

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

FILED

JUL 31 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-02654

PETITIONER,

Vs.

CASE NO.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 16, 2014 at 1:03 p.m.

APPEARANCES

For the Petitioner: [REDACTED] Petitioner

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

STATEMENT OF ISSUE

At issue is whether the Agency properly partially denied Petitioner's request for an additional 27 personal care service hours per week through the Long-term Care program.

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.

Serving as Respondent's witnesses were: Marc Kaprow, D.O., Long Term Care Medical Director, and Christian Laos, Senior Compliance Analyst, both with United Healthcare Long Term Care Plan ("the plan").

Respondent entered one exhibit, marked as Respondent's Exhibit 1, into evidence.

The hearing officer took administrative notice of Section 409.978, Florida Statutes.

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 adult male with quadriplegia and a damaged diaphragm. He requires complete assistance with all activities of daily living (ADLs) as well as medical needs such as respiratory treatments and wound care.

2. He submitted a request for an increase of 27 hours of personal care services. The plan approved an additional 4 hours of care, but denied the remaining request by notice dated February 10, 2014. The plan affirmed the decision on appeal by notice dated March 14, 2014, and sent a corrected notice on March 19, 2014 to correct the number of personal care hours he actually receives.

3. Currently, Petitioner receives 19 hours per week of personal care services, along with 15 hours per week of homemaker services. These services are all provided by his

wife and eldest daughter. He also receives approximately 10 hours per week of skilled nursing care, provided by a registered nurse.

4. Petitioner is currently participating in the "participant direct option," in which a third party fiscal intermediary reimburses his caregiver for services. He has chosen to assign his wife and eldest daughter as his caregivers under this plan. His eldest daughter is leaving for college in August and will no longer be able to assist with his care.

5. Petitioner wants outside help, but he had bad experiences with providers who have stolen or been disrespectful to his daughters. As a result, he is skeptical of trusting a Medicaid provider, despite any background check, as that did not keep him from problems in the past.

6. Petitioner's medical condition is stable and has not declined. He requested more hours because his family is having difficulty attending to all of the household needs and his wife needs assistance with his care. He requires a high level of assistance which takes away from normal household duties.

7. The plan's case manager completed a functional assessment on February 3, 2014. Based on this assessment, 1,375 minutes (22.9 hours) of personal care services and 565 minutes (9.4 hours) of housekeeping services per week from an outside provider is appropriate for Petitioner's needs. This is a total of approximately 32.3 hours of service each week. Petitioner receives 34 hours.

8. The plan considered the family's ability to support Petitioner, as well as his functional limitations, when determining the appropriate hours. The plan is intended to

provide support to the family, but not complete care for every need, as the family is expected to assist Petitioner with some of his needs.

CONCLUSIONS OF LAW

9. 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.

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

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

12. As this matter involves a request for additional service hours and Petitioner is asserting the affirmative of the issue, the burden of proof was assigned to the Petitioner pursuant to Florida Administrative Code Rule 65-2.060(1).

13. 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).

14. 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.

15. Section 409.98, Florida Statutes, lists the minimum care that long-term care plans are required to offer.

16. 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.

17. The Florida Medicaid Home Health Services Coverage and Limitations

Handbook- March 2013 ("Medicaid Handbook") has been incorporated by reference into Florida Administrative Code Rule 59G-4.130(2).

18. Page 1-2 of the Medicaid Handbook 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 (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions).

19. The Medicaid Handbook contains "general time allowances" to determine the proper amount of service hours a patient needs. The time allowances are contained on page L-4 of the Medicaid Handbook. Comparing the "approved minutes per day" that the plan provided in the functional assessment with the guidelines on page L-4, it appears that Petitioner's needs are met.

20. The assessment assumes an outside provider will be used, and considers the family's availability to help when it determines the proper amount of time to allocate to an outside provider. In this case, the wife is the Medicaid provider, as well as providing the expected family support, resulting in a 24/7 caregiving role with no breaks.

Regarding assistance with ADLs, there is no outside provider to relieve or support the wife.

21. Even if the undersigned found that the plan did not provide enough hours, the wife would still be the main caregiver, providing the same assistance with the same level of stress as she has now. There would be no change in the caregiving situation with the provision of more hours. Although Petitioner has other daily needs including respiratory treatment and diaphragmatic pacer maintenance, those needs cannot be met with personal care service hours. Those needs would be best met by a skilled provider, such as a nurse, if the family is unable to provide the service.

22. Based on the information provided, the approved hours are sufficient to meet Petitioner's ADL needs.

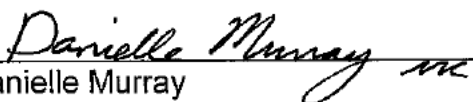
DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the
Petitioner's appeal is hereby DENIED and the 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 3rd day of July, 2014,
in Tallahassee, Florida.


Danielle Murray
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: [REDACTED] Petitioner
Judy Jacobs, Area 7, AHCA Field Office