

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

FILED

AUG 08 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-04334

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 July 10, 2014 at 8:45 a.m., with all parties appearing telephonically.

APPEARANCES

For the Petitioner:  the petitioner's representative.

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

STATEMENT OF ISSUE

At issue is the Agency action of May 9, 2014 through its agent, Amerigroup, to deny/cancel the petitioner's physical therapy services. The respondent has the burden of proof.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were Tracy Parks, manager and

Dr. Mary Colburn, medical director, both from Amerigroup.

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

FINDINGS OF FACT

1. The petitioner is thirty-six years of age; is a quadriplegic; and 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 or his provider filed a request for (ongoing) physical therapy on May 9, 2014 and with Amerigroup. Amerigroup denied the petitioner's request and sent the petitioner a Notice on May 9, 2014 stating: "Based on a review of your current plan of care on May 9, 2014, we will be: Terminating your physical therapy as of May 9, 2014. Amerigroup recommends that you reach out to your primary care provider as physical therapy maybe a Medicare covered benefit." Additionally this Notice states:

We use a unique plan of care to help decide what services are right for you. Our Medical Director has looked at the services you're getting and compared them to the plan of care we made with you and has decided the services are not in line with your plan of care. We are not saying you can't get this service, but Amerigroup will not pay for physical therapy.

3. The petitioner requested a hearing related to the above on May 19, 2014. On May 21, 2014, Amerigroup sent the petitioner a Notice advising him that his physical therapy was reinstated pending the outcome of the Fair Hearing. The petitioner was receiving physical therapy three times a week.

4. The Medical Director from Amerigroup indicated that according to Amerigroup's contract with the Agency and according to the Therapy Services Coverage and Limitations Handbook; physical therapy can only be authorized for eligible recipients over the age of twenty years, based on an evaluation for a custom wheelchair. Additionally, she indicated, that according to the Therapy Services Coverage and Limitations Handbook; physical therapy approval is very limited for recipients over the age of twenty. She also indicated that the petitioner's request was reviewed by the Inter-Disciplinary Review Team of Amerigroup.

5. The respondent submitted into evidence, Respondent Composite Exhibit 1, which contains copies of the Notices sent to the petitioner and copies of the Florida Department of Elder Affairs Comprehensive Assessment (701B) of the petitioner dated in February 2014; copies of a Comprehensive Care Plan-Home Based Service, dated in February 2014; Notification of Level of Care, dated in April 2013; Charts and Clinical notes regarding the petitioner and copies of several pages of the AHCA contract for Managed Care.

6. The petitioner submitted into evidence, Petitioner Composite Exhibit 1, contains a copy of a letter from the petitioner's representative explaining the petitioner's situation; copies of the petitioner's plan of care; charts and clinical notes (all duplicative of Respondent Evidence) Radiology report for petitioner and letter from the petitioner's treating physician.

CONCLUSIONS OF LAW

7. 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.

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 respondent.

10. Fla. Admin. Code 59G-1.010 states in part:

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

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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...

11. The Therapy Services Coverage and Limitations Handbook page August 2013, page 2-1 explains and sets forth physical therapy that currently is relevant to the Long Term Care Program and states in part:

Medicaid reimburses for medically necessary therapy services that are provided to Medicaid recipients under the age of 21. Medicaid also reimburses limited services to recipients age 21 and older, specifically: SLP services pertaining to the provision of augmentative and alternative communication systems and PT and OT services pertaining to wheelchair evaluations and fittings. These are the only services in the therapy program that Medicaid reimburses for adults.

12. As shown in the Findings of Fact, the Agency, through Amerigroup, denied/cancelled the petitioner's request for ongoing physical therapy services on May 9, 2014 stating: "Based on a review of your current plan of care on May 9, 2014, we will be: Terminating your physical therapy as of May 9, 2014. Amerigroup recommends that you reach out to your primary care provider as physical therapy maybe a Medicare covered benefit."

13. The petitioner's representative argued that the petitioner needs the physical therapy based on his worsening osteoporosis. She argued that without the physical therapy, the petitioner will have increased pain. She argued that Medicare only provides for very limited physical therapy coverage as opposed to what Medicaid provides. She argued that she had recently requested a new wheelchair for the petitioner through Medicare, but her paperwork was returned to her from Medicare as she has incomplete information.

14. The respondent witness argued that Medicaid; as per rule; provides very limited physical therapy services for recipients over twenty years of age and can be only provided related to an evaluation for a custom wheelchair.

15. For the case at hand, as indicated in the above noted "handbook" citation; Medicaid provides limited services for physical therapy for those over twenty-one years of age and as it relates to wheelchair evaluations and fittings. The petitioner did not have an evaluation or a fitting related to the PT service. Therefore, the hearing officer affirms the Agency action. The petitioner may file another request for the physical therapy with Amerigroup, if and when a request for a custom wheelchair is requested through Medicaid.

16. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the Agency action to deny/cancel the petitioner's request for ongoing physical therapy, due to: "Based on a review of your current plan of care on May 9, 2014, we will be: Terminating your physical therapy as of May 9, 2014. Amerigroup recommends that you reach out to your primary care provider as physical therapy maybe a Medicare covered benefit." is correct. The respondent has met its burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action affirmed.

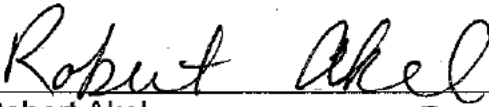
NOTICE OF RIGHT TO APPEAL

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 5th day of August, 2014,

in Tallahassee, Florida.


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