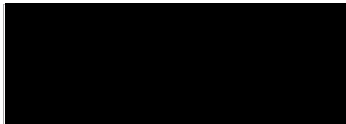


FILED

MAR 31 2015

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

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-00627

PETITIONER,

Vs.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened in this matter before the undersigned hearing officer on February 16, 2014 at 10:07 a.m. and reconvened on February 18, 2015 at 1:34 p.m.

APPEARANCES

For the Petitioner: Pro se

For the Respondent: Monica Otalora, Senior Human Services Program
Administrator, Agency for Health Care Administration

ISSUE

The Petitioner is appealing the Agency for Health Care Administration's decision, through the Petitioner's service provider United Health Care, to deny his request for Adult Day Care services five days a week.

PRELIMINARY STATEMENT

Appearing as witnesses for the Agency from United Health Care were Christian Laos, Senior Compliance Analyst and Dr. Marc Kaprow, Long-Term Care Medical Director. Susan Brinson, Program Operations Administrator, from Region 10 AHCA, appeared as an observer, without objection from the Petitioner.

Respondent entered six documents into the record which were marked as Respondent Exhibits 1 to 6. The Petitioner submitted one document into the record which was marked as Petitioner Exhibit 1.

At the Respondent's request, administrative notice was taken of Florida Administrative Rule 58A-6.009.

FINDINGS OF FACTS

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 79 year-old Medicaid recipient enrolled with United Health Care as of December 1, 2013, a Florida Long-Term Care provider. The Petitioner has been determined eligible for nursing home placement but has elected to live alone in his home and receive support services to remain in the community.
2. He is diagnosed with Type II Diabetes, Hypertension, Chronic Obstructive Pulmonary Disease (COPD) and Osteoarthritis (OA). He experiences leg cramps and has upper and lower Neuropathy. He also suffers from dizziness, anxiety, and incontinence. The Petitioner is five feet six inches tall and weighs approximately 210 pounds. He uses a cane to assist him when walking to reduce the chance of falling.
3. The Petitioner currently attends an adult day care center five days a week, six and a half hours a day, and also receives nine hours of in-home services during the

week. The Petitioner receives a total of 41½ hours of weekly services. He also receives consumable medical supplies.

4. The Petitioner was receiving adult day care services at the time he enrolled with United Health Care on December 1, 2013. The Petitioner submitted a prior authorization on December 11, 2014 to continue receiving the adult day care services five days a week.

5. On December 22, 2014 the Respondent sent the Petitioner a denial notice for the requested adult day care service providing the following explanation:

You asked for 5 days of weekly adult day care. Your care plan is based on your needs. Needs in Florida Medicaid are defined by the law. For a service to be needed it must treat a problem. It must also be a common practice. It must also be just for you. It must also not be in excess of your needs. It must also be safe. It must also not be for the convenience of you or another person. The fact that a doctor orders a service does not make it needed or covered. Adult day health care is for helping you with activities of daily living. Adult day care is for socialization. Being alone in your home is not, in and of itself, a reason for adult day health care. Based on our evaluation you need 2 days of adult day care weekly. The health plan covers this. The health plan will not cover the other days you asked for. The other days are in excess of your needs. Days in excess of your needs are not medically necessary.

6. The Petitioner timely filed his appeal on January 9, 2015.

7. The Petitioner continues to receive five days of Adult Day Care (ADC) per week pending the outcome of this appeal.

8. The Respondent's physician witness reviewed the Petitioner's evidence and determined that the Petitioner was independent in all his activities of daily living (ADLs) and that the only ADC service he needed was socialization. He determined that five days a week for socialization was excessive and that two days at the ADC would meet the Petitioner's needs. However, the doctor's report that the Respondent's physician used to make his determination contradicts information provided by the Plan's own case

manager in the long-term care assessment completed on December 11, 2014. While the doctor's report indicates that the Petitioner needs no help with his ADLs, the case manager indicated in the assessment report that the Petitioner needed 'moderate' assistance with his ADLs and IADLs.

9. Because the doctor's report also indicated the Petitioner could ambulate with no assistance, the Respondent's physician questioned the Petitioner's need to use a cane. However, the case manager who completed the assessment noted that the Petitioner lives on the second floor of the apartment building and must use the stairs to come and go from his unit. The case manager recommended that the Petitioner use a cane all the time to prevent falls.

10. To further justify the reduction in the number of days the Plan was approving for ADC services, the Respondent's physician explained that the Petitioner could also use local community centers, libraries, museums, etc. to meet his socialization needs. The plan provides two free one-way travel tickets a year for the Petitioner to use for other elements of socialization.

11. The Petitioner has difficulty using public transportation and, therefore, does not use the two free one-way tickets the plan provides. He uses a cane to help him walk but he has occasional dizzy spells and disorientation. Unlike the transportation provided by the ADC to and from the center, public transportation is not door-to-door.

12. The Petitioner has been going to the Senior's Adult Day Care for three years and plays dominoes and bingo with friends he has made there. He exercises each of the five days he goes – bicycling and doing stretching exercises.

13. The Petitioner's niece noted that her uncle gets depressed when he stays home. All the family members are working but are able to visit him on weekends and keep him active.

14. The Respondent's physician explained that the ADC cannot address the Petitioner's mental health but offered, as an alternative, that the Petitioner could move to an Adult Living Facility where his needs could best be met. The Petitioner rejected this suggestion.

CONCLUSIONS OF LAW

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

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

17. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Respondent. Per the rule, the standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence.

18. Florida Statutes 409.971 – 409.973 establishes the requirement for Medicaid recipients to be enrolled in the statewide managed medical assistance program and the minimum benefits the managed care plans shall cover. Adult day care services is one of the mandatory services that must be provided by the plan.

19. Florida Statutes 409.912 also provides that the Agency may mandate prior authorization for Medicaid services.

20. Florida Statutes 429.901 Definitions, provides in relevant part:

(1) "Adult day care center" or "center" means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.

(3) "Basic services" include, but are not limited to, providing a protective setting that is as non-institutional as possible; therapeutic programs of social and health activities and services; leisure activities; self-care training; rest; nutritional services; and respite care.

21. Fla. Admin. Code R. 59G-1.010 defines "prior authorization" as:

(226) "Prior authorization" means the approval by the Medicaid office for a Medicaid provider, or by a prepaid health plan for its affiliated providers, to deliver Medicaid covered medical or allied care, goods, or services in advance of the delivery of the care, goods, or services.

22. Fla. Admin. Code R. 59G-1.010 (166) also provides:

"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.

(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.

23. Fla. Admin. Code R. 58A-6.006 Governing Authority, Administration and Staffing provides in relevant part

(1) (a) Admission criteria shall limit participant eligibility to adults with functional impairments in need of a protective environment and a program of therapeutic social and health activities and services as defined in this rule chapter, and assure that the admission of each participant shall be made under the supervision of the owner or operator within the confines of specific requirements set forth below:

2. No participant shall be admitted or retained in a center if the required services from the center are beyond those that the center is licensed to provide.

24. Fla. Admin. Code R. 58A-6.009 Basic Services provides the following:

(1) (b) A variety of therapeutic, social and health activities and services which help to restore, remediate, or **maintain** optimal functioning of the participants and to increase interaction with others. Examples of such programs include exercise, health screening, health education, interpersonal communication, and behavior modification [emphasis added];

25. Based on the doctor's report for the Petitioner, the Respondent stated that the Petitioner did not have any need for help with his ADLs and that socialization was the only service need the Petitioner has for Adult Day Care (ADC) services. However, the Petitioner has been determined to meet the level of care needed for nursing home placement. Additionally, the case manager for the plan completed a long-term care assessment on December 11, 2014 with the Petitioner and indicated the 'member needs moderate assistance with ADLs and IADLs.

26. As noted above the 'basic services' provided by an Adult Day Care center not only includes help with ADLs and socialization but also providing a protective setting that is as non-institutional as possible; therapeutic programs of social and health

activities and services; leisure activities; rest; nutritional services; and respite care. An ADC also provides a variety of therapeutic, social and health activities and services which help to restore, remediate, or maintain optimal functioning of the participants and to increase interaction with others. Examples of such programs include exercise, health screening, health education, interpersonal communication, and behavior modification.

27. The Respondent's recommendation for the Petitioner to move to an Adult Living Facility would be a more institutional setting for the Petitioner. The Petitioner, however, has elected to stay in his home and receive support services to allow him to remain in the community. He receives nine hours a week of personal care services in addition to his ADC services and consumable medical supplies.

28. The Petitioner explained that he has been going to the Senior's Adult Day Care for three years and does not want to go anywhere else. He stated he has friends there with whom he plays dominoes and bingo. He also does bicycle and stretching exercises there five days a week with the help of one of the male staff members. The Petitioner has used a cane for years and experiences leg cramps. The Petitioner's doctor indicated on his February 5, 2015 Medical Certification for Nursing Facility/Home and Community-Bases Services Form that the Petitioner needed physical therapy and respiratory therapy, but did not indicate the frequency needed for the therapies.

29. Not only is the information from the Petitioner's doctor and the case assessment report contradictory, but the Petitioner's need for physical and respiratory therapy has not been considered by United Health Care. These therapy services could be provided at the ADC.. An accurate assessment of the Petitioner's service needs and how they can best be met should be completed before any decision is made to reduce his days at the ADC.


DECISION

Based on the evidence presented at the final hearing and on the entire record of this proceeding, the Agency for Health Care Administration, through the long-term care provider United Health Care, was incorrect when it denied Petitioner's request for five days of Adult Day Care per week. Therefore, the Petitioner's appeal is hereby granted.

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 31 day of March, 2015,
in Tallahassee, Florida.


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