

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

FILED

MAR 03 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09110

PETITIONER,

Vs.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter in West Palm Beach, Florida on January 22, 2015 at 1:10 p.m.

APPEARANCES

For the Petitioner:



Pro Se

For the Respondent:

Sharon Garrison
Registered Nurse Specialist

ISSUE

Whether respondent's denial of a request for additional personal care; homemaker; and companion services through the Statewide Long Term Managed Care Program (LTC Program) was correct.

PRELIMINARY STATEMENT

The matter was first set for a face to face hearing in West Palm Beach, Florida for December 12, 2014 at 9:00 a.m. Respondent's party timely appeared. As the

petitioner had not arrived by 9:30 a.m., respondent's party was released. Petitioner thereafter appeared. The matter was continued to January 22, 2015.

On January 22, 2015 Boris Rodriguez from Propio Language Services provided English to Spanish translation.

The petitioner represented himself. Also present were [REDACTED] and [REDACTED]. Both are caregivers for the petitioner. Petitioner's exhibit "1" was entered into evidence.

The record was held open through January 29, 2015 for petitioner to provide additional information. The information was timely received and entered as petitioner's exhibit "2".

Ms. Garrison appeared as both the representative and witness for the respondent. Present as witnesses from United Health Care (UHC) were Dr. Marc Kaprow, LTC Medical Director and Christian Laos, Senior Compliance Analyst. Respondent's exhibits "1" through "3" were entered into evidence. Administrative Notice was taken of:

- Florida Statute §409.965; §409.978; §409.979; §409.98; §409.984; and §409.985
- Fla. Admin. Code R. 59G-1.010

The record was held open through February 5, 2015 for respondent to submit additional information. Respondent was also allowed through February 5, 2015 to provide a written response to petitioner's exhibit "1" and post hearing submission. Information was timely received and entered as respondent's exhibit "4".

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Respondent administers Florida's Medicaid Program and contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTC Program. Effective September 1, 2013, petitioner's LTC services have been provided through UHC.
2. Regarding the LTC Program, respondent does not have a promulgated Coverage and Limitations Handbook.
3. Prior to September 2013, petitioner was in the Consumer Directed Care Plus Program. When that program ended he transitioned to the LTC Program.
4. Respondent is 88 years of age and lives by himself. He is paralyzed from the waist down and has limited use of the left hand. He uses a power wheelchair. He also has an intermittent catheter which is changed twice daily. His medical diagnoses include: diabetes; high blood pressure; and colon cancer. Due to colon cancer, he experiences up to three bowel movements per day.
5. Petitioner was authorized to receive 77 hours per week of personal care and homemaker services. Specifically, 64 hours of personal care and 13 hours of homemaker services.
6. On October 2, 2014 petitioner requested 90 hours per week of personal care; homemaker; and companion services.
7. On October 22, 2014 UHC issued a notice which reduced services to 55 hours per week. The first month the total service hours would be 66 hours per week. After

the first month, 55 hours per week would be authorized. The breakdowns of these hours are:

- Personal Care: 25 hours per week
- Homemaker: 16 hours per week
- Companion: 14 hours per week

8. The 55 hours was approved as a total block of time. Petitioner was not required to use the hours for a specific task. The 55 hours could be flexed among the approved service categories.

9. On October 23, 2014 the Office of Appeal Hearings received petitioner's request for a Fair Hearing.

10. Petitioner's total hours remained at 77 hours per week pending the outcome of this proceeding.

11. At the onset of the hearing, respondent stated a change of position. A letter was provided from Dr. Kaprow stating, in part: "United Healthcare Community Plan has partly overturned the denial and will now provide: A total of 77 hours of personal, homemaker and companion care a week".

12. Petitioner wished to continue the hearing based on the request for 90 service hours per week.

13. Petitioner currently uses three caregivers. Their schedule, as determined by the petitioner, is as follows

	Caregiver 1	Total Hours	Caregiver 2	Total Hours	Caregiver 3	Total Hours
Sunday			8a-12p & 5p-9p	8	5p-6p	1
Monday	8a-1p & 3p-6p	8			6p-9p	3
Tuesday	8a-1p & 3p-6p	8			6p-9p	3

Wednesday			4p-9p	5	8a-2p & 9p-10p	7
Thursday	8a-1p	5	5p-9p	4	130p-5p & 9p-10p	4.5
Friday			6p-9p	3	8a-330p & 9p-10p	8.5
Saturday			8a-12p & 5p-9p	8	7a-8a	1

14. The above hours include assistance with such activities of daily living as bathing; dressing; toileting; cleaning; laundry; meal preparation; and shopping. The hours also address catheter care. The daily breakdown of scheduled hours is:

Sunday: 9 hours
 Monday: 11 hours
 Tuesday: 11 hours
 Wednesday: 12 hours
 Thursday: 13.5 hours
 Friday: 11.5 hours
 Saturday: 9 hours

Total: 77 hours per week

15. Petitioner asserts that, due to his multiple medical conditions, additional weekend hours are needed.

16. Respondent argues assistance with activities of daily living can be performed within the context of 77 appropriately scheduled hours per week.

CONCLUSIONS OF LAW

17. 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.

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

19 Petitioner is requesting an increase in services. It is noted that, due to a change in respondent's position, no service reduction occurred. Therefore, in accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the petitioner.

20. The standard of proof in an administrative hearing is by a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

21. Regarding the LTC Program, § 409.978, Fla. Stat. states:

(1) ... the agency shall administer the long-term care managed care program ...

(2) The agency shall make payments for long-term care, including home and community-based services, using a managed care model.

22. In this instant appeal, the managed care plan is UHC.

23. Section 409.98 (1) – (19), Fla. Stat. enumerates 19 service categories each LTC managed care plan must, at a minimum, provide.

24. Regarding the LTC Program, UHC and the respondent entered into a contractual relationship. That contract states "The Managed Care Plan shall ensure the provision of the following covered services, including those covered under s 409.98(1) through (19), F.S." Those services include:

Personal Care – A service that provides assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service includes assistance with preparation of meals, but does not include the cost of the meals. This service may also include housekeeping chores such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the enrollee, rather than the enrollee's family.

Homemaker Services – General household activities such as meal preparation and routine household care provided by a trained homemaker

when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities ...

Adult Companion Care – Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hand-on nursing care. This service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

25. Florida Medicaid, which includes the LTC Program, only covers those services determined to be medically necessary. See § 409.905 (4)(c), Fla. Stat.

26. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and 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.

27. Respondent has approved 77 service hours per week. Petitioner must establish, in a preponderant manner, that the need for 90 service hours per week satisfies each condition of medical necessity.

28. The Findings of Fact establish petitioner is currently scheduling between 11.5 and 13.5 hours on each weekday. At present, nine hours are scheduled on each weekend day.

29. Within the context of the 77 authorized hours, petitioner could schedule 11 service hours per day. This number can, as the petitioner is doing, be broken into smaller increments throughout the day. The hours associated with a service category can also be flexed by the petitioner.

30. Petitioner has not provided credible evidence that 77 hours per week cannot be appropriately allocated during the course of seven days.

31. Petitioner's age and medical conditions are noted. The petitioner, however, must demonstrate that an increase in hours is medically necessary. Medical necessity is not subject to a personalized definition. Rather, the definition in Fla. Admin. Code R. 59G-1.010 is the controlling authority.

32. After reviewing all evidence and testimony on a comprehensive basis, petitioner has not demonstrated that 90 hours of personal care; companion; and homemaker services are medically necessary. The greater weight of evidence does not demonstrate the following conditions of medical necessity have been satisfied:

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

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied. Respondent's action approving 77 hours per week of personal care; companion; and homemaker services 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 3rd day of March, 2015,

in Tallahassee, Florida.



Frank Houston
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