

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

FILED

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OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-00076

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 April 16, 2015, at 10:55 a.m.

**APPEARANCES**

For the Petitioner:

Petitioner's Mother

For the Respondent:

Carol King, R.N.  
Registered Nurse Specialist/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 is correct.

**PRELIMINARY STATEMENT**

[REDACTED] the petitioner's mother, appeared on behalf of the petitioner, [REDACTED] (petitioner), who was not present. Ms. [REDACTED] may sometimes hereinafter be referred to as the petitioner's "representative".

Carol King, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration (AHCA or Agency), appeared on behalf of the Agency for Health Care Administration. Rakesh Mittal, M.D., Physician Reviewer with eQHealth Solutions, appeared as a witness on behalf of the Agency.

The petitioner introduced Exhibits 1 through 13, inclusive, at the hearing, which were accepted into evidence and marked accordingly. The Agency introduced Exhibits 1 through 5, inclusive, at the hearing, which were accepted into evidence and marked accordingly.

**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 an 11-year-old female diagnosed with autism.
2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.
3. Petitioner is approved to receive Personal Care Assistant services through the Medicaid State Plan. The Medicaid State Plan is administered by the Agency for Health Care Administration.
4. The petitioner is ambulatory and on a regular diet.

5. The petitioner is non-verbal and communicates with the assistance of an augmentative device and pictures.
6. The petitioner is incontinent and requires assistance with diaper changes.
7. The petitioner has significant behavioral problems and requires monitoring and supervision to ensure her safety.
8. The petitioner's Personal Care Services Plan of Care lists the services to be performed by a Personal Care Assistant as follows: bathing and grooming; toileting and elimination; oral hygiene; and oral feedings and fluid intake. The same Plan of Care explains that the petitioner must be watched closely, uses a harness during transport, and that the doors must remain locked to prevent the petitioner's elopement.
9. The Plan of Care lists the petitioner's functional limitations as follows: speech difficulty and other. The explanation in the other category states "Lacks ADL skills, Elopement".
10. 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").
11. The petitioner requires total assistance for the completion of her ADLs.
12. 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.
13. Personal Care Assistant services may not be approved by the Agency for Health Care Administration for the purposes of providing monitoring and supervision.

14. The petitioner lives in the family home with her mother, father, a 9-year-old sibling, and a 14-year-old-sibling. The petitioner's siblings have no health issues.

15. The petitioner attends school between 8:00 a.m. and 2:00 p.m. The school bus picks her up at approximately 6:30 a.m. and drops her off at about 2:15 p.m. The petitioner has an aide approved through her individual education plan (IEP) to ride with her to and from school.

16. The petitioner's mother presently assists the petitioner with getting ready for school in the mornings.

17. The petitioner's parents do not have any physical limitations, which could limit their ability to provide care to the petitioner.

18. The petitioner's father works from 7:00 a.m. to 7:00 p.m., Monday through Friday.

19. The petitioner's mother works from 9:00 a.m. to 6:00 p.m., Monday through Friday. She also works from 12:00 p.m. through 5:00 p.m., two Saturdays per month; and from 9:00 a.m. through 12:00 p.m., two Sundays per month.

20. On December 17, 2014, the petitioner's provider submitted a request to eQHealth Solutions for Personal Care Assistant services to be provided as follows: 2:00 p.m. through 6:00 p.m., Monday through Friday; 12:00 p.m. through 6:00 p.m. on early release days; 9:00 a.m. through 6:00 p.m. on holidays and school breaks; 12:00 p.m. through 5:00 p.m. two Saturdays per month; and 9:00 a.m. through 12:00 p.m. two Sundays per month.

21. 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.

22. eQHealth Solutions is charged with the responsibility of determining if 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.

23. 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.

24. 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.

25. The petitioner's request was reviewed by an eQHealth Solutions Physician Reviewer on December 23, 2014. The Physician Reviewer approved two hours per day, seven days per week and denied the remainder of the requested hours. In support of the decision, the Physician Reviewer supplied the following rationale:

The patient is a 10 year old with autism. The patient lives with her mother and 2 siblings. The patient is incontinent, ambulatory and on a regular diet. The patient requires assistance with ADLs. The mother works from 2-6pm Monday through Friday, 12-5 on Saturday and 9am to noon on Sunday. The patient attends school from 830am to 230pm. The clinical information provided supports the medical necessity of 2 hours Monday through Sunday to assist the patient with ADLs while the mother is working.

The clinical information provided does not support the medical necessity of the additional services. The already approved services should be

sufficient to assist the patient with ADLs while the mother is working. The additional services appear to be for supervision which is not a covered service. The additional services are deemed excessive.

26. At the petitioner's request, a Reconsideration Review was completed by a different Physician Reviewer on January 2, 2015. The second Physician Reviewer upheld the decision of the first Reviewer and explained the following, in part:

For the Reconsideration Review, it was noted that the mother would be mailing in additional information. No new information was received. Review of the previous information indicates that the initial PR [Physician Reviewer] approved sufficient PCS hours to assist the patient while the mother is working. As noted by the initial PR reviewer, monitoring and supervision remain non-covered services per the Florida Medicaid Home Health Services and Limitations Handbook. Recommend upholding the initial PR's decision.

27. During the hearing, the Agency's witness stipulated to approving two additional hours of PCA services on school holidays when the petitioner's parents work. The Agency's witness also explained that, for weekend days on which the petitioner's mother does not work, she may use those hours on weekdays when she does work.

#### **CONCLUSIONS OF LAW**

28. 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.

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

30. The Florida Medicaid Home Health Services Coverage and Limitations Handbook October 2014 (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.

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

32. This appeal results from an initial request for services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

33. 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, 7<sup>th</sup> Ed.).

34. 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 ...

35. 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.

36. 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.

37. 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 to 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.

38. 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.

39.. 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.

40. 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 recipients to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability."

41. 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).

42. 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.

43. 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.

44. 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."

45. 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.

46. 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)"*).

47. 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 equal to the two (2) hours per visit approved by the Agency.

48. 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 2-2 of the Handbook.

49. The Handbook, on Page 2-25, discusses the requirement of parental responsibility. It explains:

Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Where needed, the home health service provider must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.

Medicaid can reimburse personal care services rendered to a recipient whose parent or legal guardian is not 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.

50. 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.

51. In the present case, the petitioner is ambulatory and on a regular diet. The two hours previously approved by the Agency are sufficient to assist the petitioner with her activities of daily living in the afternoon. The petitioner's mother is available to assist her with these tasks in the morning Monday through Friday and both parents are available to assist her with these tasks on weekend mornings. Although the petitioner has behavioral problems and requires monitoring and supervision, these services are outside the scope of the Home Health Services program and may not be properly approved.

52. Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, petitioner has not met her burden of

proof that the Agency incorrectly denied her request for additional Personal Care Assistant services.

53. 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.

54. The hearing officer hereby affirms the decision of the Agency for Health Care Administration.

### **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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 6<sup>th</sup> day of May, 2015,

in Tallahassee, Florida.

*Peter J. Tsamis*

Peter J. Tsamis

Hearing Officer

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