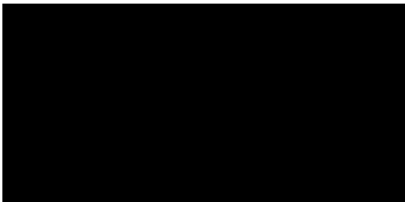


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

AUG 04 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-03963

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 June 30, 2014, at 10:50 a.m.

APPEARANCES

For the Petitioner:



Petitioner's Parents

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 a portion of the petitioner's request for Personal Care Assistant ("PCA") services for the certification period February 1, 2014 to July 31, 2014 is correct.

PRELIMINARY STATEMENT

[REDACTED] the petitioner's mother, and [REDACTED] the petitioner's father, appeared on behalf of the petitioner, [REDACTED] ("petitioner"). The petitioner's parents may sometimes hereinafter be collectively referred to as the petitioner's "representative".

The Agency for Health Care Administration (sometimes hereinafter referred to as the "Agency" or "AHCA") was represented by Ken Hamblin, Field Office 10 Medicaid Fair Hearing Coordinator for the Agency for Health Care Administration. Rakesh Mittal, M.D., a Physician Consultant with eQHealth Solutions, appeared telephonically as a witness on behalf of the Agency.

The petitioner introduced Exhibits "1" through "3", inclusive, at the hearing, which were accepted into evidence and marked accordingly. The Agency introduced Exhibits "1" through "6", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The hearing record in this matter was left open for the Agency to provide information regarding the Consumer-Directed Care Plus Program, which was relied upon during the presentation of petitioner's case. Once received, this information was accepted into evidence and marked as respondent's Exhibit "7". The record was then closed.

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 17 year old male. He is diagnosed with cerebral palsy; quadriplegia, and developmental delay.

2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.

3. The petitioner is enrolled in the Developmental Disabilities Home and Community-Based Services ("HCBS") Waiver Program. The Developmental Disabilities HCBS Waiver Program is administered by the Agency for Persons with Disabilities.

4. Within the Developmental Disabilities HCBS Waiver Program, petitioner is further enrolled in and receiving services through the Consumer Directed Care Plus ("CDC+") Program.

5. The petitioner receives Personal Care Assistant services through the Medicaid State Plan. The Medicaid State Plan is administered by the Agency for Health Care Administration.

6. The petitioner is ambulatory with the assistance of a walker or wheelchair. He needs assistance with transferring and minimal assistance with repositioning. The petitioner is incontinent.

7. The petitioner's Personal Care Services Plan of Care dated April 3, 2014 lists the services to be performed by a Personal Care Assistant as follows: bathing and grooming; toileting and elimination; oral hygiene; oral feedings and fluid intake; and range of motion and positioning.

8. The Plan of Care lists the petitioner's functional limitations as follows: limited use of arms, hands, or feet; requires assistance to ambulate; bowel/bladder incontinence; speech difficulty; and other – needs full assistance.

9. Eating, bathing, dressing, oral care, skin care, toileting and elimination, incontinent care, and range of motion and positioning are considered to be activities of

daily living ("ADLs"). Activities of daily living should not take longer than two (2) hours in the morning and two (2) hours in the afternoon to complete.

10. The petitioner requires full assistance with completing his activities of daily living.

11. Personal Care Assistant services may be approved by the Agency for Health Care Administration for the purpose of assisting a patient with activities of daily living, if a parent or caregiver is not available to provide the service.

12. Personal Care Assistant services may not be approved by the Agency for Health Care Administration for the purposes of providing monitoring and supervision.

13. The petitioner lives in the family home with both parents. The petitioner's parents do not have any physical limitations which limit their ability to provide care to the petitioner.

14. The petitioner's father is self employed as a real estate agent. He also owns and operates a cleaning service along with the petitioner's mother. The father's Parent or Legal Guardian Statement of Work Schedule indicates that the petitioner's father works four hours per day, seven days per week. The document also indicates that the hours the father works vary from day to day. The petitioner's father testified at the hearing that he does not have a set work schedule; that his schedule varies daily; and that he arranges his schedule so that he is available to provide whatever care his son needs.

15. The petitioner's mother is self employed as a real estate agent. She also owns and operates a cleaning service along with the petitioner's father. The mother's Parent or Legal Guardian Statement of Work Schedule indicates that the petitioner's

mother works four to six hours per day, seven days per week. The document also indicates that the hours the mother works vary from day to day.

16. The petitioner's parents are willing and able to assist the petitioner with his activities of daily living.

17. The petitioner's father explained during the hearing that he was previously providing the petitioner's Personal Care Assistant services.

18. On April 8, 2014, the petitioner's provider submitted a request to eQHealth Solutions for Personal Care Assistant services to be provided to the petitioner six hours per day, seven days per week, for the certification period February 1, 2014 through July 31, 2014.

19. eQHealth Solutions is the Quality Improvement Organization contracted by the Agency for Health Care Administration to review requests by Medicaid recipients in the State of Florida for Private Duty Nursing and Personal Care Services.

20. eQHealth Solutions is charged with the responsibility of determining whether a requested service is medically necessary under the terms of the Florida Medicaid Program. eQHealth Solutions has the authority to act as a witness for AHCA.

21. The Home Health Services Program includes various types of assistance. Examples include: Registered Nurse Services, Licensed Practical Nurse Services, and Personal Care Services. Personal Care Assistant services and Home Health Aide services are types of Personal Care Services.

22. A request for Personal Care Services is submitted directly to eQHealth Solutions by a petitioner's home health agency. Once eQHealth Solutions receives the

information, it completes a prior authorization review – it reviews the written request to determine if the number of hours requested are medically necessary.

23. The petitioner's request was reviewed by an eQHealth Solutions Physician Reviewer, Board Certified in Pediatrics, on April 22, 2014. The Physician Reviewer approved four hours per day of Personal Care Assistant services on Saturday and Sunday and denied the remainder of the petitioner's request. In support of the decision, the Physician Reviewer supplied the following clinical rationale:

The clinical information provided does not support the medical necessity of the additional days. There is not sufficient information regarding the caregivers actual work hours and whether the child attends school. No information was given, when requested, regarding the patient's school schedule to determine how many hours during the week the patient is home without a caregiver present. The caregivers have no limitations and should be able to provide care to the patient when the child is home and the caregivers are home.

24. At the petitioner's request, a Reconsideration Review was completed by a different Physician Reviewer, also Board Certified in Pediatrics, on April 30, 2014. The second Physician Reviewer upheld the decision of the first Reviewer and explained the following:

For the Reconsideration Review, the provider submitted 14 pages of additional documentation that included a request for reconsideration that was handwritten on behalf of the parents and another type written letter of request from the parents. In addition, the daily schedule for the recipient was provided. There was no notation of school hours and no further clarification of the parent's self-employment work hours in real estate or with their cleaning service. The request appears to include monitoring and supervision, which remain non-covered services per the Florida Medicaid Home Health Services and Limitations Handbook. Since no new information was provided, and it was noted that there is no change in the recipient's condition, recommend upholding the initial PR's decision for PCS.

25. The petitioner was previously receiving Personal Care Assistant services six hours per day, seven days per week. These hours were administratively approved by the respondent pending the resolution of this appeal.

26. The petitioner receives 54 hours per month of respite care through the Agency for Persons with Disabilities. The purpose of respite care is to allow caregivers an opportunity to address personal matters unrelated to the care of their child.

27. The petitioner's 2013-2014 Copied Cost Plan contained in respondent's Exhibit "6" indicates the only services the petitioner receives through the CDC+ Plan at the Agency for Persons with Disabilities are a personal care item, respite services, and limited support coordination.

28. Although the petitioner was previously receiving Personal Care Assistant services through the Agency for Persons with Disabilities, he now receives these services under the Medicaid State Plan administered by the Agency for Health Care Administration.

29. The criteria for receiving Personal Care Assistant services through the CDC+ Program under the Agency for Persons with Disabilities are different than the criteria for receiving Personal Care Assistant services under the Medicaid State Plan administered by the Agency for Health Care Administration.

CONCLUSIONS OF LAW

30. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. § 120.80.

31. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat., and Chapter 59G, Florida Administrative Code. The Program is administered by AHCA.

32. The Florida Medicaid Home Health Services Coverage and Limitations Handbook March 2013 ("Handbook") is promulgated into rule by Fla. Admin. Code R. 59G-4.130(2). The Handbook describes the Home Health Services Program, which consists of various services including: Registered Nurse services; Licensed Practical Nurse services; and Personal Care Services. All services provided under this Program, including Personal Care Assistant services, must be determined to be medically necessary in order to be approved under Florida Medicaid.

33. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

34. The respondent in the instant matter is proposing to reduce the petitioner's Personal Care Assistant services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the respondent.

35. 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.).

36. 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 ...

37. Although the terms medically necessary and medical necessity are often used interchangeably and may be used in a variety of contexts, their definition for Florida Medicaid purposes is contained in the Florida Administrative Code. Fla. Admin. Code R. 59G-1.010 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.

38. Since petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Section 409.905, Fla. Stat., Mandatory Medicaid Services defines Medicaid services for children to include:

(2) 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. 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.

39. Section 409.913, Fla. Stat. governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows

"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....

Section (1)(d) goes on the further state:

...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

40. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the hearing officer is the final decision making authority for the Agency. See § 120.80, Fla. Stat.

41. For Personal Care Assistant services to be approved, the services must not only be medically necessary but must also meet any further requirements set forth in the Handbook.

42. Page 1-2 of the Handbook states "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."

43. Page 1-2 of the Medicaid Handbook provides a list of personal care (ADL) services. These services 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).

44. Personal Care Services are confined by the limitations specified in the Handbook. An individual's service needs relating to behavioral or supervisory issues do not supersede Handbook provisions.

45. The hearing officer acknowledges the petitioner may need to be monitored or supervised due to her medical condition. However, monitoring and supervision may be provided by any responsible adult; a medically trained professional is not necessary.

46. The Handbook, on Page 1-3, defines babysitting as: "The act of providing custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient."

47. The Handbook, on Pages 2-11 and 2-12, lists babysitting, day care or after school care, as examples of services that are not reimbursable under the Medicaid home health services program.

48. Eating, bathing, dressing, oral care, skin care, incontinent care, and assistance with toileting may be summarized as activities of daily living. These services may be approved and provided by a Home Health Aide if it is determined they are medically necessary and a primary caregiver is unavailable to provide the care." (See Fla. Admin. Code R. 59G1.010 (111), *Definition of "Home Health Aide (HHA)"*).

49. Appendix L of the Handbook discusses "Medicaid Review Criteria for Personal Care Services" and sets forth each of the allowable personal care tasks and general time allowance for each task. The sum of time for all of the individual tasks performed by the petitioner's Personal Care Assistant is less than the two (2) hours per visit approved by the Agency.

50. The definition of medical necessity set forth in Fla. Admin. Code R. 59G-1.010 (166)(a) explains goods or services furnished or ordered must:

(5) Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

This information is echoed on Page 2-18 of the Handbook.

51. The Handbook, also on Page 2-18, discusses the requirement of parental responsibility. It explains

...parents or legal guardians must provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs) for their child, to the fullest extent possible. If parents or legal guardians need training to safely perform these ADL and IADL tasks, the home health services provider must provide training and document the methods used to train the parent or legal guardian in the medical record. If the parents or legal guardians are willing and capable of providing more than ADL and IADL care, private duty nursing can be authorized to supplement the care provided by those parents or legal guardians.

Medicaid can reimburse services rendered to a recipient whose parent or legal guardian is not available or able to provide ADL or IADL care. Supporting documentation must accompany the prior authorization request in order to substantiate a parent or legal guardian's inability to participate in the care of the recipient (i.e., work or school schedules and medical documentation....

52. The above paragraphs highlight that the Home Health Services Program is a supplemental program. It is designed to supplement the care provided by the parents or caregivers and is not intended to assume the care of the patient under any circumstances. Parents and caregivers must participate in providing care to the fullest extent possible.

53. The Handbook, on Page 2-28, explains, in part:

Medicaid does not allow "banking of hours" or "flex hours". Only the number of hours that are determined medically necessary by the QIO [Quality Improvement Organization] can be approved. Home health service providers must request only the number of hours that are expected to be used and must indicate the times of day and days per week the hours are needed....

54. The Consumer-Directed Care Plus Program administered by the Agency for Persons with Disabilities operates under the authority of section 1915(j) Medicaid State Plan Amendment of the Social Security Act and governed by Title 42, Code of Federal Regulations (CFR) Part 441, Chapter 393, Fla. Stat., and Section 409.221, Fla. Stat.

55. The Florida Medicaid Developmental Disabilities Medicaid Waivers Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook ("Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook") is promulgated into rule by Fla. Admin. Code R. 59G-13.088.

56. Page 1-1 of the Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook states as follows: "The 1915(j) Medicaid State Plan Amendment authorized programs enable beneficiaries to pay legally liable relatives directly for personal assistance services identified in the service plan and budget."

57. The petitioner's father explained during the hearing that he was previously providing the petitioner's Personal Care Assistant services. Although the Consumer-Directed Care Plus Program has a provision which allows for payments to legally liable relatives for the provision of personal assistance services, no such provision exists in the Medicaid State Plan.

58. The petitioner's parents relied heavily on the petitioner's enrollment in the CDC+ Program during the presentation of the petitioner's case. Although the petitioner is enrolled in this Program, he presently receives his Personal Care Assistance services

through Medicaid State Plan. Therefore, the respondent's action must be evaluated in accordance with the rules governing the provision of these services under State Plan Medicaid.

59. In the present case, both of the petitioner's parents are available to assist the petitioner with his activities of daily living. Both of the petitioner's parents have variable work schedules which change daily, and both parents work only limited hours. The petitioner's father works four hours per day, seven days per week, and his mother works four to six hours per day, seven days per week. Testimony during the hearing revealed that both parents can set their work schedules so they can be at home with the petitioner when he requires assistance. In fact, petitioner's father had been providing petitioner's ADL care. Neither parent has any reported medical or other limitations which limit their ability to care for their son. Furthermore, because the parents' schedules are variable, there is no way to determine what hours a Personal Care Assistant would be needed. As indicated on Page 2-28 of the Handbook: "Home health service providers must request only the number of hours that are expected to be used and must indicate the times of day and days per week the hours are needed...."

60. Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the respondent has met its burden that it correctly reduced the petitioner's Personal Care Assistant services.

61. In rendering this decision, the undersigned hearing officer considered all of the testimony and documentary evidence submitted at the hearing and reviewed all conditions of "medical necessity" and Personal Care Assistant duties set forth in the Florida Administrative Code and the rules governing the Florida Medicaid program.

62. The undersigned hearing officer hereby affirms the decision of the Agency for Health Care Administration to approve Personal Care Assistant services four hours per day Saturday and Sunday and to deny the remainder of the petitioner's request.

DECISION

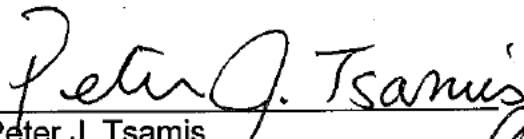
The petitioner's appeal is hereby DENIED.

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 4th day of August, 2014,

in Tallahassee, Florida.


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