

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

FILED

JUN 12 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02386

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 18 Seminole
UNIT: AHCA


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 23, 2014 at 10:11 a.m.

APPEARANCES

For the Petitioner:  Petitioner's granddaughter

For the Respondent: Lisa Sanchez, Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether the Agency properly denied Petitioner's request for skilled nursing facility level of care.

PRELIMINARY STATEMENT

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

Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Petitioner presented [REDACTED] her son, as a witness.

Serving as Respondent's witnesses from United Healthcare were: Dr. Marc Kaprow, Long Term Care Program Medical Director; Christian Laos, Senior Compliance Analyst; Adele Clark, Care Management Manager; Laurie Hairston, Senior Health Services Director, and Leshanda Cooks, Health Services Director.

Administrative notice was taken of Section 409.978, Florida Statutes, and Florida Administrative Code Rule 58A-5.0181.

Petitioner submitted 2 exhibits into evidence. Respondent's composite exhibit 1 was entered into evidence.

Petitioner submitted information after the hearing. The record was not held open for any additional information, and closed at the time the hearing concluded. As a result, the hearing officer cannot rely on the late submission for the purposes of this order. The Agency may take the information into consideration for future actions as the Petitioner's care is ongoing.

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 an elderly woman diagnosed with dementia and has a recent history of hip fracture and surgery. She requires some assistance with all activities of daily

living (ADLs). Petitioner requires some assistance with transfers. Petitioner is not bedridden. She currently lives in a nursing home.

2. In October 2013, Petitioner was living in an ALF when she had a fall, fracturing her hip and requiring surgery. She was placed in a nursing home to receive therapy and to recover. In December 2013, the plan determined based on the medical information available that Petitioner did not require the total care that a nursing home provides.

3. The Agency, through its contracted managed care plan United Healthcare ("United"), denied Petitioner's request to continue her stay at the nursing home. The original denial was dated December 23, 2013. Petitioner's granddaughter filed a grievance/appeal with United, which United received on January 27, 2014. On March 11, 2014, United sent a letter notifying Petitioner that the original decision was upheld. The Office of Appeal Hearings received Petitioner's hearing request relating to the United denial on March 31, 2014.

4. According to the December 23, 2014 letter, the reason United denied Petitioner's request for nursing home level care is: "[Petitioner was] accepted for placement at Emeritus at Tuskawilla Assisted Living Facility and Azalea Manor Assisted Living Facility." See Respondent's Exhibit 1 at 14.

5. Petitioner's family does not believe that an ALF can provide the necessary level of care for Petitioner. Since December, her health has been declining. According to the family, she is bedridden and not receiving any therapy at the nursing home. She wears diapers and requires continence care. The nursing home has opted to continue Petitioner's care although United is not paying for the care.

6. Petitioner's son testified that she needs a nurse to take her blood pressure multiple times a day like the nursing home does. She also needs two people to help her with transfers. She used to walk around her old ALF, but now cannot walk without assistance.

7. Petitioner's granddaughter testified that Emeritus at Tuskawilla ALF was too expensive for Petitioner to stay at. She was unaware of anything regarding Azalea Manor ALF. Petitioner's previous ALF, Aiden Springs, rejected her because she required a high level of care, and another ALF called Eastbrook also denied her.

8. The most recent evaluation, dated April 2, 2014 by Alexandra Alexis M.D., indicates that Petitioner needs assistance, but not total assistance, with all activities of daily living. She can eat independently, without assistance. Dr. Alexis specifically indicated that Petitioner is not bedridden. However, Dr. Alexis indicated that Petitioner's needs cannot be met at an ALF unless that ALF is also a medical, nursing, or psychiatric facility. See Petitioner's Exhibit 2, at 2.

9. Respondent argued that each assisted living facility ("ALF") has different options available for different residents' needs. When an ALF rejects a resident, it is because the specific ALF cannot handle the resident's needs, not that the resident is entirely unsuitable for ALF placement anywhere. Another ALF may be able to meet the resident's needs. For example, some ALFs have licenses to provide nursing care where others may not.

10. The Agency explained that with the long term care program, there is a share of cost and the resident will be responsible for some portion of the payment to the facility.

Petitioner's case manager from United would call Petitioner's granddaughter and explain how it was calculated and what the share of cost would be for the Petitioner.

CONCLUSIONS OF LAW

11. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 120.80, Florida Statutes. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

12. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency.

13. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

14. As the Agency reduced Petitioner's level of care, the burden of proof is now assigned to the Agency pursuant to Florida Administrative Code Rule 65-2.060(1).

15. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

16. Section 409.978, Florida Statutes, provides that the "Agency shall administer the long-term care managed care program." The Agency is required to do this through a managed care model. *Id.* It does this by contracting with eligible plans to provide provider service networks. Section 409.981(1), Florida Statutes.

17. The Medicaid program only covers "medically necessary" services. See Sections 409.905(4)(c) and 409.913(7) Florida Statutes. Florida Administrative Code Rule 59G-1.010(2)(166) states:

"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.

18. Skilled nursing services are described in Florida Administrative Code Rule 59G-4.290(3)(b), must be:

1. Ordered by and remain under the supervision of a physician;
2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effective performance;
4. Required on a daily basis;
5. Reasonable and necessary to the treatment of a specific documented illness or injury; and
6. Consistent with the nature and severity of the individual's condition or the disease state or stage.

19. Some ALFs may be able to offer limited nursing services if they are licensed to do so. See Fla. Admin. Code R. 58A-5.0131. An individual must meet certain criteria in order to be admitted to a facility holding a standard, limited nursing, or limited mental

health license. See Fla. Admin. Code R. 58A-5.0181. The facility administrator makes the determination on whether the individual is appropriate for the facility and that the facility can meet the individual's needs. See Fla. Admin. Code R. 58A-5.0181(1)(a)(14).

20. The criteria at issue for admission to a limited nursing licensed facility (ALF) in Petitioner's case from Rule 58A-5.0181, Florida Administrative Code, are as follows (emphasis added):

3. Be able to perform the activities of daily living, *with supervision or assistance* if necessary.
4. Be able to transfer, *with assistance* if necessary. *The assistance of more than one person is permitted....*
8. Not require 24-hour licensed professional mental health treatment.
9. Not be bedridden....
12. Not require 24-hour nursing supervision.
13. Not require skilled rehabilitative services as described in Rule 59G-4.290, F.A.C.
14. Have been determined by the facility administrator to be appropriate for admission to the facility.

21. Skilled rehabilitative services, according to Florida Administrative Code Rule 59G-4.290(4) must be:

- (a) Ordered by and remain under the supervision of a physician;
- (b) Reasonable and necessary to the treatment of a recent or presently existing illness or injury;
- (c) Performed by a physical therapist, occupational therapist, certified respiratory care practitioner/therapist;
- (d) Required at least 5 days a week; and
- (e) Reviewed and reevaluated at least every 30 days by the physician and the physical, occupational therapist or respiratory care practitioner/therapist.

22. Petitioner needs continence care, assistance with ADLs, medication administration, physical and/or occupational therapy, and the family wants her vital signs checked on a regular basis. She does not have a complex medical condition. An unskilled aide (not a skilled nurse) can provide the continence care and assistance with

ADLs. None of Petitioner's needs meets the criteria for "skilled nursing services" as defined by the above authorities.

23. Petitioner meets the criteria for admission to an ALF with a limited nursing license, as described above. Petitioner can perform her ADLs, with assistance. She can transfer with assistance. There is no evidence that she requires 24-hour licensed professional mental health treatment, though she does suffer from dementia. According to her physician, as of April 2, 2014, she is not bedridden. She does not require 24-hour nursing supervision. Two facility administrators have deemed her appropriate for admission to their specific facilities.

24. Petitioner requires ongoing physical therapy to improve her stability with walking and increase independence with transfers. She is not currently in need of "skilled rehabilitative services" as defined above. Her injury was in October, and it is now almost May. Her hip fracture is no longer "recent" or "presently existing." The therapy she needs is not in direct relation to treating her injury from October nor is there evidence that therapy is required 5 days per week.

25. The requested level of care must be necessary to protect petitioner's life, prevent illness or disability, or alleviate severe pain. The service also must not be in excess of her needs. Petitioner's main needs appear to be assistance with ADLs, physical and/or occupational therapy, and general monitoring.

26. In this case, there is no evidence that Petitioner requires continuous skilled nursing assistance, as defined by Florida Administrative Code Rule 59G-4.290(3)(b) excerpted above. She has no apparent need for daily medical care. She has no open wounds that require care and she is not bedridden. She simply needs continence care

and assistance with ADLs, which do not require a skilled nurse. Without a need for skilled nursing care, a less intense level of care is appropriate, such as limited nursing provided by an ALF with such a license.

27. Petitioner's son wanted to ensure someone could check Petitioner's vital signs, as she has had low blood pressure in the past. A facility with a limited nursing license can provide that service, because it is a "nursing assessment." See Fla. Admin. Code. R. 58A-5.0131(1)(l).

28. The undersigned finds that the Petitioner needs some assistance, but not to the level of a skilled nursing facility. An assisted living facility could provide the needed assistance if the facility accepts her as a resident. The undersigned finds the Agency properly denied the request for skilled nursing facility level of care. The Agency's action in this matter was correct.

29. If Petitioner's condition changes, she should work with her case manager to find appropriate care. This order does not preclude any future appeal rights the Petitioner may have to challenge future Agency actions.

DECISION

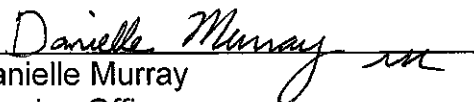
Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby DENIED and Agency's action is AFFIRMED.

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 12th day of June, 2014,

in Tallahassee, Florida.


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