

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-08282

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 07 St. Johns
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 27, 2015 at 2:22 p.m. at the Department of Children and Families Program Office in Jacksonville, Florida.

APPEARANCES

For the Petitioner: 

For the Respondent: Jackie Allison, human services program specialist

STATEMENT OF ISSUE

Whether the respondent improperly denied the petitioner's request to increase the hours of home health services hours (companion care, personal care, and homemaker services) she receives through the Medicaid Long Term Care Waiver (LTCW) program from 107 hours weekly to 123 hours weekly. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (the Agency or AHCA or respondent) administers the Florida Medicaid program. Medicaid rules require that most recipients receive their Medicaid services through the managed care program. The Agency contracts with numerous health care organizations to provide medical services to its program participants. United Healthcare (United) is the contracted health care organization in the instant case.

By notice dated June 27, 2014, United informed the petitioner that her request to increase the hours of home health services (companion care, personal care, and homemaker services) she receives through LTCW from 107 hours weekly to 123 hours weekly was denied. The petitioner requested reconsideration. By notice dated August 28, 2014, United informed the petitioner that the original decision was upheld.

On September 18, 2014, the petitioner timely requested a hearing to challenge the United's decision.

The matter was scheduled for hearing by telephone on October 29, 2014. The respondent requested a continuance due to a scheduling conflict. The request was granted. The respondent implemented the requested service increase, pending the outcome of the hearing, because of the hearing delay. The petitioner is now receiving 123 hours of home health services weekly. However, the respondent stands by its decision that this service level is not medically necessary.

The matter was next scheduled for hearing by telephone on November 13, 2014. The hearing was continued because the petitioner requested to appear in person before the hearing officer.

The matter was next scheduled for hearing, in person, on December 3, 2014. The respondent requested a continuance due to a scheduling conflict. The request was granted.

The final hearing was convened on February 27, 2015. There were no additional witnesses for the petitioner. Petitioner's Composite Exhibit 1 was admitted into evidence. Susan Frischman, senior compliance officer with United and Dr. Marc Kaprow, long term care medical director with United, were present as witnesses for the respondent. Respondent's Composite Exhibit 1 was admitted into evidence. Administrative notice was taken of Florida Statute § 409.978; § 409.979; § 409.984; § 409.985; Florida Administrative Code: R.59G-1.010(166).

The record was held open until close of business on March 6, 2015 for the submission of additional evidence. No evidence was received from either party. The record was closed.

FINDINGS OF FACT

1. The petitioner (age 27) is a Florida Medicaid recipient. The petitioner is enrolled in the LTCW program. LTCW provides, among other things, home health services to individuals who would otherwise require nursing home placement. The petitioner receives her Medicaid LTCW services through United.

2. The petitioner has been diagnosed with Muscular Atrophy, a genetic neuromuscular disease that affects all of her voluntary muscles. The petitioner has virtually no use of her arms and legs. She has some use of her fingers; this allows her to operate her power wheelchair (via a joy stick) and to partially feed herself. Otherwise, the petitioner requires total assistance with all the activities of daily.

3. The petitioner lives in the community, in an apartment that she shares with a roommate. The roommate shares the rent, living expenses, and chores. The roommate is not involved in the petitioner's care.

4. The petitioner has her own internet business. In addition, she works part-time as a tutor at a local high school. She works Tuesdays and Thursdays from 9:00 a.m. to 4:00 p.m.

5. Prior to the action under appeal the petitioner received 107 hours weekly/15 hours daily of companion care, personal care and homemaker services. The petitioner is capable of being alone a few hours at a time. The caregivers work in shifts, generally two shifts each day, 7:30 a.m. – 5:30 p.m. and 10:00 p.m. – 7:30 a.m. The petitioner utilizes fewer hours on the weekends because she spends time with family and friends.

6. In June 2014, the petitioner requested that the service hours be increased to 123 hours weekly/18 hours daily. The petitioner asserted that additional hours are needed because she digests food very slowly due to weakened jaw and esophagus muscles. It takes the petitioner approximately one hour to eat a meal. She is a choke risk; someone must be present to assist with her feeding. The petitioner asserted that she has lost approximately 10 pounds in the last year due to insufficient time to complete meals.

7. In addition to nutritional needs, the petitioner asserted that she requires additional service hours for toileting and respiratory needs. The petitioner requires total assistance with toileting. She must be undressed and then redressed. She requires toileting 4 to 6 times daily. Each episode takes approximately 20 minutes to complete. Due to a weakened respiratory system, the petitioner requires albuterol treatments twice daily. She also requires, as needed, a fast acting inhaler and manual massage to loosen lung secretions.

8. All Medicaid services must be medically necessary as determined through prior service authorization. United conducts functional assessments to determine the patient's needs. Industry standard of care guidelines are used to allocate the amount of time necessary for home health services (bathing, dressing, feeding, laundry, meal preparation, chores, etc.).

9. United determined that additional service hours were not medically necessary in the instant case. A needs assessment showed that the petitioner's medical condition

is stable (she has not been hospitalized in the last 12 months). She feeds and takes medications by mouth. She is not on a ventilator or feeding tube or any device that requires one-on-one monitoring. The petitioner requires assistance with the activities of daily living, companionship to and from work, and assistance with household chores. The petitioner is capable of being alone for two or three hours at a time. The petitioner acknowledged that her caregivers have some downtime, time when they are not administering to her needs.

10. United determined that the petitioner's needs can be addressed at the current service level, 15 hours daily. If the current hours were spread out in smaller shifts throughout the day (i.e., three shifts of five hours vs. two shifts of seven and one-half hours), there is sufficient time to address the petitioner's nutritional, toileting and respiratory needs.

11. Respondent witness Dr. Marc Kaprow is a board certified physician. Dr. Kaprow is United's long term care medical director. Dr. Kaprow opined that the petitioner's service needs, including nutritional, toileting and respiratory needs can be met at the current service level, 15 hours daily. Dr. Kaprow opined that 18 hours of home health services daily is in excess of the petitioner's needs. There is no evidence that the petitioner has unmet medical needs which require additional home health services.

12. Regarding the petitioner's weight loss due to inadequate time to complete meals, Dr. Kaprow opined that the petitioner's nutritional needs can be met by

increasing her supplemental nutrition, including G-tube feedings. This is a viable option for individuals with weakened jaw and esophagus muscles, who are unable to meet their nutritional needs orally. Dr. Kaprow recommends that the petitioner be evaluated by a specialist. Dr. Kaprow opined that additional custodial services for nutritional purposes are not medically necessary.

PRINCIPLES OF LAW AND ANALYSIS

13. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

14. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

15. At issue is a request for increased Medicaid services. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

16. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 65-2.060(1)). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

17. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the

respondent. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

18. The definition of medically necessary is found in the Fla. Admin Code. R.

59G-1.010 which states:

(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.

19. Section 409.979, Fla. Stat. sets forth the eligibility criteria for long-term care services:

- (1) Medicaid recipients who meet all of the following criteria are eligible to receive long-term care services and must receive long-term care services by participating in the long-term care managed care program. The recipient must be:
 - (a) Sixty-five years of age or older, or age 18 or older and eligible for Medicaid by reason of a disability.
 - (b) Determined by the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to require nursing facility care as defined in s. 409.985(3).
- (2) Medicaid recipients who, on the date long-term care managed care plans become available in their region, reside in a nursing home facility or are enrolled in one of the following long-term care Medicaid waiver programs are eligible to participate in the long-term care managed care program for up to 12 months without being reevaluated for their need for nursing facility care as defined in s. 409.985(3):
 - (a) The Assisted Living for the Frail Elderly Waiver.
 - (b) The Aged and Disabled Adult Waiver.
 - (c) The Consumer-Directed Care Plus Program as described in s. 409.221.
 - (d) The Program of All-inclusive Care for the Elderly.
 - (e) The Channeling Services Waiver for Frail Elders.

(3) The Department of Elderly Affairs shall make offers for enrollment to eligible individuals based on a wait-list prioritization and subject to availability of funds. Before enrollment offers, the department shall determine that sufficient funds exist to support additional enrollment into plans.

20. The petitioner requested that her home health service hours be increased from 107 hours weekly/ 15 hours daily to 123 hours weekly/18 hours daily. The petitioner asserted that the additional hours are necessary to address her nutritional, toileting, and respiratory needs.

21. The respondent determined that additional service hours are not medically necessary. The petitioner receives 15 hours of service daily; she is capable of being alone approximately three hours at a time. Three service shifts of five hours each and three service breaks of three hours each accounts for the entire 24 hour day (15 hours of service + 9 hours without service = 24 hours). The petitioner's needs can be met at the lower service level.

22. Dr. Kaprow, the only expert witness, opined that additional services hours are not medically necessary. Regarding the petitioner's nutritional needs, Dr. Kaprow opined that the petitioner's nutritional needs can be met by nutritional supplements. He also recommended that she see a specialist.

23. The controlling legal authorities state that Medicaid goods and services cannot be in excess of a patient's needs. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes that the petitioner did not meet

her burden in this matter. The petitioner did not prove that additional home health services hours are medically necessary.

DECISION

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

DONE and ORDERED this 8th day of May, 2015,

in Tallahassee, Florida.



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FINAL ORDER (Cont.)

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Copies Furnished To [REDACTED] Petitioner
Debbie Stokes, Area 4, AHCA Field Office Manager