

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

**FILED**

**FEB 09 2015**

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-09669

PETITIONER,

Vs.

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

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 29, 2014 at 1:07 p.m.

**APPEARANCES**

For the Petitioner:

Petitioner's Daughter

For the Respondent:

Carol King, Registered Nurse Specialist

**ISSUE**

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

**PRELIMINARY STATEMENT**

The Agency for Health Care Administration (AHCA) is responsible for administering Florida's Medicaid Program. AHCA contracts with Health Maintenance

Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTC Program. Effective August 1, 2014, petitioner's LTC services have been provided through United Health Care (UHC).

Petitioner was present but represented by her daughter. No exhibits were entered into evidence.

Ms. King appeared as both the representative and witness for the respondent. Present as witnesses from UHC were Dr. Marc Kaprow, LTC Medical Director and Susan Frishman, Senior Compliance Analyst. Respondent's composite exhibit "1" was entered into evidence.

Administrative notice was taken of:

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

The record was held open through January 7, 2015 for respondent to provide: LTC contract definitions; a Plan of Care; and assessment information referenced in respondent's notice of October 27, 2014. Information was timely received and entered as respondent's exhibits "2" and "3".

#### **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. Petitioner is 69 years of age. She resides with her daughter. Petitioner is 5'1" tall and weighs approximately 260 pounds.

2. Medicare is currently providing a nurse visit twice per week and physical therapy twice per week.

3. When petitioner transitioned to the LTC Program with UHC, clinical and functional assessments were completed. The assessments were based on face to face contact with the petitioner. A Plan of Care was thereafter developed. The assessments and Plan of Care provide the information which follows.

4. Petitioner's medical conditions include: congestive heart failure; chronic obstructive pulmonary disease (COPD); gastroparesis; hyperlipidemia; frozen shoulder; rotator cuff injury; diabetes; and stage 4 bed sores. She requires oxygen on a daily basis.

5. Petitioner has been hospitalized approximately ten times in the past year.

6. Petitioner is primarily bed bound. She is bathed while in the bed.

7. Petitioner requires assistance with transferring; repositioning; dressing; and grooming.

8. Petitioner has both a power and manual wheelchair. Neither is currently utilized. She also has a walker.

9. Petitioner eats some solid foods. Her diet is supplemented with an enteral formula.

10. Petitioner experiences frequent diarrhea. She uses a bed pan for elimination purposes. She also has access to a bedside commode.

11. Because of bed sore drainage, sweating, and diarrhea, bedding and clothing is changed frequently. It is estimated 21 loads of laundry are done each week.

12. Petitioner receives the following supplies/products through the LTC program: chux pads; wipes; gloves; ointment; and Ensure Plus.

13. Based on the assessments, the case manager immediately approved 21 hours of personal care services per week. A further review was then completed by UHC personnel. The review produced an increase in the number of weekly hours.

Petitioner's weekly hours were increased to 26.8 hours for personal care and 10.5 hours for homemaker services (total of 37.3 combined service hours per week).

14. A request for 48.5 hours per week of personal care and homemaker services was thereafter received by United Health Care. Dr. Kaprow reviewed the request and issued a denial on October 7, 2014. The notice stated, in part:

The specific reason for our decision: You have asked for 48.5 hours of personal and homemaker care at home a week. You are getting 26.8 hours of personal care a week. You are getting 10.5 hours of homemaker care a week. Your care plan for help is based on how much you [sic] help you need. The health plan reviewed your needs for personal care. Personal care includes help for activities of daily living. This includes help for dressing and bathing. Based on our review you need personal care for 28 hours per week ... The health plan will not cover the other hours of personal care you asked for. The other hours are in excess of your needs. Hours in excess of your needs are not medically necessary. The health plan reviewed your needs for a homemaker. Homemaker care includes help for preparing meals and housekeeping. Only homemaker care that is for you, not the whole home, is covered. Based on our review you need homemaker care for 13 hours weekly. The health plan will cover 13 hours of homemaker care a week. The health plan will not cover the other hours of homemaker care you asked for. The other hours are in excess of your needs. Hours in excess of your needs are not medically necessary. The total number of hours approved is 41 hours weekly.

15. Petitioner requested UHC reconsider the above decision. A second review followed. On October 27, 2014 a notice was issued upholding the initial decision. The

reviewer stated, in part: "We cannot approved 48.5 hours because it is not medically necessary."

16. On November 11, 2014 the Office of Appeal Hearings received petitioner's request for a Fair Hearing.

17. Upon approval of the 41 hours per week, petitioner allocated the hours as follows:

- Six days per week the hours are 3:30 p.m. to 9:30 p.m. (six hours per day)
- One day per week the hours are 3:30 p.m. to 8:30 p.m. (five hours)

18. The five or six hours per day can, if desired, be used in multiple increments throughout the day.

19. Petitioner has refused admission into a skilled nursing facility.

20. Petitioner's daughter asserts numerous medical conditions<sup>1</sup> hinders her ability to assist the petitioner with many activities.

21. Petitioner asserts when the LTC provider is not present, elimination needs associated with diarrhea are held until staff arrives.

### **CONCLUSIONS OF LAW**

22. 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.

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

---

<sup>1</sup>Conditions include, in part, COPD; asthma; fibromyalgia; knee pain; hip pain; frozen shoulder; headaches; and degenerative disc disease.

24. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the petitioner. 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, 7<sup>th</sup> Ed.).

25. 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.

26. In this instant case, that managed care plan is UHC.

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

28. 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 ...

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

30. 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.

31. Respondent has approved 41 hours per week of PCS and homemaker services (28 hours of PCS and 13 hours of homemaker). Petitioner must establish, in a preponderant manner, that the need for 48.5 hours of PCS and homemaker services satisfies each condition of medical necessity.

32. It is noted that the definition of PCS and homemaker contain similarities. Both services, for example, include meal preparation and the completion of basic household chores.

33. The medical conditions of petitioner's daughter are noted. Physical limitations associated with these conditions, however, were not documented by a medical professional.

34. Not all assistance required by the petitioner is physical in nature. Preparing of food and the completion of laundry, for example, do not involve lifting; transferring; or repositioning of the petitioner. Neither do such activities as brushing of hair, washing of face and hands and assistance with oral hygiene.

35. When laundry is being completed by the LTC provider, other duties associated with PCS or homemaker duties could be addressed during the washing and drying cycle. It is also noted that chux pads are provided to decrease the frequency of laundering of bed linens.

36. Petitioner has not established that breaking the services into smaller segments to facilitate multiple daily visits has been unsuccessful.

37. A hearing officer must consider all evidence; judge the creditability of witnesses; draw permissible inferences from the evidence; and reach findings of fact based on competent substantial evidence. After reviewing all evidence and testimony on a comprehensive basis, petitioner has not demonstrated that 48.5 hours of PCS 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;

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.

**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 9<sup>th</sup> day of February, 2015,

in Tallahassee, Florida.

  
Frank Houston  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To:

 Petitioner  
Carol King, Field Office 9 Medicaid