

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

FILED
FEB 17 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-10043

PETITIONER,

Vs.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened in this matter before the undersigned hearing officer on December 22, 2014 at 11:32 a.m.

APPEARANCES

For the Petitioner:

 son

For the Respondent:

Dianna Chirino, Senior Human Services Program
Administrator, Agency for Health Care Administration

ISSUE

The Petitioner is appealing the Agency for Health Care Administration's decision through the Petitioner's service provider, United Health Care, to deny her request for Adult Day Care services six days a week.

PRELIMINARY STATEMENT

Appearing as witnesses for the Agency from United Health Care were Christian Laos, Senior Compliance Analyst and Dr. Marc Kaprow, Long-Term Care Medical Director.

Respondent entered a 71 page composite document into the record which was marked as Respondent Exhibit 1. The Petitioner submitted no documents into the record.

Petitioner continues to attend the adult day care center six days a week, pending the outcome of this appeal.

FINDINGS OF FACTS

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

1. The Petitioner is an 86 year old Medicaid recipient enrolled with United Health Care as of August 1, 2014, a Florida Long-Term Care provider.
2. The Petitioner has been determined eligible for nursing home placement but has elected to stay in her home and receive support services to remain in the community. She is diagnosed with Alzheimer's disease, high blood pressure and coronary artery disease. She has had a stroke and uses a wheelchair. She uses a roller walker to ambulate but needs help to prevent falling. She lives with her son, who is her primary caregiver. She needs help with all her activities of daily living (ADLs).
3. The Petitioner currently attends an adult day care center six days a week, eight hours a day and also receives 10 hours of in-home services during the week. The total hours of weekly services received is 58.

4. The Petitioner was receiving adult day care services at the time she enrolled with United Health Care August 1, 2014. The Petitioner submitted a prior authorization on November 7, 2014 to continue receiving the adult day care services.

5. On November 18, 2014 the Respondent sent the Petitioner a denial notice for the requested adult day care service providing the following explanation:

You asked for 6 days of weekly adult day care. Your care plan is based on your needs. Adult day health care is for helping you with daily activities. Adult day care is also for being social. Being alone in your home is not a reason for adult day health care. For adult day care you must be able to help in your own care. You require total for most of your daily activities. Based on our evaluation you will not benefit from adult day care. The health plan will not cover adult day care. The service is in excess of your needs. Services in excess of your needs are not medically necessary. You may benefit from other community services such as assisted living. The health plan will cover 37 hours of care in your home a week.

6. The Petitioner timely filed her appeal on November 19, 2014.

7. The Respondent's witness stated that the level of care the Petitioner needs is more than what an Adult Day Care facility can provide. He explained that based on the functional assessment completed on the Petitioner at the adult day care facility on November 7, 2014, she has near total care need for her activities of daily living (ADLs). Additionally, due to her dementia and past stroke he opined that it is unlikely that she will improve in performing any of her ADLs. Citing the Florida Administrative Code, he further explained that based on medical necessity more conservative and equally effective services must be used. He explained that general guidelines were used to develop the number of minutes for specific services that the plan is prepared to provide to the Petitioner in her home. Table A below reflects the services and amount of time allocated for each:

TABLE A

<i>ADL Services</i>	Allocation (in minutes) per Week
Bathing	210
Dressing Assistance	140
Feeding (set up, etc.)	70
Grooming assistance	210
Diaper changes	280
Transfers/walker supervision	210
<i>Household chores</i>	
Cleaning	180
Laundry	120
Meal Preparation	315
Shopping support	100
Total minutes per week	1,835
Total hours per week	31
Companion Services per week	6
GRAND TOTAL	37 hours/week

8. The Petitioner's son disagreed with the Respondent, stating that his mother looks forward to going to the adult day center and has 'become a different person' since she's been going to the center. The functional assessment completed by the Respondent indicates Petitioner is cooperative with the adult day care staff. While at the adult day care center, she is able to eat by herself; she advises staff when she needs to go to the bathroom; she is able to transfer with the roller walker with one person holding her, and she exercises there six days a week.

CONCLUSIONS OF LAW

9. By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has

conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80, Florida Statutes.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

11. Because the matter under appeal involves a termination of adult day care for the Petitioner, to be replaced by services in the home, the burden of proof was assigned to the Respondent in accordance with Fla. Admin. Code R. 65-2.060 (1).

12. Florida Statutes 409.971 – 409.973 establishes the requirement for Medicaid recipients to be enrolled in the statewide managed medical assistance program and the minimum benefits the managed care plans shall cover. Adult day care services is one of the mandatory services that must be provided by the plan.

13. Florida Statutes 409.912 also provides that the Agency may mandate prior authorization for Medicaid services.

14. Florida Statutes 429.901 Definitions, provides in relevant part:

(1) "Adult day care center" or "center" means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.

(3) "Basic services" include, but are not limited to, providing a protective setting that is as non-institutional as possible; therapeutic programs of social and health activities and services; leisure activities; self-care training; rest; nutritional services; and respite care.

15. Fla. Admin. Code R. 59G-1.010 defines "prior authorization" as:

(226) "Prior authorization" means the approval by the Medicaid office for a Medicaid provider, or by a prepaid health plan for its affiliated providers, to

deliver Medicaid covered medical or allied care, goods, or services in advance of the delivery of the care, goods, or services.

16. Fla. Admin. Code R. 59G-1.010 (166) also provides:

"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.

(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.

17. Fla. Admin. Code R. 58A-6.006 Governing Authority, Administration and Staffing

provides in relevant part:

(1) (a) Admission criteria shall limit participant eligibility to adults with functional impairments in need of a protective environment and a program of therapeutic social and health activities and services as defined in this rule chapter, and assure that the admission of each participant shall be made under the supervision of the owner or operator within the confines of specific requirements set forth below:

2. No participant shall be admitted or retained in a center if the required services from the center are beyond those that the center is licensed to provide.

18. Fla. Admin. Code R. 58A-6.009 Basic Services provides the following:

- (1) (b) A variety of therapeutic, social and health activities and services which help to restore, remediate, or **maintain** optimal functioning of the participants and to increase interaction with others [emphasis added]. Examples of such programs include exercise, health screening, health education, interpersonal communication, and behavior modification;

19. The Respondent argued that the level of service at the adult day care center was in excess of what the Petitioner needs because she is in need of total care with her ADLs and has no likelihood of improving.

20. The Petitioner's son disagreed, arguing that his mother looks forward to going the adult day center.

21. The functional assessment completed by the Respondent on November 7, 2014 appears to support the benefits of the Petitioner going to the adult day center (ADC). The assessment was completed at the ADC and responses were provided by an ADC administrator. Some of the comments that indicate the benefit of the Petitioner going to the center include: "[eligible enrollee (EE)] does not cooperate with any dressing process at home; however, the staff from ADC reported EE is very cooperative with dressing process at the ADC"; "EE needs assistance with cutting up food but is able to eat by herself at the ADC"; regarding toileting, "EE is able to cooperate at the ADC. EE is able to advise the ADC staff when she needs to go to the bathroom"; "EE is able to transfer with the roller walker and one person holding her at the ADC. EE is wheelchair

bound at home and refuses uses with the roller walker at home." It is also noted that she exercises at the ADC six days a week.

22. The Respondent opined that the Petitioner's needs exceed what the ADC can provide and that she would not likely improve her ability to perform her ADLs. However, the ADC's have the ability to limit participation per the above cited administrative rules and the services are to "help to restore, remediate, or maintain optimal functioning of the participants." The comments by the ADC administrator in the Respondent's November 7, 2014 assessment would indicate that the Petitioner is benefitting from their services.

DECISION

Based on the evidence presented at the final hearing and on the entire record of this proceeding, the Agency for Health Care Administration, through the long-term care provider United Health Care, was incorrect when it denied all days of the Petitioner's request for adult day care services six days a week and terminated all of these services. Therefore, the Petitioner's appeal is hereby granted.

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

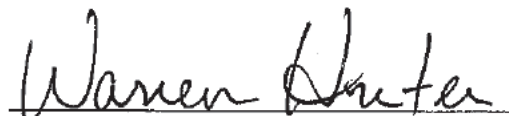
FINAL ORDER (Cont.)

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be the petitioner's responsibility.

DONE and ORDERED this 17 day of February, 2015,
in Tallahassee, Florida.


Warren Hunter

Hearing Officer

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