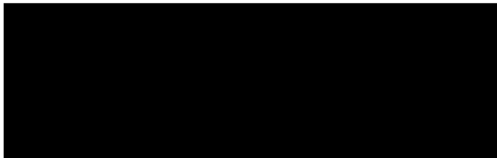


FILED

JUL 28 2014

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-03723

PETITIONER,

Vs.

CASE NO.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 17, 2014, at 1:05 p.m., with all parties appearing telephonically.

APPEARANCES

For the Petitioner:



For the Respondent: Dianna Chirino, senior program specialist, Agency For Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency action of April 17, 2014 through its agent, Amerigroup, to deny the petitioner's request a prior service authorization for bathroom modification requested as a Home accessibility adaptation. The petitioner has the burden of proof.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were Tracy Parks, manager; Dr. May Colburn, medical director and Carlene Brock, operations appeals nurse, all from Amerigroup.

Up until December 2013, the petitioner was enrolled in an Aging and Adult Medicaid Waiver Program. She, along with other individuals in this Program was transferred to the "new" Long Term Care Managed Care Program.

FINDINGS OF FACT

1. The petitioner, who is [REDACTED] years of age; is a current enrollee in the Long Term Care Program through Amerigroup. Amerigroup is an HMO or Managed Care Organization that has been authorized by AHCA to make certain prior service authorization decisions for individuals enrolled in the Long Term Care Program.

2. The petitioner filed a request for bathroom modification of her home in March 2014 and with Amerigroup on April 17, 2014. Amerigroup denied the petitioner's request and sent the petitioner a Notice on April 17, 2014 stating: "Based on a review of your current plan of care on April 17, 2014, we will be: Denying your request for a modification in bathroom. However, Amerigroup will continue to provide you with your current services as determined by your care plan."

3. The petitioner, who is bed ridden, lives in her own home. She receives as a service; a personal care attendant (PCA) or a home health aide (HHA), seven days a week. The PCA/HHA provides the petitioner a sponge type bath every day. The bathroom modification requested by the petitioner is for a "rolling shower". She

currently has a tub in her bathroom which she is requesting to be removed for the "rolling shower".

4. The respondent witness (medical doctor) indicated that according to Amerigroup's contract with AHCA, the petitioner request was denied as her current plan of care provides the appropriate hygienic care. That care includes for the hygienic care, the use of a PCA or HHA to provide the petitioner with a bed-sponge bath daily. Additionally, the respondent witness indicated that the request for the bathroom modification as requested to be approved, would have to allow the petitioner to function with greater independence and that without the adaptation/modification the petitioner's would require institutionalization.

5. The petitioner had requested a hearing for this matter and Amerigroup sent a registered nurse and a social worker to the petitioner's home to complete another evaluation. The first decision for this case was upheld. The "contract" noted above was submitted as part of Respondent Composite Exhibit 1.

CONCLUSIONS OF LAW

6. 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 § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

7. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

8. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

9. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

10. 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.* Section 409.981(1), Florida Statutes indicates that the Agency does this by contracting with eligible plans to provide provider service networks. In this instance, the eligible plan is Amerigroup.

11. 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.

12. The Fla. Admin. Code R. 59G-13.080(3) Home and Community-Based Services Waiver, states, in part:

(I) Environmental Modifications, Minor Physical Adaptations to the Home/Home Modifications, and Home Modifications are structural changes to the home which are necessary to enhance a recipient's safety and well-being or to help the recipient to function with greater independence in the home. These adaptations/improvements must be of direct medical or remedial benefit to the client.

13. The "contract" as described by the respondent, between AHCA and Amerigroup, further addresses the home accessibility adaption services for the long term care program:

Home Accessibility Adaption Service.-Physical adaptations to the home required by the enrollee's plan of care which are necessary to ensure the health, welfare and safety of the enrollee or which enable the enrollee to function with greater independence in the home and without which the enrollee would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies, which are necessary for the welfare of the enrollee. Excluded are those adaptations or improvement to the home that are of general utility and are not of direct medical; or remedial benefit to the enrollee, such as carpeting, roof repair or central air conditioning. ...

14. As shown in the Findings of Fact, the Agency through Amerigroup denied the petitioner's request for bathroom modification for a "rolling shower": "Based on a review of your current plan of care on April 17, 2014, we will be: Denying your request for a modification in bathroom. However, Amerigroup will continue to provide you with your current services as determined by your care plan."

15. The petitioner argued that she needs the bathroom modification for hygienic needs as she is having skin problems and for mental health issues as she has been getting a sponge bath for years now. She argued that she is aware that Medicaid allows for, and pays for such things as bathroom modifications.

16. The respondent witness argued that the petitioner's hygienic needs are being met through the use of either a PCA or HHA that are provided through the petitioner's plan of care. The PCA/HHA provides the petitioner with a sponge bath seven days a week. Additionally she argued, the bathroom modification or adaptation as requested to be approved would have to allow the petitioner to function with greater independence and that without the adaptation/modification the petitioner's would require institutionalization.

17. For the case at hand, the hearing officer acknowledges the petitioner's concerns and needs; however, finds that the petitioner's hygienic needs are being met through the use of PCA/HHA which provides sponge baths seven days a week. Nothing was presented to show that without the adaptation/modification the petitioner would require institutionalization.

18. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the Agency's action to deny the petitioner's request for the bathroom adaptation/modification as a Home accessibility adaptation on April 17, 2014: "Based on a review of your current plan of care on April 17, 2014, we will be: Denying your request for a modification in bathroom. However, Amerigroup will continue to provide

you with your current services as determined by your care plan....." The petitioner has not met her burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED and the Agency action 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 28th day of July, 2014,
in Tallahassee, Florida.

Robert Akel
Robert Akel
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager