

FILED

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

AUG 27 2014
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-04791

PETITIONER,

Vs.

CASE NO. [REDACTED]

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

RESPONDENT.
/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 24, 2014 at 8:35 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED] mother

For Respondent: Nadine Purrier, Registered Nurse specialist
Agency for Health Care Administration

ISSUE

Whether it was appropriate for the respondent to partially deny petitioner's increase request for 6 hours of personal care services (PCS) Monday through Friday for the certification period, May 6, 2014 through October 24, 2014 and approve 2 hours of personal care services, Monday through Friday.

PRELIMINARY STATEMENT

At the hearing on June 24, 2014, respondent was represented by Nadine Purrier, registered nurse specialist with the Agency for Health Care Administration (AHCA or Agency). Dr. Rakesh Mittal, physician reviewer with eQHealth Solutions appeared as a witness for the respondent.

The respondent presented a composite document of 123 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 along with relevant Florida statute citations, administrative rule citations, and Chapter 2 of the agency's Home Health Services Covered Services, Limitations, and Exclusions handbook.

Petitioner was represented by her mother, [REDACTED]

Because this appeal involves a request for an increase in personal care services, burden of proof was assigned to the petitioner. Approved services for the petitioner continue at 2 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 15 year old female who is a Medicaid recipient. She is diagnosed with developmental delay and scoliosis that impairs her social and communication interaction with restricted and repetitive behavior. She is hypersensitive with impair decision making skills. She is ambulatory and on a regular diet. She needs

assistance with her activities of daily living (ADLs) and needs adult supervision at all times.

2. Petitioner lives with her mother and sole caregiver. The mother usually works from noon to 8 pm but sometimes works into the evening hours. On these days she has also requested up to 9 hours of PCS "on specified days". The petitioner attends summer school from 8 am to 4 pm and is picked up and taken home by bus.

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 request for an 6 hours of personal care services Monday through Friday was submitted on 5/6/2014 by the petitioner's provider, [REDACTED]

5. A "Notice of Outcome" was sent to the petitioner on 5/20/2014 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 5/20/2014 gave the following clinical rationale for the decision:

The patient is a 15 year old with developmental delay. The patient is ambulatory and on a regular diet. The patient requires constant supervision per provider. The patient attends school from 8am-245 pm. The patient lives with her mother who works noon to 8pm Monday through

Friday. It is medically necessary to provide PCS [personal care services] for 2 hours per day Monday through Friday. The clinical information provided does not support the medical necessity of the additional requested hours. The additional hours appear to be for supervision and behavior redirection which are not covered services. There have been no significant changes on the patient's clinical condition. The additional hours are deemed excessive.

7. No reconsideration was requested or conducted.

8. The petitioner filed a timely request for hearing on May 30, 2014.

9. The petitioner's mother explained that she needs at least 4 hours of personal care services for her daughter, Monday through Friday. She stated her daughter has a chronological age of 15 but a mental age of 7. She stated her daughter does not recognize danger and the mother needs a professional to supervise her daughter and keep her safe. She explained she has no one to help her and she cannot afford to pay someone to watch her daughter.

10. The respondent's witness agreed that the petitioner needs supervision for her safety but explained that supervision is not a covered service. He also pointed out that supervision can be provided by any responsible adult and that a home health aide is a professional trained to provide medical care. He stated that the child's medical need for assistance with her activities of daily living can be done within 2 hours each day, Monday through Friday, while the mother works. He noted the petitioner had no other medical deficits.

CONCLUSIONS OF LAW

11. 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.

12. 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.

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

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

15. Because the matter under appeal involves a 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).

16. 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).

17. 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.

18. 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).

19. Because the petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be

considered. Florida Statute § 409.905, Mandatory Medicaid services, provides that Medicaid services for children must include:

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 [emphasis added]**. 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.

20. The petitioner's mother argued that she needed the increased hours for the safety of her daughter. She stated while she is currently receiving 2 hours of personal cares services for her daughter, she has asked her neighbor and a friend to stay with her daughter while she works. She explained that this was not a solution and she needed a professional to provide supervision and to keep her daughter safe.

21. The respondent noted that 2 hours of personal cares services, while the mother worked, was sufficient to meet the petitioner's need for assistance with her activities of daily living. He explained that supervision was not a Medicaid covered service and that any responsible adult could provide the needed supervision.

22. Based on evidence and testimony provided during this appeal, the petitioner has not met her burden of proof in support of 6 PCS hours Monday through Friday. In addition to supervision not being a covered service, it also fails to meet the medical necessity definition for EPSDT in which treatment to correct or ameliorate medical problems and conditions is a criterion.

DECISION

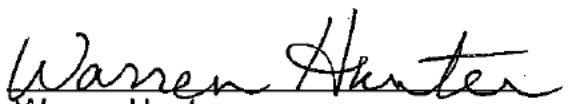
Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and the respondent's action is AFFIRMED.

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 27th day of August, 2014,

in Tallahassee, Florida.


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