

FILED

AUG 05 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-03302, 14F-06293,
14F-06294

VS.

CASE NO.

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

RESPONDENT.

FINAL ORDER

The parties convened for a telephonic administrative hearing on June 16, 2014 at 9:05 a.m. The parties subsequently convened a second time by telephone on July 10, 2014 at 9:01 a.m.

STATEMENT OF ISSUE

At issue is whether Respondent's denials of Petitioner's request for physical therapy (PT), occupational therapy (OT), durable medical equipment (DME), and additional personal care services and respite hours were proper.

PRELIMINARY STATEMENT

The original appeal number assigned to this case was 14F-03302. As there were multiple service issues to be addressed, appeal numbers 14F-06293 and 14F-06294 were also assigned to this case for administrative purposes.

[REDACTED] Petitioner's mother, represented Petitioner. Lisa Sanchez, Senior Human Services Program Specialist, represented the Respondent. Witnesses for the Respondent from Sunshine Health Plan included Carolyn Jan Vier, Appeals and Grievance Coordinator; David Gilchrist, D.O., Medical Director; Donna Laber, Grievance and Appeal Manager (appeared at first hearing only); Carolyn Smith, Case Manager Supervisor (appeared at second hearing only) and Iraickza Velez, Clinical Manager Resource Specialist (appeared at second hearing only).

Respondent entered two exhibits into evidence, marked as Respondent's exhibit 1 and 2. Petitioner entered one exhibit into evidence marked as Petitioner's exhibit 1.

Following the first hearing, Respondent agreed to grant Petitioner's requests for PT, OT, and additional home care hours. It upheld the original DME denial.

Petitioner was approved for in home physical therapy twice a week for three weeks and occupational therapy three times per week for three weeks. When the approved therapy is completed, the therapists will review Petitioner's progress and suggest whether additional therapy is warranted at that time. Sunshine Health will make a determination as to continued therapies at that time.

Respondent also agreed to provide Petitioner with her request for home health hours. Petitioner will now receive 50.5 hours of care per week, which breaks down to 28.5 respite hours, 2 hours of homemaker services, and 20 hours of personal care services per week.

Therefore the home health hours, the OT, and PT issues are moot because Petitioner was approved for the requested services. The DME denial is the only remaining issue for the undersigned to address.

FINDINGS OF FACT

Based upon 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. Petitioner is a 22 year old male diagnosed with a brain injury. He requires total care and assistance from his caregivers for activities of daily living.

2. He previously received physical therapy from Florida Hospital Sports Medicine and Rehabilitation. He was discharged on November 19, 2013 from physical therapy because he had no need for skilled therapy intervention at that time. However, it was noted that he would benefit from a motomed bicycle for home use.

3. The Agency, through its agent Sunshine Health Plan, denied Petitioner's request for a motomed bicycle by a notice sent to Petitioner dated February 20, 2014. The notice indicated that the service is not medically necessary. Petitioner's mother requested an appeal with the Office of Appeal Hearings, which was received on April 18, 2014.

4. At hearing, the plan indicated that there was no prescription for the motomed bike so it was denied as an invalid request. The plan did not actually consider medical necessity despite what the notice indicated. The plan also indicated that their provider doesn't carry the particular equipment requested so there would need to be an alternative device that the provider carries.

5. Upon reconvening on a later date, the plan indicated that it denied the request because the motomed bike is not covered under Medicaid because it is a device used in a facility and it is exercise equipment. The plan suggested Petitioner look for

alternatives, but then suggested that there aren't likely to be any alternatives because it's all going to be deemed exercise equipment.

6. Petitioner originally requested the equipment in November 2013 and gave the prescription and all supporting paperwork to her case manager when she was visiting the home. Petitioner wants the device to continue his home exercise program and maintain his strength from his physical therapy.

7. A questionnaire filled out at Sunshine Health's request by Petitioner's prior physical therapist indicates that a motomed bike will help Petitioner with tone reduction and will reduce future risk of contractures. It will also facilitate joint lubrication, bone density, and cardiovascular health. It will not promote his walking ability or independence. See Respondent's Exhibit 2.

8. A second physical therapist, who evaluated Petitioner at the plan's request, filled out a similar questionnaire regarding the motomed bike. In her opinion, a motomed bike was not indicated because she didn't foresee any significant improvement in his mobility due to his brain injury. See Respondent's Exhibit 2.

CONCLUSIONS OF LAW

9. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes Chapter 120.

10. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

11. The DME and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook") has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.070(2).

12. This is a Final Order, pursuant to Sections 120.569 and 120.57, Florida Statutes.

13. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

14. The burden of proof was assigned to the Petitioner in accordance with Florida Administrative Code Rule 65-2.060(1). 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).

15. Fla. Stat. § 409.905 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....

16. With regard to the need for DME, Section 409.906(10), Florida Statutes, states in relevant part, "The agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary."

17. Additionally, the Handbook defines the guidelines for DME on page 1-2, as follows:

Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

18. Page 2-97 of the DME Handbook lists items that are not covered under Medicaid. Specifically, it lists "physical fitness equipment" and "training equipment or adaptive self-help equipment or devices" as non-covered items.

19. The Agency primarily denied the requested equipment because it is a non-covered item. It argued that the equipment is primarily used in a rehabilitation facility by trained therapists and is used for exercise, and therefore not covered.

20. Upon review of the DME handbook, the undersigned cannot find a relevant exception or alternative category that a motomed bike would fit. It is a device intended to function as exercise equipment in order to facilitate body movement and flexibility in a home exercise program. Therefore it is physical fitness equipment that is excluded by the DME handbook.

21. There is no exception to the non-covered item list for someone over the age of 21, like Petitioner. The undersigned is not considering whether the item is medically necessary, because even if the item were deemed medically necessary it would still not be covered based on the DME handbook.

DECISION


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

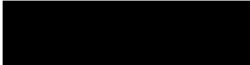
NOTICE OF RIGHT TO APPEAL

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 5th day of August, 2014,

in Tallahassee, Florida.


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