

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

FILED

MAY 07 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-02327

PETITIONER,

Vs.

CASE NO.

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 April 23, 2015, at 1:30 p.m.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's son.

For the Respondent: Dianna Chirino, Senior Program Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency action, through Sunshine Health Care, denying the petitioner's request for an additional seven hours a week of Personal Care services. The petitioner was approved for 19 hours a week of services.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were India Smith, Grievance and Appeals Coordinator, and Dr. Michael Silverman, Medical Director, both from Sunshine Health. Also present as a witness for the respondent was Linda Elbe, Director of Case Management with Little Havana. Little Havana is in partnership with Sunshine Health Care.

Present as observers were Donna Laber, from Sunshine Health and Gladys Johnson from Little Havana.

The respondent submitted into evidence Respondent Exhibit 1 and 2.

The record was left open for five days in order for the respondent to provide additional information. Additional information was submitted within the time frame allotted and has been accepted into evidence as Respondent Exhibit 3.

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. The petitioner is enrolled in the Long-Term Care Medicaid Program (LTC) through Sunshine Health. She resides in the family home. She is eighty-eight years of age and requires an evaluation for services as provided by Sunshine Health. Sunshine Health is a Health Maintenance Organization (HMO) under contract with AHCA to

provide managed care and perform prior service authorization decisions for Long-Term Care Medicaid recipients.

2. The petitioner's representative requested seven additional hours a week of personal care services from Sunshine Health. On January 21, 2015, Sunshine Health denied this request and mailed the petitioner a Notice indicating: "The request we got on January 19, 2015 for coverage of 7 additional hours of Personal Care services daily, 7 times weekly was partially denied." The notice also indicated:

According to the Medical Director, a total of 19 hours weekly of Personal Care services should be sufficient for a client residing at home with a Caregiver. The client's health status has not changed. The request for additional services was made for the Caregiver's benefit. ...A client with a need for services in excess of this amount needs to consider alternative placement such as an assisted living facility

3. The 19 hours of weekly service approved for the petitioner consists of one hour, five days a week of companionship; one hour, seven days a week of homemaker and one hour, seven days a week of personal care.

4. The petitioner is bedridden and lives in her home with her daughter. The petitioner's daughter is the petitioner's caretaker. The petitioner's daughter provides help for the petitioner, but works during the week.

5. Around March 5, 2015, Sunshine Health's Medical Director agreed to provide an additional four hours a week of Personal Care services for the petitioner, and the petitioner's provider agreed to volunteer an additional three hours a week of personal care services. At that time, the petitioner's representative did not agree with this "offer"

and wanted to go ahead with this fair hearing. The additional hours were not approved for the petitioner.

6. Sunshine Health has agreed on record to provide the petitioner with the additional four hours of Personal Care services on top of the seven hours already approved for a week's period of time. The record was left open for the witness from Little Havana to contact the petitioner's provider to see if the three hours of "volunteered" personal care services would also be provided. The provider for the petitioner is Neighborhood Home Health.

7. The response provided by the respondent witness from Little Havana was that the provider has agreed only to provide one additional hour of personal care services as "charity" for the petitioner once the four hours were approved by Sunshine Health.

8. The petitioner's representative indicated on record that he would only agree to the additional seven hours of personal care services and not to anything less. He argued the petitioner needs the personal care services due to her medical issues. He indicated she needs someone to prepare her lunch, take her to the bathroom, and give her baths.

9. The respondent witness, Linda Elbe, indicated the petitioner's total situation was reviewed by Sunshine Health and its partner Little Havana. She indicated the review for the petitioner included the need for Activities of Daily Living (ADL's), IADL's (instrumental activities of daily living), and the 701B form. The 701B form, as found in Respondent Exhibit 2, is a form from the Florida Department of Elder Affairs and is titled

701B Comprehensive Assessment. This form contains information about the petitioner's demographic, memory, general health, sensory, communication, health conditions, therapies, mental health, residential living, environment, medications, substance use, nutrition, ADL's, IADL's, and caretaker information.

10. Dr. Michael Silverman indicated the amount of Personal Care services as approved is the correct medically necessary amount of services for the petitioner based on the above evaluations and reviews.

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 § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

13. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.

14. Fla. Admin. Code R. 59G-1.010 states in part:

(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;
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...

...83) "Expanded benefit" means a covered service of a prepaid health plan that either is not a Medicaid covered service, or is a Medicaid covered service furnished by a prepaid plan for which the plan receives no capitation payment.

15. Section 409.98, Florida Statutes sets forth Long Term Care Plan benefits:

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

- (6) Personal care.

16. As shown in the Findings of Fact, the Agency through Sunshine Health denied the petitioner's request for an additional seven hours a week of personal care services. Sunshine Health did agree to provide four hours of additional Personal Care service hours a week for a total of 23 hours weekly.

17. The petitioner's representative additionally argued there are seven days in the week and any hours approved under seven hours would mean the petitioner would not receive the needed help for some days of the week.

18. The respondent argued that 19 hours a week would have been sufficient for the petitioner, but they will provide four additional hours along with the one hour of charity from the provider. This is more than sufficient for the petitioner and anymore hours approved would not be medically necessary.

19. For the case at hand, the hearing officer agrees with the respondent's argument that 23 total hours a week for the petitioner is medically necessary, and the petitioner has not met her burden of proof to show otherwise.

20. After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer orders the Agency to provide the petitioner, as stipulated by the respondent, four additional hours a week of personal care services, but finds the Agency's action denying the petitioner's request for an additional three hours of services as correct.

DECISION

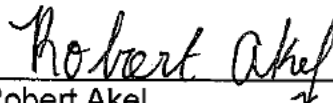
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied in part and granted in part as stated in the Conclusions of Law.

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 7th day of May, 2015,

in Tallahassee, Florida.



Robert Akel
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