

FILED

JUN 30 2014

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

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DEPT. OF CHILDREN & FAMILIES



PETITIONER,

APPEAL NO. 14F-02623
14F-02624

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 04 Duval
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 14, 2014 at 10:19 a.m.

APPEARANCES

For the Petitioner:



Petitioners' mother

For the Respondent:

Cynthia Barge, registered nurse specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether respondent's action reducing the petitioners' private duty nursing (PDN) services for the certification period January 4, 2014 through March 4, 2014 was correct.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (the Agency) administers the Florida Medicaid Program.

By notice dated January 3, 2014, the Agency informed the petitioners that their PDN (home health aide) services were being reduced from eight hours Monday – Friday and 12 hours on Saturday to five hours five days per week.

In April 2014, the petitioners requested a hearing to challenge the Agency's decision.

The Agency reduced the services as indicated in the notice because, per the Agency, the petitioner did not request a hearing within 10 days of the notice.

The petitioners were not present. Their parents, [REDACTED] and [REDACTED] testified on their behalf. The petitioner did not submit exhibits.

Present as witnesses for the Agency were Dr. Allen Okie, First Coast Advantage medical director; Andrea McLelland, First Coast Advantage director of health services; Kenyah Lee, First Coast Advantage assistant medical director; Deionne Parker, First Coast Advantage grievance and appeals coordinator; Delia Williams, First Coast Advantage grievance and appeals coordinator. Respondent's Exhibits 1 through 5 were admitted into evidence.

FINDINGS OF FACT

1. The petitioners (age 16) are Florida Medicaid recipient recipients. They receive home health services through the PDN Program. The PDN Program provides home health services to children with complex medical conditions requiring the care to

be delivered in the place of residence. PDN services supplement the care provided by family or caregivers.

2. PDN services must be medically necessary as determined through a prior authorization process completed by the Agency or its contracted agent. The Agency contracts with First Coast Advantage to complete medical necessity determinations for the PDN Program.

3. The petitioners suffer from autism. They are ambulatory, but non-verbal. The petitioners require physical assistance to complete the activities of daily living (bathing, grooming, dressing, toileting, etc.) The petitioners attend school weekdays from 7:30 a.m. to 2:50 p.m.

4. The petitioners live in the family home with their parents. The father is a laborer and works up to seven days per week doing odd jobs; his average work schedule is 9:00 am to 9:00 pm. The mother is an assistant seamstress; she sews clothing for a master seamstress. The mother sets her own hours and works as needed. Some days there is a lot of work. On other days, there is less work. On average she works 20 to 25 hours per week, four or five hours daily/five days per week.

5. Prior to the action under appeal, the petitioners were receiving eight hours of personal care assistance (PCA) daily on Mondays – Fridays, and 12 hours on Saturday. PDN services are reviewed periodically, approximately every six months. During the most current eligibility review, the petitioners requested that their PDN services be continued at the same level for the certification period January 4, 2014 – March 4, 2014.

6. Eligibility for PDN services is based on the patient's medical condition and need for home health care services to supplement the care of family or caregivers. The reviewing agency relies on clinical and household information provided by the patient's home health care agency to make the medical necessity determinations.

7. The petitioners' December 2013 authorization request explains their need for home health services. The medical history and clinical information section reads, "[r]equest for HHA/PCS hours 8 hrs/day x 5 days/ week Monday – Friday and 12 hours on Saturdays to help with ADLs, bathing, safety, meals, hygiene, incontinence care, etc. No changes in mom's work schedule."

8. The petitioners' Plan of Care explains that the home health aide will assist with the activities of daily living to ensure that they remain "clean and dry...[are] adequately nourished and not have issues with overeating...will remain safe..."

9. The aide's activity logs for December 2013 detail the services provided to the petitioners. Those services include toileting, bathing, dressing, laundry, housekeeping, and meal preparation. There is one provider for both petitioners.

10. In January 2014, First Coast Advantage informed the petitioners that their request was denied in part. The notice reads in relevant part:

This request for Home Health Aide services is being partially denied because: Florida Medicaid requires that parents and caregivers must participate in providing care to the fullest extent possible when receiving Home Health Aide assistance in the home environment. The medical records and the parents work schedule sent with the request have been reviewed and do not show a parent or caregiver's inability to participate in the care of the recipient. The request has been approved for a Home Health Aide for 5 hours per day for 5 days a week. ...

11. Dr. Okie, medical director of First Coast Advantage, addressed the partial denial decision in greater detail. Dr. Okie explained that the mother's employment form shows that she works only four to five hours per day. Accordingly, with a parent available to provide care, it is not medically necessary for the petitioners to receive eight hours of PDN services. Program rule prohibits the provision of services in excess of need.

12. In addition, the provider notes show the she was providing supervision, meal preparation and housekeeping. Dr. Okie explains that these services can be provided by a responsible lay person and do not require the skills of a medical paraprofessional.

13. Dr. Okie testified that it was his intention to approve 12 hours of PDN services on Saturdays because the mother's work schedule shows she works additional hours on Saturdays. For reasons unknown, the Notice of Decision did not include Saturday hours. Dr. Okie amended his decision on the record and approved 12 hours of PDN services on Saturdays. Dr. Okie stands by his decision that no additional hours are medically necessary on weekdays.

14. The petitioners' mother explained that in December 2013, she was working fewer hours because there was less work. Seamstress work is not predictable. Work has increased over the past few months, particularly on Saturdays because her employer does not work on Saturdays.

15. The petitioners' mother explained that they need care during all waking hours. They weigh approximately 250 lbs each and are not easy to handle. They require regular toileting assistance, feeding, dressing, grooming, and monitoring of

behaviors. They are non-verbal and require visual supervision to ensure safety and proper hygiene. The petitioner and her husband are trained and physically able to provide the care, but need to work outside the home to support the family and require PDN services.

16. The petitioners' mother argues that five hours of PDN services weekdays will not meet their needs. She asserts that eight hours weekdays and 12 hours on Saturdays is medically necessary. The home health aide would arrive at 2:45 p.m. weekdays to help the petitioners off the bus. She would toilet, feed, bathe, play with, and put them to bed. She would leave at 9:45 p.m. On Saturdays the aide worked 9:00 a.m. to 9:00 p.m. and would perform the same tasks, with more rotations because she was there all day. The petitioners' responded well to this particular aide's care; there were few behavioral issues. They were not able to retain the same aide after the service cuts. The petitioners' have not adjusted well to the change in care providers.

17. The petitioners' treating physician, Dr. Carmelo Cedres, writes, in a letter dated January 27, 2014:

██████████ born ██████████ has been diagnosed with severe autism, a lifelong condition.

Due to the intensity of care that is needed around the clock, this family relies heavily upon assistance and would be severely negatively impacted by cuts in this assistance.

██████████ and his twin brother both need constant care and attention. They need assistance with daily living activities and supervision to ensure they don't wander away. Their mother is unable to work without the help of the home health assistant.

Please allow the maximum benefits for the twins for home health assistant. ...

18. Autism specialist, [REDACTED] addresses the petitioners' need for home health services in a letter dated March 20, 2014. The letter reads: "[REDACTED] [and] [REDACTED] [are] fully autistic teenager[s] that require a full time home care assistant. ..."

CONCLUSIONS OF LAW

19. 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.

20. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

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

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

23. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 65-2.060(1).) The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

24. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the respondent. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are

determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

25. The definition of medically necessary is found in the Fla. Admin Code. R.

59G-1.010 which 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.

26. As the petitioners are under 21, a broader definition of medically necessary applies to include the EPSDT requirements. Section 409.905, Fla. Stat., Mandatory Medicaid services, defines Medicaid services for children to include:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.--The agency shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

27. In accordance with the cited authority, the Agency must provide services to Medicaid recipients under 21 years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state. The state is authorized to establish the amount, duration, and scope of such services.

28. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (The Handbook) has been incorporated by reference into Florida Administrative Code Rule 59G-4.130(2).

29. The Handbook addresses personal care services on page 1-2 and states in pertinent part:

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of

daily living (IADL) that enable the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability.

ADLs include:

- Eating (oral feedings and fluid intake);
- Bathing;
- Dressing;
- Toileting;
- Transferring; and
- Maintaining continence ...

30. The petitioners' age and developmental delay necessitate assistance with ADLs. At issue is the amount of assistance that is medically necessary.

31. The Handbook addresses parental responsibility on page 2-18 states in relevant part:

There are times during the day when skilled interventions are not required for a recipient receiving private duty nursing services. In these cases, parents or legal guardians must provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs) for their child, to the fullest extent possible ...

Medicaid can reimburse services rendered to a recipient whose parent or legal guardian is not available or able to provide ADL or IADL care ...

32. The Medicaid Handbook on page 2-11 through 2-12 provides examples of services not reimbursable as a home health services. The list includes baby-sitting/supervision.

33. During the most current service review, the Agency reduced the petitioners' PDN services from eight hours weekdays to five hours weekdays. Saturday hours, after clarification during the hearing, remain the same, 12 hours of PDN services on Saturdays.

34. The Agency asserts that more than five hours of PDN services is not medically necessary weekdays because the petitioners' mother is home to care for them. The mother asserts that eight hours of PDN services is needed weekdays so she can work additional hours when work is available.

35. The evidence establishes that the petitioners are in school six hours daily on weekdays (from 7:30 a.m. to 2:50 p.m.) When school hours are added to the five hours of approved PDN services weekdays, there are 11 hours weekdays when the petitioners are in the care of others and the mother is available to work. Per the mother's own testimony, seamstress work is not predictable. Sometimes there is less work; sometimes there is more work. At the time of the December 2013/January 2014 review, she was working only four to five hours per day weekdays. Per the mother's own testimony, Saturdays are the major workdays for her, because her employer does not work on Saturdays. The Agency approved 12 hours of PDN services on Saturdays.

36. The controlling legal authorities make it clear that Medicaid goods and service cannot be in excess of a patient's needs. After reviewing ESPDT and medical necessity requirement, the undersigned finds that the Agency's action was correct. The evidence does not prove that it is medically necessary for the petitioners to receive more than five hours of PDN services weekdays. As previously noted, the Agency reinstated the 12 hours of PDN services on Saturday.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are DENIED in part, for the weekday PDN hours. The Agency's decision to approve five

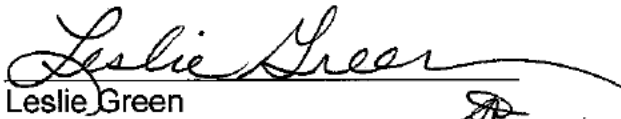
hours of PDN services on weekdays is upheld. The appeal is granted in part, based on the Agency's reversal of its previous denial, for Saturday PDN hours. The Agency will provide 12 hours of PDN services on Saturdays.

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 30th day of June, 2014,

in Tallahassee, Florida.



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