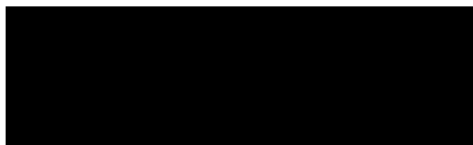


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

JUN 02 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-01698

PETITIONER,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 05 HERNANDO
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice and agreement, this matter convened for telephonic hearing before Hearing Officer Patricia C. Antonucci on March 18, 2015 at approximately 10:00 a.m., and reconvened on April 13, 2015 at approximately 3:00 p.m. All parties and witnesses appeared via teleconference.

APPEARANCES

For the Petitioner: _____ Petitioner's wife

For the Respondent: Andrew Singer, Human Services Program Specialist,
Agency for Health Care Administration

STATEMENT OF THE ISSUE

Prior to the action at issue, Petitioner was receiving 20 home-delivered meals, per month. At issue is the decision by Respondent, the Agency for Health Care Administration (AHCA), through its contracted long-term care plan, United Healthcare,

to terminate provision of this service. Respondent bears the burden of proving, by a preponderance of the evidence, that said termination was proper.

PRELIMINARY STATEMENT

When this matter convened for hearing on March 18, 2015, Petitioner's wife appeared as his representative, and requested that the undersigned also review Respondent's decision to deny Petitioner's therapy services. This request was taken as a separate appeal, assigned case number 15F-03044, and ultimately, resolved. As such, the only issue remaining on appeal is Respondent's termination of HDM.

Respondent was represented by Andrew Singer, Human Services Program Specialist with AHCA. Respondent presented two additional witnesses from Petitioner's managed care/HMO, United Healthcare Community Plan Florida (United): Marc Kaprow, D.O., Long Term Medical Care Director, and Christian Laos, Senior Compliance Analyst. Rick Zimmer, Hearing Officer with the Office of Appeal Hearings, observed the proceedings. Respondent's Exhibits 1 through 12, inclusive, were entered into evidence. Administrative Notice was taken of Fla. Admin. Code R. 59A-18.0081(5)(f) and R. 59G-1.010(166) and of 42 C.F.R. § 441.745(a)(ii)(A).

After proceeding to hearing and securing testimony from both sides, the record was held open so that Respondent could submit additional documentation referenced at hearing, which was not previously filed or provided to Petitioner. In consideration of the added delay caused by the need to reconvene, Dr. Kaprow offered to reinstate Petitioner's HDM pending the outcome of his appeal. Petitioner's wife did not wish to accept reinstatement of benefits unless United provided a guarantee that no

reimbursement would be sought, even if Petitioner's appeal was ultimately denied. As United could not make such guarantee, Petitioner opted to forgo reinstatement.

Hearing was again continued, but reconvened on April 13, 2015. Respondent's Exhibits 13 through 15, inclusive, were entered into evidence, testimony secured, and the record closed on the issue of HDM.

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 64-year old male, born [REDACTED] He resides with his wife in the family home. Petitioner suffers from uncontrolled diabetes type II (with renal and neurological manifestations), hypertension, and hypothyroidism. He has a history which includes a stroke (2005), and takes medication for an irregular heart rate, edema, and blood pressure. He has difficulty sleeping, experiences frequent urination and excessive thirst, uses a wheelchair to mobilize, and requires assistance with all activities of daily living.
2. Petitioner was diagnosed with morbid obesity, weighing 304 pounds, in April of 2014. At that time, his primary care physician recommended a cardiac evaluation to help determine an appropriate weight loss program. During the same visit, Petitioner's doctor noted that Petitioner refused to take insulin and was inconsistent in monitoring his glucose levels. More recent medical records reflect weights of 250 pounds (August 2014) and 266 pounds (October 2014), and physician referrals to Petitioner's home health provider for glucose and blood pressure monitoring, as well as diet and prescription compliance.

3. Prior to becoming a member of United, Petitioner was enrolled on a fee-for-service Medicaid Waiver. Through this Waiver, he received home-delivered meals at a frequency of 10 meals every two weeks (20 meals per month). Petitioner has received HDM since 2013.

4. Petitioner was transitioned to United on or about October 1, 2014 as a result of mandatory, statewide movement to managed care. His previously authorized services were continued, pending a new assessment and Plan of Care (POC) by United.

5. Per United, Petitioner was assigned a caseworker, who conducted an evaluation of Petitioner's needs, and submitted this assessment to United. Said assessment, completed October 29, 2014, reflects Petitioner's need for assistance with meal preparation, as follows:

Level of Impairment	Service Arrangement/ Provider	Rec Mins/Day Range	Approved Mins/Day	Approved Days/Wk	Actual Total Mins/Wk	Rounded Total Mins/Wk
Total	Agency – Purchased (Family Life Care, Inc.)	46-60	46	3	138	140
Total	Caregiver – Unpurchased/Natural (wife)	46-60	46	4	184	185

6. Based upon the full assessment, Petitioner was authorized to receive 12 hours per week of home health care, which includes 4 hours of personal care assistance, 4 hours of homemaker services, and 4 hours of companion. Petitioner also request continuation of his HDM.

7. Per United policy, Petitioner's case manager had the option of recommending HDM continuation to her supervisor, or further discussing the HDM request. In the instant case, the case manager brought Petitioner's request to her supervisor (the manager of case managers), who then forwarded the request to the Medical Director, for review.

8. By letter dated November 13, 2014, United notified Petitioner that utilizing Florida Administrative Code and "UnitedHealthcare Community and State Policy LTC HS-022 Home Delivered Meals":

The health plan covers delivered meals when no one in the home can prepare meals.... Your caregivers are able to prepare three meals daily. Delivered meals are in excess of your needs. Services in excess of your needs are not medically necessary. The health plan will not cover delivered meals.

9. On or about December 9, 2014, Petitioner requested review of this denial, noting that he had encountered difficulty in corresponding with United to obtain a copy of the policy used in the service review. Petitioner noted, in part:

I am diabetic, and the meals that I was receiving... are special diabetic meals prepared by and designated as diabetic meals by qualified parties. Although my wife generally prepares my meals for me, she is unable to make special diabetic meals like that special diabetic meals I was receiving from Food With Care. Getting a portion of my meals from Food With Care, with their easy preparation, make[s] things a little easier for my wife, who is my main caregiver. ...I also get some home health aide services because of my conditions, and simple meal preparation is one of their duties. It is easier for the home health aide who helps with meal preparation if they can simply heat up a prepared diabetic meal for me, to insure that it meets my needs as a diabetic.

10. United received Petitioner's request for review, and issued a determination letter on December 22, 2014, noting in pertinent part:

Your appeal was reviewed by a doctor who is a specialist in Internal Medicaid, Peter Stangel, MD. As part of our review we look at information you or your doctor gave us. We also look at your benefits.... You asked for home delivered meals. Home delivered meals are not a covered benefit, because there is someone at home who can prepare your meals.

11. On January 22, 2014, United issued a "Corrected Letter," amending its previous reference to policy LTC HS-022 to LTC HS-021.

12. On January 26, 2014, Petitioner requested a hearing to challenge Respondent's denial.

13. At hearing, Dr. Marc Kaprow explained United's decision to deny the service, noting that the denial was based on a medical necessity review. Under this review, United determined that HDM was *not* medically necessary for the Petitioner because home delivered meals duplicated the meal preparation provided through Petitioner's homemaker and personal care services. Specifically, Dr. Kaprow testified that because Petitioner's caregivers – both his wife and his home health care aides – are able to prepare meals, there is no need for the additional service of HDM.

14. Petitioner's wife testified that she prepares the majority of Petitioner's meals, and "does [her] best" to ensure they meet his nutritional needs. However, as she is not a nutritionist, Petitioner's wife feels she is unable to appropriately measure the caloric, sodium, protein, and carbohydrate content of the foods she cooks. She prefers pre-packaged meals that are certified by a nutritionist. Petitioner's wife further stated she does not believe the home health aides have received nutritional training, as she's observed them making poor choices regarding their own diets.

15. In response to these concerns, Dr. Kaprow noted that nutritional counseling is a distinct service/benefit, available to assist Petitioner and his caregivers in obtaining the training needed to prepare diabetic meals. He also referenced provisions of United's contract with AHCA, and portions of the Florida Administrative Code which pertain to homemaker and personal care services. Per these provisions, meal preparation, including preparation that incorporates special diets, fall within the duties of home health aides/Certified Nurse Assistants (CNAs).

PRINCIPLES OF LAW AND ANALYSIS

16. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes, Chapter 120.

17. Legal authority governing the Florida Medicaid Program is found in Florida Statutes, Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

18. This is a Final Order, pursuant to § 120.569 and § 120.57, Fla. Stat.

19. This hearing was held as a *de novo* proceeding, in accordance with Fla. Admin. Code R. 65-2.056.

20. The burden of proof in the instant case belongs to Respondent, who proposes termination of HDM. The standard of proof is preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).)

21. Florida Statutes § 409.98 addresses mandatory Medicaid services under the Long Term Care plans of managed care agencies:

Long-term care plans shall, at a minimum, cover the following:

- (1) Nursing facility care.
- (2) Services provided in assisted living facilities.
- (3) Hospice.
- (4) Adult day care.
- (5) Medical equipment and supplies, including incontinence supplies.
- ...
- (15) Nutritional assessment and risk reduction.

22. With regard to managed care, per Fla. Stat. § 409.965

All Medicaid recipients shall receive covered services through the statewide managed care program, except...The following Medicaid recipients are exempt from participation in the statewide managed care program:

- (1) Women who are eligible only for family planning services.
- (2) Women who are eligible only for breast and cervical cancer services.
- (3) Persons who are eligible for emergency Medicaid for aliens.

History.—s. 6, ch. 2011-134; s. 4, ch. 2014-57.

23. No evidence was presented to demonstrate that Petitioner may opt-out of managed care for his long-term care needs.

24. Section 409.978, Florida Statutes, provides that the “Agency shall administer the long-term care managed care program,” through the Department of Elder Affairs and through a managed care model. Fla. Stat. § 409.981(1), authorizes AHCA to bid for and utilize provider service networks to achieve this goal. In the instant case, the provider network/HMO is United.

25. As of the date of this Final Order, there is no Medicaid Long-Term Care Handbook currently promulgated by rule. As such, the undersigned must review United’s determinations in conjunction with contractual provisions regarding the specific services at issue, and general provisions of medical necessity.

26. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, 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.

27. While all five prongs of medical necessity must be met before a service or item is authorized, the elements particularly relevant to the instant case are those set forth in Fla. Admin. R. 59G-1.010(166)(a) subsections 2, 4, and 5.

28. United's contract with AHCA (Attachment II, Effective 1/15/15) defines the services received (or previously received) by Petitioner as follows:

(1) 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 hands-on nursing care. This service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

(10) Home Delivered Meals – Nutritionally sound meals to be delivered to the residence of an enrollee who has difficulty shopping for or preparing food without assistance. Each meal is designed to provide a minimum thirty-three and three tenths percent (33.3%) of the current Dietary Reference Intake (DRI). The meals shall meet the current Dietary Guidelines for Americans, the USDA My Pyramid Food Intake Pattern and reflect the prominent statewide demographic.

(11) 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. Chore services, including heavy chore services and pest control may be included in this service.

(19) 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 as essential to the health and welfare of the enrollee, rather than the enrollee's family.

(emphasis added)

29. The definition of HDM does not *exclude* provision of meals when a caregiver is able to prepare same. However, as Medicaid is intended as the "payor of last resort for medically necessary goods and service" (Fla. Stat. § 409.910), natural and generic supports must be considered when establishing a recipient's needs. More importantly, review of the home health aide services which Petitioner receives demonstrates that homemaker, in particular, includes full meal preparation services when the primary caregiver is unavailable or unable to complete this task.

30. Petitioner's assessment allots 46 minutes per day, three days per week during which the provider/CNA is tasked *only* with preparing meals (whether for those days or for the entire week). Additionally, the assessment notes that Petitioner's primary caregiver (his wife) is able to prepare the remainder of his daily meals. Indeed,

Petitioner's initial (December 9, 2014) request to review termination of his HDM specifically states that while his wife usually cooks for him, provision of HDM makes it easier for his wife or aide, in that they need "simply heat up a prepared meal."

31. Petitioner's wife is understandably concerned that she and/or the CNAs who provide Petitioner's care may not be able to properly measure his meals to ensure they are appropriate to meet his diabetic needs and restrictions. Per Fla. Admin. Code R.

59A-18.0081 (Certified Nursing Assistant and Home Health Aide):

The certified nursing assistant (C.N.A.) and the home health aide shall:...

(5) Perform other activities as taught and documented by a registered nurse, concerning activities for a specific patient and restricted to the following:...

(e) Doing simple urine tests for sugar, acetone or albumin;

(f) Measuring and preparing special diets...

As Petitioner may also seek approval from United for nutritional counseling, HDM are not the exclusive means of obtaining diabetic meals.

32. In reviewing the totality of the evidence, the undersigned is unable to conclude that the request for HDM is not in excess of Petitioner's needs or duplicative of another service (Fla. Admin. Code R. 59G-1.010(166)(a)(2)), that its purpose (i.e., nutrition) cannot be met more effectively by some other good or service ((166)(a)(4)), or that the supplement is for medical purposes, as opposed to dietary convenience ((166)(a)(5)).

33. Absent such documentation, Respondent was correct to deny continuation of HDM.

DECISION

Petitioner's appeal is DENIED and Respondent's termination of HDM is hereby 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 2nd day of June, 2015,

in Tallahassee, Florida.



Patricia C. Antonucci

Hearing Officer

Building 5, Room 255

1317 Winewood Boulevard

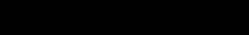
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