

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

**FILED**

**JUN 30 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-04274

PETITIONER,

Vs.

CASE NO. 30484055

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 10, 2014 at 12:02 p.m. in Doral, Florida.

**APPEARANCES**

For Petitioner: [REDACTED] mother

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

**ISSUE**

Whether it was appropriate for the respondent to deny petitioner's modification request for 4 additional hours of personal care services (PCS) Monday through Friday for the remaining months of the certification period, April 1, 2014 through June 24, 2014.

**PRELIMINARY STATEMENT**

At the hearing on 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. Ellen Theophilopoulos, physician reviewer with eQHealth Solutions appeared as a witness for the respondent.

The respondent presented a composite document of 126 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. The respondent also admitted into evidence the Florida statute citations, administrative rule citations, and Chapter 2 of the agency's Home Health Services Covered Services, Limitations, and Exclusions handbook. This set of documents was marked Respondent's Exhibit 2.

Petitioner was represented by his mother, [REDACTED]

Because this appeal involves a modification request for an increase in personal care services, burden of proof was assigned to the petitioner. Administratively approved services are not applicable and the petitioner continues to receive 6 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 14 year old male who is a Medicaid recipient. He is diagnosed with autism, seizures, and scoliosis. He is non-ambulatory, on a regular diet and is incontinent. The petitioner is able to eat independently with meal preparation. He requires assistance with his activities of daily living – bathing, oral hygiene, dressing, skin care, etc., as well as transfers.

2. Petitioner lives with his mother and step-father. The mother has a lifting restriction and does not work at this time.

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 modification request for an additional 4 hours of personal care services was submitted on 4/4/2014 by the provider, Maxim Healthcare Services, Inc.

5. A "Notice of Outcome" was sent to the petitioner on 5/12/2014 and provided the reason for 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 5/12/2014 gave the following clinical rationale for the decision:

The patient is a 14 year old with autism, seizures and scoliosis. The patient does not attend school (homebound). The patient is non-ambulatory, on a regular diet and incontinent. The patient requires assistance with ADLs and transfers. The patient is able to eat independently with meal prep. The patient lives with mother and step-father. The mother has a lifting restriction and currently does not work. The patient is currently receiving PCS for 6 hours per day. The request is for an additional 4 hours (3-7 pm). At the time of the previous fair hearing (approving a total of 6 hours) the mother was working full-time. The mother has had documented physical limitations in the previous certifications. The clinical information provided does not support the medical necessity of the additional services. The mother could be able to

provide the remainder of assistance with ADLs. The additional services are deemed excessive.

7. No reconsideration was requested or conducted.

8. The petitioner filed a timely request for hearing on May 10, 2014.

9. The petitioner's mother explained that she needs more hours for her son because her husband was helping her move her son, but he cannot do it anymore. Her husband is having problems with his back and is having to see a psychiatrist. She also explained that she has her limitations as well and that her son is always in bed. She stated everything for her son has to be done in the bed.

10. Her son does not receive services on Saturday and Sunday and the mother explained that she and her husband provide her son's care on those days. She stated the initial request for services was for 12 hours a day 7 days a week and the agency approved 6 hours Monday through Friday. The additional 4 hours of personal care services would be added to the 6 hours currently received that cover from 10 a.m. to 7 p.m. The mother explained that her son does not wake up until 9-9:30 a.m. and the personal care services worker finishes waking him up and stays with him until the afternoon. The mother states that she leaves in the morning for her mental therapy and gets home 4-4:30, Monday through Friday. The mother also stated that her son had spine surgery and on a dislocated hip (3 years ago) and the doctor advised that her son could not be lifted with a Hoyer lift. He is home schooled because he cannot sit for long periods in his wheelchair because his legs get inflamed.

11. The respondent's witness reviewed the petitioner's medical diagnoses, his limitations as well as those of the mother. She noted that the 6 hours of personal care

services initially approved Monday through Friday were based on the mother's limitations and her working outside the home and had physical limitations. The mother and step-father have been providing care to the petitioner on weekends.

12. The respondent's witness concluded that the mother is available to assist with the petitioner's activities of daily living and that the personal care assistant is needed to provide transfers and repositionings for the petitioner. She noted it was unclear how the transfers or repositionings are done on weekends and suggested that the mother request PCS for weekends if these services are not able to be done by her. The respondent's witness upheld the agency's 6 hours of PCS Monday through Friday.

#### **CONCLUSIONS OF LAW**

13. 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.

14. 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.

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

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

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

18. 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).

19. 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.

20. 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).

21. The petitioner's mother argued that she and her husband are no longer able to provide care to her son. She has a documented back problem and she stated her husband has injured his back helping transferring her son.

22. The respondent argued that the 6 hours of personal care services were approved when the mother was working outside the home and that these hours are sufficient for the personal care assistant to provide transfer and repositioning services, as well as some assistance with the petitioner's ADLs. She recommended that the mother submit a modification request for PCS services on the weekends if she is unable to do transfers and repositions for her son.

23. Based on evidence and testimony provided during this appeal, the petitioner has not met his burden of support for 4 additional PCS hours Monday through Friday.

**DECISION**

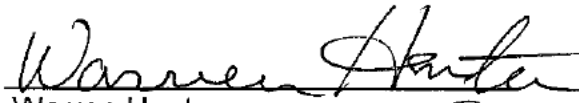
Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and the respondent's action is AFFIRMED.

**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 30<sup>th</sup> 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](mailto:Appeal_Hearings@dcf.state.fl.us)

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