

FILED

JUN 30 2014

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-03149

PETITIONER,

Vs.

CASE NO. 30401413

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 22, 2104 at 1:30 p.m. The hearing was continued to June 12, 2014 at 8:32 a.m.

APPEARANCES

For Petitioner:  mother

For Respondent: Dianna Chirino, senior human services program specialist
Agency for Health Care Administration

ISSUE

Whether it was appropriate for the respondent to partially deny petitioner's request for 8 additional hours of personal care services (PCS) 7 days a week for the certification period, April 1, 2014 through May 30, 2014 and approve 2 hours of personal care 7 days a week.

PRELIMINARY STATEMENT

At the proceedings on May 22, 2014 and June 10, 2014, respondent was represented by Dianna Chirino, senior human services program specialist with the Agency for Health Care Administration (AHCA or Agency)-Miami. Dr. Darlene Calhoun, physician reviewer with eQHealth Solutions appeared as a witness for the respondent.

The respondent presented a composite document of 109 pages which was entered into evidence as Respondent's Exhibit 1. The exhibit contained medical information, decision letters and documentation sent by the provider in support of the service request, Florida statute citations, administrative rule citations, and Chapter 2 of the agency's Home Health Services Covered Services, Limitations, and Exclusions handbook.

Petitioner was represented by his mother, [REDACTED]. The petitioner entered two documents into the record. The first document contained a behavior assessment, an occupational therapy evaluation and progress report. This document was entered as Petitioner's Exhibit 1. The second document was a January 17, 2014 letter from the Agency for Persons with Disabilities (APD) that the petitioner was eligible for APD services because he was determined to have autism. This document was entered as Petitioner's Exhibit 2.

Because this appeal involves an initial request for personal care services, burden of proof was assigned to the petitioner. Administratively approved services are not applicable and the petitioner continues to receive 2 hours of personal care services Monday through Friday, pending the outcome of this appeal.

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 4 year old male who is a Medicaid recipient. He has been diagnosed with autism, encephalopathy, febrile seizures, hypotonia, failure to thrive, microcephaly, monoplegia versus hemiplegia. Global developmental delays, including speech delays. A letter from his pediatrician notes that he is non-verbal. He is on a casein and gluten free diet and needs assistance with his ADLs, including showering, feedings and oral care, etc. He is extremely hyperactive and is incontinent.

2. Petitioner lives with his mother, who works as a self-employed housekeeper from 1 pm to 9 pm, and his step-father, who also works. He does not attend school and receives applied behavior analysis (ABA) therapy in the home 8 am to noon. He has been approved for services with the Agency for Persons with Disabilities and is on the agency's waiting list to receive services.

3. A request for service is submitted by a provider along with all information and documentation required for the Agency to make a determination of medical necessity for the level of service requested. A review is conducted for every new certification period but a request for modification may be submitted by a beneficiary at any time.

4. 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. The petitioner's initial request for 8 hours of personal care services 7 days a week was submitted on 4/1/2014 by the provider, Friendly Hands, Inc.

5. A "Notice of Outcome" was sent to the petitioner on 4/16/2014 and provided the reason for the partial denial as:

...the services are not medically necessary as defined in 59G-1.010 (166), Florida Administrative Code (F.A.C.)...

6. A "Notice of Outcome" sent to the provider on 4/16/2014 gave the following clinical rationale for the decision:

The patient is a 4 year old with autism, developmental delay and ADHD. The patient crawls, is incontinent and is on a regular diet. The patient requires assistance with ADLs. The patient lives with his mother who works 1 to 9 pm 7 days a week and step-father who also works. The patient receives behavior therapy from 8 am to noon. The clinical information provided supports the medical necessity for PCS 2 hours 7 days per week. The clinical information provided does not support the medical necessity of the additional requested hours. The additional hours appear to be for supervision and behavior redirection which are not covered services. The additional hours are deemed excessive.

7. A reconsideration was requested on 4/14/14.

8. The reconsideration was completed on 4/15/14 and notice sent to the petitioner on 4/16/14. It upheld the initial decision.

9. Notice to the provider added a statement that, "There was no new information provided for this reconsideration that would reverse the previous decision. The original decision is upheld."

10. The petitioner filed a timely request for hearing on 4/21/14.

11. The petitioner's mother explained that she needs the 8 hours of personal care services for her son because she works 8 hours a day 7 days a week. She stated that her son is hyperactive, doesn't know how to bath and does not recognize any type of danger. He has global delays and can't do anything for himself. He walks sometimes but mostly crawls and has no one to help me. She stated her son has been found

eligible for Medicaid waiver services but there are no funds available to provide services. She advised that she sent all the doctor's letters, evaluations and information needed to make a favorable decision.

12. The respondent's witness reviewed the petitioner's medical condition as described in paragraph 1, above. She itemized the relevant supporting documentation contained in the respondent's exhibit as well as the petitioner's exhibits.

She then read the nurse's review into the record:

██████████ mother] works 1pm-9pm M-Sun. ██████████ [step-father] works 11 am-9pm M-Sun. Child is 4 years old with Autism, Developmental Delay, and ADHD. Recipient is incontinent, eats a regular diet and non-ambulatory (only crawls). Needs assistance with all ADLs. Behavior therapy is in the home 8am-noon. Child does not attend school.

Nurse's recommendation was 4 hours of HHA a day M-Sun.

13. The respondent's witness explained that whenever the nurse cannot approve all the requested hours then a physician reviewer, at least certified in pediatrics, must review the request. She reviewed the basis for the initial and reconsideration determinations. (See paragraph's 6 and 8 above.) She also reviewed a letter from Dr. Bustamonte which stated the petitioner has self-injurious behavior.

14. It was noted that any 4 year old child cannot be left alone and that supervision and monitoring of behavior are not Medicaid covered services. The respondent's witness concluded that because the mother is self-employed she can set her work schedule and therefore the 2 hours of personal care services is sufficient to meet the needs of the petitioner.

CONCLUSIONS OF LAW

15. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat. § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

16. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

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

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

19. Because the matter under appeal involves an initial request for services, the burden of proof was assigned to the petitioner pursuant to Fla. Admin. Code R. 65-2.060(1).

20. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

21. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (Medicaid Handbook), March 2013, has been promulgated by reference in the Florida Administrative Code at 59G-4.130 (2). In order to receive services, the Handbook on page 2-2 states:

Medicaid reimburses services that do not duplicate another provider's service and are medically necessary for the treatment of a specific documented medical disorder, disease, or impairment.

Chapter 59G-1.010 (166), Florida Administrative Code defines medically necessary as follows:

"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.

22. The Medicaid Handbook, pages 1-2 also provides the following regarding personal care services, in relevant 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).

23. Because the petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be considered. Florida Statute § 409.905, Mandatory Medicaid services, provides that Medicaid services for children must include:

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 [emphasis added]**. 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.

24. The petitioner's mother argued that because her son is hyperactive and does not recognized danger he needs someone to watch him. Previously she was working part-time and now she is working full-time. This is the reason she has asked for an increase in personal care services.

25. The respondent argued that the 2 hours of personal care services 7 days a week were sufficient to meet the petitioner's ADL needs because the mother is self-employed and is able to adjust her work schedule.

26. The undersigned finds that while the petitioner is 4 years old and needs supervision when the parents are working, supervision is not a covered Medicaid service. Using the EPSDT standard for medical necessity, supervision is not a "treatment service" that must be provided to correct or ameliorate medical problems and

conditions. The petitioner did not meet his burden of proof in demonstrating medical necessity for the level of service requested.

DECISION

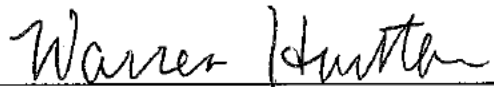
Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and the respondent's action is AFFIRMED.

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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 30th day of June, 2014,

in Tallahassee, Florida.



Warren Hunter
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:  Petitioner
Rhea Gray, Area 11, AHCA Field Office Mgr.