

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



PETITIONER,

Vs.

APPEAL NO. 15F-02530

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 15, 2015 at 8:34 a.m.

APPEARANCES

For Petitioner:  Mother

For Respondent: Linda Latson, Registered Nurse Specialist,
Agency for Health Care Administration

ISSUE

Whether it was appropriate for the Respondent to partially deny Petitioner's request for four hours of personal care services (PCS) Monday through Friday for the certification period, March 9, 2015 through May 8, 2015.

PRELIMINARY STATEMENT

Appearing as a witness for the Respondent was Dr. Darlene Calhoun, Physician Reviewer with eQHealth Solutions.

The Respondent presented a composite document of 44 pages, which was entered into evidence as Respondent Exhibit 1. The exhibit contained medical information, decision letters, and documentation sent by the provider in support of the service request.

Because this appeal involves a request for an increase in personal care services from the prior certification period, the burden of proof was assigned to the Petitioner.

Administratively approved services are not applicable and the Petitioner continues to receive two hours of personal care services Monday through Friday, pending the outcome of this appeal.

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 male who is a Medicaid recipient. He is diagnosed with autism, attention deficit hyperactivity disorder (ADHD), and speech delay. The mother noted that her son has had a recent increase in behavior problems at home and at school due to an increase in his anxiety. The Petitioner is ambulatory and continent (with occasional incontinence).

2. The Petitioner is not on any prescribed medications but is taking Vitamin C, Probiotics and Fish Oil. He attends school from 7:30 a.m. to 2:30 p.m. and arrives home at approximately 3:30 p.m.

3. Petitioner lives with his mother and a roommate. The mother is self-employed as a behavior analyst Monday through Friday from 1:00 p.m. to 8:00 p.m. The roommate arrives home from work between 7:00 – 7:30 p.m.

4. A request for service is submitted by a provider along with all information and documentation required for the Agency to make a determination of medical necessity for the level of service requested. A review is conducted for every new certification period but a request for modification may be submitted by a beneficiary at any time.

5. EQHealth Solutions has been authorized to make Prior (service) Authorization decisions for the Agency. The Petitioner's request for four hours of personal care services was submitted on March 9, 2015 by the provider, Bett-er Support and Service, Inc.

6. A Notice of Outcome was sent to the Petitioner on March 11, 2015 and provided the reason for denial as:

[T]he services are not medically necessary as defined in 59G-1.010 (166), Florida Administrative Code (F.A.C.)...

7. A Notice of Outcome sent to the provider on March 11, 2015 gave the following clinical rationale for the decision:

The patient is an 11 year old with Autism, attention deficit hyperactivity disorder and speech delay. The patient is ambulatory and continent (with occasional incontinence). The patient requires assistance with activities of daily living (ADLs). The patient lives with his mother who works from 3pm to 8pm Monday through Friday. The clinical information provided supports the medical necessity of the continued personal care services (PCS) as in

the previous certification. The clinical information provided does not support the medical necessity of the additional services. There have been no significant changes in the patient's clinical condition. The already approved services should be sufficient to assist the patient with ADLs. The mother should be able to provide the remainder of assistance with ADLs. The additional services appear to be for supervision which is not a covered service. The additional services are deemed excessive.

8. No reconsideration was requested or conducted.

9. The Petitioner filed a timely request for hearing on March 12, 2015.

10. The Petitioner's mother explained that she needs the four hours of personal care services to cover the hours her son arrives home from school until the roommate gets home from work. The hours of coverage needed are from 3:30 p.m. to 7:30 p.m. The roommate supervises the Petitioner until the mother arrives home.

11. The Respondent's witness from eQHealth reviewed the Petitioner's medical diagnoses, his limitations, and medications. She noted that the two hours of personal care services approved Monday through Friday would meet the Petitioner's ADL needs and that the remaining hours were for supervision. She explained that supervision is not a covered service and can be provided by any responsible adult.

12. The Petitioner's mother explained it was difficult to find someone to supervise her son because of his medical conditions and his recent increase in behavior problems. She declared that the two hours of personal care services was not sufficient to meet her needs or her son's needs.

CONCLUSIONS OF LAW

13. 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. § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

14. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

15. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

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

17. Because the matter under appeal involves a request for an increase in services, the burden of proof was assigned to the Petitioner pursuant to Fla. Admin. Code R. 65-2.060(1).

18. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

19. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (Medicaid Handbook), October 2014, has been promulgated by reference in the Florida Administrative Code at 59G-4.130. In order to receive services, the Handbook on page 2-2 states:

Medicaid reimburses services that are determined medically necessary and do not duplicate another provider's service.

Rule 59G-1.010 (166), Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:

"[T]he 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.

20. The Medicaid Handbook, page 1-2, also provides the following regarding personal care services, in relevant part:

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 recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability. Medicaid reimburses for these services provided to eligible recipients under the age of 21 years.

ADLs 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).

21. Because the Petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be

considered. Florida Statutes § 409.905, Mandatory Medicaid services, provides that

Medicaid services for children must 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.

22. In reviewing the appeal for compliance with EPSDT requirements, personal care services are part of Florida's Medicaid state plan of services. The agency is providing these services to the Petitioner for the certification period under appeal, and is therefore, in compliance with this EPSDT requirement. The remaining matter to consider is compliance with the EPSDT definition of medical necessity, which includes the amount and duration of the services.

23. The Petitioner's mother argued that her son needs the four hours of personal care services while she is working. She explained that because of his medical conditions and behavior problems resulting from his increased anxiety, it is difficult to find anyone to care for him.

24. The Respondent explained that two hours of personal care services (PCS) when he returned home from school was sufficient to meet his activities of daily living (ADLs) needs. The remaining two hours would be for supervision. The Respondent advised that the assessment of medical necessity complies with EPSDT requirements.

Considering the evidence and testimony provided during this appeal, the Petitioner has not met his burden of proof for four PCS hours Monday through Friday.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is hereby DENIED and the respondent's action is 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 agency has no funds to assist in this review, and any financial obligations incurred will be the Petitioner's responsibility.

DONE and ORDERED this 8th day of June, 2015,

in Tallahassee, Florida.



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