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JUL 09 2014

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02899

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically in this matter before the undersigned hearing officer on May 30, 2014, at 10:37 a.m.

APPEARANCES

For the Petitioner:


Petitioner

For the Respondent:

Ken Hamblin
Field Office 10 Medicaid Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether the decision of the Agency for Health Care Administration to deny the petitioner's request for Home Health Aide ("HHA") services for the period January 12, 2014 through March 12, 2014.

PRELIMINARY STATEMENT

[REDACTED] the petitioner ("petitioner") appeared on her own behalf. Bijan Budall, Director of Business Operations at Maxim Healthcare, appeared as a witness on behalf of the petitioner.

Ken Hamblin, Field Office 10 Medicaid Fair Hearing Coordinator for the Agency for Health Care Administration (sometimes hereinafter referred to as "AHCA", "Agency", or "respondent"), appeared on behalf of the Agency for Health Care Administration. The following individuals from Humana appeared as witnesses on behalf of the Agency: Keren Curnutt, Grievance and Appeals Specialist; and Kathleen O'Connell, M.D., Lead Medical Director for Grievances and Appeal.

Respondent introduced Exhibits "1" through "5", inclusive, at the hearing which were accepted into evidence and marked accordingly. The petitioner did not introduce any exhibits.

FINDINGS OF FACT

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 a 22 year old female. Her date of birth is [REDACTED]
[REDACTED]
2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.
3. The petitioner is enrolled in Humana. Humana is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Broward County.

4. The petitioner is a graduate of the University of Miami.
5. The petitioner was born with muscular dystrophy. She is diagnosed with spinal muscular atrophy and generalized pain.
6. The petitioner is non-ambulatory. She ambulates with the assistance of a wheelchair and requires assistance with all transfers and repositioning at night while in bed.
7. The petitioner is incontinent and requires incontinent care.
8. The petitioner needs assistance with all activities of daily living ("ADL's"). Activities of daily living include eating, bathing, grooming, oral care, skin care, and toileting and elimination.
9. The petitioner was previously receiving Home Health Aide services eight (8) hours per day, seven (7) days per week. These services were provided continuously each evening from 11:00 p.m. to 7:00 a.m.
10. The previous authorization for Home Health Aide services on file with Humana indicates that Home Health Aide services were approved for the period August 19, 2013 through August 19, 2014. The notes accompanying the authorization state: "Home Health Aide 7 days a week for 8 hours from 11:00 pm – 7:00 am 61 days to start, will call when the additional days are needed."
11. On January 31, 2014, Maxim Healthcare Services, the petitioner's home health agency (sometimes hereinafter referred to as the petitioner's "provider") sent a request to Humana for Home Health Aide services to be provided eight (8) hours per day, seven (7) days per week, for the period January 12, 2014 through March 12, 2014.

12. On February 13, 2014, Humana sent a letter to the petitioner advising her that her request was denied. The letter states, in pertinent part,

We're writing to let you know Humana won't cover the service you're asking for because:

Under the terms of your Humana contract, you must coordinate your health care needs with your Primary Care Physician. Your request for home health aide, 8 hours a day for 7 days a week is denied. Medicaid does not cover full time home health care or aide services. This is considered custodial care and is not [sic] covered a covered benefit under Medicaid. Please contact your Primary Care Physician's office for coordination of your care.

13. The petitioner requested a fair hearing and this proceeding ensued.

14. The respondent testified that if the petitioner was previously approved to receive Home Health Aide services for eight (8) hours per day continuously that approval was contrary to Medicaid policy. He explained that individuals over age 21 can only receive intermittent Home Health Aide Visits, not continuous Personal Care Services. Medicaid will only approve Personal Care Services for children under age 21.

15. The petitioner testified that a Home Health Aide was previously providing services to her each evening from 11:00 p.m. to 7:00 a.m. She explained the Home Health Aide would spend the first 1.5 hours preparing the petitioner for bed and the last 1.5 hours assisting the petitioner with getting ready for the day. The sole task of the Home Health Aide during the remaining time was to reposition the petitioner every 1.5 hours.

16. The petitioner's Plan of Care explains a Home Health Aide is needed to assist the petitioner with the following: bathing; hair care; mouth care; skin care; dressing; and nail care.

17. The Humana Lead Medical Director appearing as a witness for the Agency stated at the hearing that the petitioner's request for Home Health Aide services was denied because the petitioner is not receiving skilled nursing care.

CONCLUSIONS OF LAW

18. 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 Chapter 120.80, Fla. Stat.

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

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

21. The respondent in the present case is proposing to terminate petitioner's Home Health Aide services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the respondent.

22. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

23. The Florida Medicaid program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid program is administered by respondent.

24. 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. ...

(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. Section 409.912, Fla. Stat. states, in relevant parts:

Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care ...

(3) The agency may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients. This subsection expires October 1, 2014.

27. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules by Fla. Admin. Code Rule 59G-5.020. In accordance with the above Statute, the Handbook states on page 1-27

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

Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.

Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

28. Pages 1-28 of the Florida Medicaid Provider General Handbook provide a list of HMO covered services. These services include home health services.

29. Page 1-30 of the Florida Medicaid Provider General Handbook states: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

30. The Humana Family Florida Medicaid Member Handbook, in addressing Home Health Services on Page 32, states the following

You are covered for unlimited home health visits. Includes medically necessary **intermittent** skilled nursing care, home health aide services,

and rehabilitation services. Prior authorization and referral may be required, subject to medical necessity. (Emphasis added)

31. Humana's policy regarding home health services is consistent with that of Medicaid fee-for-service for individuals age 21 and over receiving these services. The Medicaid fee-for-service policy is set forth below.

32. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (March 2013) ("Handbook") has been promulgated into rule in the Florida Administrative Code at Rule 59G-4.130(2). The Handbook describes the services that are covered under the Florida Medicaid Home Health Services Program.

33. The Home Health Services Coverage and Limitations Handbook, on Page 1-2, provides the following definition of home health services

Home health services are medically necessary services, which can be effectively and efficiently provided in the place of residence of a recipient. Services include home health visits (nurse and home health aide), private duty nursing and personal care services for children, therapy services, medical supplies, and durable medical equipment.

34. The Home Health Services Coverage and Limitations Handbook, on Page 2-11, lists covered services for adults and states as follows

Medicaid reimburses the following services provided to eligible recipients age 21 and older:

- Licensed nurse and home health aide visits.
- Limited durable medical equipment and supplies.
- Limited therapy evaluations.

35. The Home Health Services Coverage and Limitations Handbook, on Page 1-3, defines a Home Health Visit. The definition states, in part:

A home health visit is a face-to-face contact between a registered nurse, licensed practical nurse, or home health aide and a recipient at recipient's place of residence.

A home health visit is not limited to a specific length of time, but is defined as an entry into the recipient's place of residence, for the length of time needed to provide the medically-necessary nursing or home health aide service(s).

36. The Home Health Services Coverage and Limitations Handbook continues on Page 2-14 by explaining

Home health visits are limited to a maximum of three intermittent visits per day for non-pregnant adults age 21 and older. The visits can be any combination of licensed nurse and home health aide visits.

The minimum length of time between home health visits provided to a recipient on the same day must be at least one hour.

37. The above is interpreted to mean that a Home Health Aide visit is not a continuous service throughout an extended period of time. Rather, the service is to be intermittent and provided one to three times per day to address those duties which can be performed by a HHA.

38. In the present case, the petitioner requested Home Health Aide services eight (8) uninterrupted hours per day, seven (7) days per week. Since the petitioner is 22 years of age, she is eligible to receive Home Health Aide Visits but not continuous Personal Care Assistant services. Home Health Aide visits are limited to a maximum of three (3) intermittent visits per day for non-pregnant adults age 21 and older, and the minimum length of time between home health visits provided to a recipient on the same day must be at least one (1) hour. Since the petitioner is requesting a service that is not available to adults over age 21, the Agency correctly denied her request.

39. Pursuant to the above, the respondent has met its burden of proof that it correctly denied the petitioner's request for Home Health Aide services.

40. This Order does not purport to state that the petitioner does not require assistance, just that her needs may not be met under the currently applied program. The parties are hereby encouraged to explore other services which may appropriately provide the petitioner with the assistance she requires.

DECISION

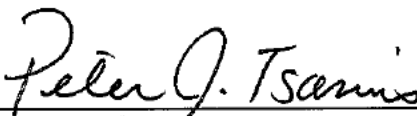
The petitioner's appeal is hereby DENIED.

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 9th day of July, 2014,

in Tallahassee, Florida.


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