

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-10424

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 January 15, 2015, at 1:05 p.m., in Doral, Florida.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's mother.

For the Respondent: Linda Latson, Registered Nurse Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's action to deny the petitioner's request for additional personal care services (PCS) for a total of four hours a day, Monday through Friday and six hours a day for weekend days, for the certification period from November 12, 2014

through January 10, 2015. The petitioner was approved for two hours a day, Monday through Friday.

PRELIMINARY STATEMENT

Present as a witness for the respondent was Dr. Ellyn Theophilopoulos, Physician Reviewer with eQHealth Solutions.

The respondent submitted into evidence Respondent Composite Exhibit 1.

In the above labeled exhibit, page 38 is the petitioner's mother's work schedule; page 40 and page 41 is the petitioner's Plan of Care; page 43 contains the petitioner's medical prescription; and page 46 through page 54 shows the petitioner's provided therapies.

FINDINGS OF FACT

1. The petitioner, who is thirteen years of age, has been diagnosed with Down Syndrome, developmental delay, and requires an evaluation for services as provided by the Agency for Health Care Administration (AHCA), under Florida's Medicaid State Plan. The petitioner's condition(s) is further outlined in Respondent Composite Exhibit 1. AHCA 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 pediatrician is the consultant reviewer for eQHealth Solutions. On November 17, 2014, eQHealth Solutions determined that the petitioner's request for a total of four hours of PCS services a day, Monday through Friday and six hours a day for Saturday and Sunday, was denied for

the certification period of November 12, 2014 through January 10, 2015. This request for PCS was a request for an increase in the services. The petitioner was approved for two hours a day Monday through Friday. The petitioner was previously approved for the above for the last certification period.

3. A notice was mailed to the petitioner on November 19, 2014, with an explanation for the denial, stating: "The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider. The service is denied because the care can be provided by the parent, or caregiver. Submitted information does not support the medical necessity for requested frequency/or duration." This notice also provides a clinical rationale for the decision and states in part:

...The patient is a 13 year old with Down's syndrome. The patient is ambulatory and continent. The patient is on a regular diet. The patient attends school until 3:30 p.m. The patient lives with her mother who works from 8a.m. to 5pm Monday through Friday. The clinical information provided support the medical necessity of two personal care services hours per day Monday through Friday to assist the patient with activities of daily living while the mother is working. The clinical information provided does not support the medical necessity of the additional services. The additional hours appear to be for supervision which is not a covered service. Additionally, the mother should be available to provide the remainder of assistance with activities of daily living.

4. A reconsideration request was made for this case. eQHealth Solutions upheld the first decision noted above and sent the petitioner a Notice on November 20, 2014, advising of the decision.

5. Dr. Theophilopoulos reiterated the information as noted in the clinical rationale noted above. She indicated that she agreed with the decision made by the consultant reviewer for this case. She indicated that the request for the service hours for the

petitioner amounts to a request for supervision of the petitioner, which is not covered under the rules for the service. She indicated that the petitioner's mother is capable of providing ADL (activities of daily living) care for the petitioner and that the PCS hours approved are for the hours the petitioner's mother is working when the petitioner is at home and not in school.

6. The petitioner's representative indicated that the petitioner needs special supervision twenty-four hours a day for both her ADLs and in general. She argued that the petitioner has a right to the hours of PCS. She indicated she is unable to get the "aide" to come to her house just for two hours at a time. She indicated that she could forego the request for the weekend hours and at worse could accept three hours a day of PCS for the petitioner in the afternoon. The respondent witness again reiterated that the Agency decision remains correct.

7. The physician reviewer indicated that she has taken into consideration the requirements of the EPSDT Program for the petitioner and has made the correct medically necessary decision.

CONCLUSIONS OF LAW

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

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

11. Fla. Admin. Code R. 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.

(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...

12. 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.

13. The Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook, under Personal Care Services, on page 2-25 (October 2014) "Parental Responsibility", states:

Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Where needed, the home health service provider must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.

Medicaid can reimburse personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care. Supporting documentation must accompany the prior authorization request in order to substantiate a parent or legal guardian's inability to participate in the care of the recipient.

14. The Home Health Services Coverage and Limitations Handbook, page 2-12, (October 2014) states in part:

Listed below are examples of services that are not reimbursable as a Medicaid home health service:

- Audiology services
- Housekeeping (except light housekeeping), homemaker, and chore services, including any shopping except grocery shopping when provided as an IADL
- Meals-on-wheels
- Mental health and psychiatric services
- Normal newborn and postpartum services, except in the event of complications
- Respite care
- Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications
- Baby-sitting
- Services to a recipient residing in a community residential facility when those services duplicate services the facility or institution is required to provide
- Social services
- Transportation services (except when necessary to protect the health and safety of the recipient and no other transportation service is available or when provided as an IADL)

15. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

5010. Overview

A. Early and Periodic Screening, Diagnostic and Treatment Benefit.-- Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...

5110. Basic Requirements

OBRA 89 amended §§1902(a)(43) and 1905(a)(4)(B) and created §1905(r) of the Social Security Act (the Act) which set forth the basic requirements for the program. Under the EPSDT benefit, you¹ must provide for screening, vision, hearing and dental services at intervals which meet reasonable standards of medical and dental practice established after consultation with recognized medical and dental organizations involved in child health care. You must also provide for medically necessary screening, vision, hearing and dental services regardless of whether such services coincide with your established periodicity schedules for these services. Additionally, the Act requires that any service which you are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, must be provided to EPSDT participants regardless of whether the service or item is otherwise included in your Medicaid plan.

16. § 409.913, Fla. Stat. addresses "Oversight of the integrity of the Medicaid program," with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part: "For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity."

17. As shown in the Findings of Fact, the Agency on November 19, 2014 denied the petitioner's request for a total of four PCS hours a day, Mondays through Friday, and six hours a day on Saturday and Sunday for the certification period of November 12, 2014 through January 10, 2015 based on: "The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider. The service is

¹ "You" in this manual context refers to the state Medicaid agency.

denied because the care can be provided by the parent, or caregiver. Submitted information does not support the medical necessity for requested frequency/or duration." The petitioner was approved for two hours a day of PCS, Monday through Friday.

18. The petitioner's representative argued that she would settle for just three hours of PCS for the petitioner, Monday through Friday.

19. The respondent representative argued that the petitioner's request for the PCS hours amounts to a request for supervision of the petitioner, which is not covered under the rules. She argued that the petitioner's caretaker mother is capable of providing the care to the petitioner. Therefore, by rule, the mother must participate in providing care to the fullest extent possible. She argued that based on the above arguments, the amount of PCS as provided to the petitioner is the correct medical necessity amount.

20. For the case at hand, the evidence presented shows that the petitioner's mother is capable of providing ADL care for the petitioner and that the PCS as approved for the petitioner is to be utilized when the petitioner's mother is working and the petitioner is at home. Additionally, the hearing officer agrees with the respondent's arguments that the PCS hours as requested would be for supervision of the petitioner.

21. Furthermore, activities related to supervision are termed "baby-sitting" in the Medicaid Handbook and are listed as a service exclusion. Page 1-3 of the Handbook defines babysitting as "the act of providing custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be

medically necessary for the recipient." The controlling authorities also make clear that parents and caregivers must participate in care to the fullest extent possible.

22. After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the petitioner has not met her burden of proof and that the Agency action to partially approve the petitioner's request for PCS services for two hours a day, from Monday through Friday, for the certification period of November 12, 2014 through January 10, 2015 is correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action 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.


Robert Akel
Hearing Officer
Building 5, Room 255

FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED] Petitioner

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