

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

FILED

APR 20 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01136

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 15 Palm Beach  
UNIT: AHCA


RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 2, 2015 at 11:03 a.m.

APPEARANCES

For the Petitioner:

  
Petitioner's Daughter

For the Respondent:

Carol King  
Registered Nurse Specialist

ISSUE

Whether respondent's denial of a request for additional personal care; homemaker; and companion services through the Statewide Long Term Managed Care Program (LTMC Program) was correct.

### **PRELIMINARY STATEMENT**

Petitioner was not present but represented by her daughter. Petitioner entered no exhibits into evidence. Respondent's proposed evidence was not received by petitioner's representative. The representative requested the hearing proceed with evidence being explained on the record. Respondent also agreed to re-send the exhibits. Petitioner was to notify the Office of Appeal Hearings by March 6, 2015 if the evidence was not received. The record was held open through March 12, 2015 to allow the representative to further review the documentary exhibits and, if desired, submit written remarks. A response was not received.

Ms. King appeared as both a representative and witness for the respondent. Present as witnesses from United Health Care (UHC) were Dr. Marc Kaprow, LTMC Medical Director and Christian Laos, Senior Compliance Analyst. Respondent's exhibits "1" and "2" were entered into evidence. Administrative Notice was taken of:

- Florida Statute §409.965; §409.978; §409.979; §409.98; §409.984; and §409.985
- Fla. Admin. Code R. 59G-1.010
- Home Health Services Coverage and Limitations Handbook

Present as an observer from the Office of Appeal Hearings was Rick Zimmer, Hearing Officer.

### **FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner is 89 years of age and resides with her daughter. The daughter is petitioner's primary caregiver.

2. Respondent administers Florida's Medicaid Program and contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTMC Program.

3. Respondent does not have a promulgated Coverage and Limitations Handbook for the LTMC Program. LTMC services descriptions are defined by contract.

4. Effective July 1, 2014 petitioner's LTMC services have been provided by UHC. Petitioner was approved to receive 31 hours per week of personal care; companion; and homemaker services.

5. On October 2, 2014 a UHC case manager completed an in person functional assessment. Regarding the petitioner, the assessment provided the following information:

- 75% assistance needed with bathing
- Unable to dress or groom herself
- Assistance required with feeding
- Totally incontinent
- Unable to independently transfer or ambulate
- Unable to perform any type of household chore
- Limited use of either hand
- Experiencing cognitive decline
- Requires oxygen on a daily basis
- Medicare provides physical therapy twice weekly

6. On November 13, 2014 petitioner requested her service hours be increased from 31 hours to 51 hours per week. The request was in response to a change in the daughter's work hours and a decline in petitioner's functional status.

7. Dr. Kaprow reviewed the request and determined 40 hours per week were now medically necessary. A notice was issued to the petitioner on November 19, 2014.

8. The 40 hours per week were based on time estimates to complete the following activities of daily living:

Service:	Activity:	Weekly Minutes:	Weekly Hours:
Personal Care			
	Bathing	280	4.7
	Dressing	210	3.5
	Feeding	105	1.75
	Grooming	280	4.7
	Toileting	280	4.7
	Transferring	280	4.7
<b>Total Personal Care</b>		1435 minutes	<b>24</b>
<b>Homemaker</b>	Cleaning, laundry; cooking; shopping	660 minutes	<b>11</b>
<b>Companion</b>		300 minutes	<b>5</b>
<b>Total:</b>		<b>2400 minutes</b>	<b>40</b>

9. The notice of November 13, 2014 also stated, in part:

The other hours are in excess of your needs. Hours in excess of your needs are not medically necessary ... The hours were approved as a total amount of time. Hours are not required to be used for a specific task. You are able to use these hours in addition to any help from relatives or other sources.

10. On January 20, 2015 the Office of Appeal Hearings timely received petitioner's

request for a fair hearing.

11. Petitioner is distributing the 40 hours on Monday through Friday, only. On those weekdays, LTMC services are used in 8 hour blocks from 7:30 a.m. to 3:30 p.m.

12. Petitioner's daughter is employed. The LTMC service hours cover all but approximately two hours of the daughter's work related schedule. The additional hours would prevent the petitioner from being by herself.

13. The petitioner has experienced several falls and the daughter is concerned leaving her unsupervised. There are no other family members available to provide assistance.

14. Respondent argues the LTMC Program is not meant to duplicate a skilled nursing environment. Hours are approved to meet the estimated time to complete basic activities of daily living. It is the respondent's position that the approval of 40 LTMC service hours per week is sufficient to address petitioner's current functional status.

### **CONCLUSIONS OF LAW**

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

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

17. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the petitioner. The standard of proof in an administrative hearing is by 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.).

18. Regarding the LTMC Program, § 409.978, Fla. Stat. states:

(1) ... the agency shall administer the long-term care managed care program ...

(2) The agency shall make payments for long-term care, including home and community-based services, using a managed care model.

19. In this instant appeal, the managed care plan is UHC.

20. Regarding the LTMC Program, UHC and the respondent entered into a contractual relationship. The contract both enumerates and defines required services.

Contractual definitions relevant to this proceeding are:

Personal Care – A service that provides assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service includes assistance with preparation of meals, but does not include the cost of the meals. This service may also include housekeeping chores such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the enrollee, rather than the enrollee's family.

Homemaker Services – General household activities such as meal preparation and routine household care provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities ...

Adult Companion Care – Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hand-on nursing care. This service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

21. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary. See § 409.905 (4) (c), Fla. Stat.

22. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and 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.

23. The rationale for additional hours was based on changes in petitioner's functional status and the daughter's work schedule. Respondent considered the functional changes and increased the number of weekly service hours. As petitioner has chosen to use these hours Monday – Friday, the increase equates to eight continuous hours each weekday.

24. The greater weight of evidence does not demonstrate that properly scheduled 40 hours per week is not sufficient. As noted in the notice of November 19, 2014, petitioner is not required to allocate the hours based on the identified service frequency. Rather, the petitioner can direct how the 40 hours are divided between personal care; homemaking; and companion services.

25. The daughter's work schedule is noted. Persuasive evidence, however, was not presented which established the medical necessity of additional hours for this purpose. Medical necessity is not subject to a personalized definition. Rather, the definition in Fla. Admin. Code R. 59G-1.010 is the controlling authority.

26. A hearing officer must consider all evidence; judge the creditability of witnesses; draw permissible inferences from the evidence; and reach findings of fact based on competent substantial evidence. After reviewing all evidence and testimony on a comprehensive basis, petitioner has not demonstrated that 50 hours of personal care; homemaker; and companion services are medically necessary. The greater weight of evidence does not demonstrate the following conditions of medical necessity have been satisfied:

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

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied.

#### **NOTICE OF RIGHT TO APPEAL**

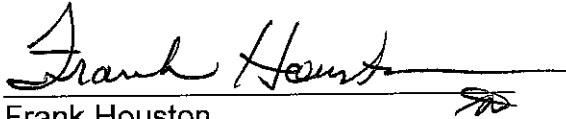
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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 20<sup>th</sup> day of April, 2015,

in Tallahassee, Florida.



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