." The petitioner was approved for 1 HHA visit 7 days a week. A reconsideration request was not made by the petitioner or his provider agency. This request was a request for an increase in service. The petitioner's provider had requested for the above certification period; 2 HHA visits 7 days a week. The petitioner's treating physician; however, had requested 3 HHA visits 7 days a week, Respondent Composite Exhibit 1.

4. After listening to the petitioner's testimony, the respondent witness indicated that 2 HHA visits 7 days a week is the correct medically necessary amount of the service for the petitioner. He also indicated and noted that the petitioner's certification period has expired and thus his decision is now moot. The respondent representative indicated that his records indicate that the petitioner's provider has not made another request for services for the petitioner.

5. The petitioner's representative indicated that he does not agree with the above respondent decision in any way, as he indicated his father needs at least 3 HHA visits a day.

#### **CONCLUSIONS OF LAW**

6. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla.

Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

7. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

8. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

9. Federal Regulations at 42 C.F.R. § 440.230, Sufficiency of amount, duration, and scope, informs:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

11. Fla. Admin. Code 59G-1.010 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;
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...

#### 10. The Florida Medicaid Home Health Services Coverage and Limitations

Handbook, March 2013, discusses who can receive in-home services that include home health aide services as follows at page 2-3.

Medicaid reimburses home health services for Medicaid recipients who are under the care of an attending physician. The recipient must meet the following requirements:

- Require services that, due to a medical condition, illness or injury, must be delivered at the place of residence rather than an office, clinic, or other outpatient facility because:
  - Leaving home is medically contraindicated and would increase the medical risk for exacerbation or deterioration of the condition or
  - The recipient is unable to leave home without the assistance of another person.
- Require services that are medically necessary and reasonable for the treatment of the documented illness, injury or condition.
- Require services that can be safely, effectively, and efficiently provided in the home. and
- Live in a residence other than a hospital, nursing facility, or intermediate care facility for the developmentally disabled (ICF/DD) (See exceptions for ICF/DDs in 42 CFR 483, Subpart I.).

#### 11. The Florida Medicaid Home Health Services Coverage and Limitations

Handbook (March 2013) discusses prior authorization of home health aide services at page 2-14, as follows:

Home health visits are limited to a maximum of three intermittent visits per day for non-pregnant adults age 21 and older. The visits can be any combination of licensed nurse and home health aide visits.

The minimum length of time between home health visits provided to a recipient on the same day must be at least one hour.

All home health services must be prior authorized by the QIO prior to the delivery of services. Home health services are authorized by the QIO if the services are determined to be medically necessary.

12. The Agency, through eQHealth Solutions, took action on January 6, 2014 to deny/reduce the petitioner's request for home health aide services for 2 visit per day 7 days a week for the period of December 30, 2013 through February 13, 2014. The Agency had approved 1 visit 7 days a week. At the hearing, the Agency witness indicated that 2 HHA visits 7 days a week would be medically necessary for the petitioner.

13. The petitioner's representative, indicated and argued that though appreciating all that the Agency has approved for the petitioner, service wise; the petitioner is in need for 3 home visits 7 days a week. He argued that he was not aware that the petitioner's provider had only requested 2 visits per day instead of 3 visits per day that he believes his father needs. He indicated he is not satisfied with the petitioner's current provider and was going to make a complaint against them.

14. The respondent witness argued that the petitioner's certification period has expired and that the petitioner, through his provider should have requested HHA services for the petitioner for the next certification period. He explained that eQHealth makes medically necessary decisions for HHA visits for 60 day certification periods. He

explained that the petitioner's representative would need to advise the petitioner's provider to keep him abreast with all of the petitioner's service requests in order to know what has been requested. He argued that the Agency cannot approve any further HHA services until the petitioner's provider files a request for the HHA services. He argued that based on all of the above, the Agency decision to agree that 2 HHA visits 7 days a week is now a moot point.

15. For the case at hand, the petitioner's provider requested 2 HHA visits 7 days a week and this is what's at issue. The Agency, at the hearing agreed with this amount of HHA visits for the petitioner. The petitioner's representative is requesting 3 HHA visits per day. The hearing issue for this case is the 2 HHA visits 7 days a week. It would be beyond the scope of this hearing official to be able to approve more HHA visits than what was requested by the petitioner's provider. It also should be noted that the petitioner has been in a rehabilitation center for three months and has not been in the home and obviously not accessing the HHA visits that were approved.

16. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the Agency's action to approve the petitioner's request for home health aide services for the request of 2 HHA visit per day; 7 days a week of the service, for the period of December 30, 2013 to February 13, 2014, but agrees that this decision is now moot based on the petitioner's now expired certification period and the need for the petitioner's provider to request HHA services for the next certification period.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 2<sup>nd</sup> day of April, 2014,

in Tallahassee, Florida.



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Copies Furnished To [REDACTED], Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager