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

[redacted]

APPEAL NO. 15F-02970

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 19, 2015 at 2:08 p.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Sister/Authorized Representative

For the Respondent: Cindy Henline
Medical Health Care Program Analyst

ISSUE

Whether respondent's denial of a request for a lift chair through the Statewide Long Term Managed Care Program (LTMC Program) was correct. The burden of proof is assigned to the petitioner.

PRELIMINARY STATEMENT

Petitioner was not present. Petitioner's representative offered no exhibits into evidence.

Ms. Henline 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 Susan Frishman, Senior Compliance Analyst. Respondent's exhibits "1" and "2" were entered into evidence.

Administrative Notice was taken of:

- Florida Statute: §409.965; §409.972; §409.973; §409.815; and §409.913
- Fla. Admin. Code R. 59G-1.010
- DME and Medical Supply Services Coverage and Limitations Handbook

The record was held open through May 26, 2015 for respondent to provide additional information regarding a lift chair. Information was timely received and entered as Respondent's Exhibit "3".

Petitioner did not wish to submit a written response to respondent's post hearing submission.

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 59 years of age and lives independently.

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.

4. Effective November 1, 2013 petitioner's LTMC services have been provided by UHC. Services currently received through the LTMC Program include: personal care; homemaker services; skilled nursing; and a personal emergency response system.

5. On October 8, 2014 a UHC case manager completed an in person functional assessment. Regarding the petitioner, the assessment provided the following:

- Has experienced two strokes
- Receives nebulizer treatment
- Requires assistance with bathing
- Can dress himself except for putting on socks and shoes
- Some feeding is through a tube
- Some food is consumed by mouth
- Able to toilet himself
- Cannot walk without assistance
- Unable to shop for groceries

6. An assessment narrative states: "Member can push up from his wheelchair to stand, but must hold on and is unable to stand alone. He can transfer from wheelchair to toilet, but cannot get in bed without assistance of one to position his legs up into the bed."

7. Regarding transfers, the assessment identifies the following needs:

- Cueing/Stand by assistance
- Needs assist of one for member to rise from a sitting to a standing position &/or position for use of walking apparatus
- Needs assist of one for adjusting/changing member's position in bed/chair

8. Regarding ambulation, the assessment identifies "Requires hands on assistance of 1 or more person for mobility ..."

9. The assessment includes a list of possible durable medical equipment (DME) used by the petitioner. DME checked for the petitioner include: bedside/toilet commode; wheelchair; and a power operated vehicle.

10. Petitioner remains in a wheelchair for most of the day. Due to being in a constant sitting position, his legs and feet swell.

11. To address swelling, petitioner's physician's recommended a lift chair. A lift chair has a powered lift mechanism that pushes the entire chair up from the base. The chair assists the user, when sitting, to easily move to a standing position. The chair also reclines into multiple positions.

12. A lift chair is DME.

13. On October 24, 2014, UHC denied the request stating the chair is available through Medicare.

14. UHC thereafter learned petitioner does not have Medicare. On December 29, 2014 a second denial was issued and stated, in part: "The specific reason for our decision: The doctor asked for a lift chair. Lift chairs are not included in your medical equipment benefit."

15. On March 19, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing[1].

16. Petitioner's representative asserts the lift chair is necessary as the wheelchair is the only available place to sit. The wheelchair does not allow petitioner's legs to be elevated. Consequently, swelling of his legs and feet remains unresolved.

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[1] The hearing request also referenced a hospital bed. Petitioner's representative stated the hospital bed is no longer at issue.

17. As petitioner cannot independently transfer, respondent asserts the use of the lift chair would be limited. Additionally, the Medicaid Program does not identify a lift chair as an allowable DME item. As such, alternatives outside the LTMC Program should be considered.

Principles of Law and Analysis

18. 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.

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

20. 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, 7th Ed.).

21. 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.

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

23. The Florida Medicaid Provider General Handbook (Provider Handbook) – July 2012 is incorporated by reference in Fla. Admin. Code R. 59G-4.

24. The Provider Handbook states:

Page 1-27:

> Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.
>
> Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee. Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

25. Page 1-28 of the Provider Handbook provides a list of covered services. The list includes durable medical equipment.

26. Page 1-30 of the Provider Handbook states "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

27. The Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (DME Handbook) – July 2010 has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.070(2).

28. The DME Handbook, on page 1-2 states:

> Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

29. Starting on page 2-1, the DME Handbook lists 33 types of allowable equipment. A lift chair is not included. The closest category, a patient lift, is identified on page 2-73. That category, however, is limited to individuals under the age of 21.

30. It is noted that page 2-98 of the DME Handbook states: "Exceptions for Non-Covered Services and Exclusions are only for eligible recipients under 21 years of age."

31. The Findings of Fact establish the petitioner is over 21 years of age.

32. Further analysis is directed to page 2-9 of the DME Handbook which states: "Medicaid reimburses for services that do not duplicate another provider's service and are determined to be medically necessary."

33. 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.

34. Should a lift chair be considered an "expanded" service provided by UHC, medical necessity must be demonstrated prior to approval.

35. Petitioner requires assistance to stand. The greater weight of evidence does not establish petitioner would be able to use a lift chair at any time other than when assistance is available. The Findings of Fact establish he lives alone. Consequently,

he is dependent on paid and natural supports for assistance with standing and transferring.

36. Neither documentation nor testimony establishes there have been unsuccessful attempts to raise petitioner's legs while in the sitting position. These attempts could be orchestrated by either paid of natural supports.

37. Neither documentation not testimony establishes petitioner is confined to wheelchair 24 hours per day.

38. It has not been demonstrated that a lift chair is an item identified in the DME Handbook. Additionally, the petitioner has not demonstrated 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;
> 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...

39. Therefore, the undersigned concludes petitioner did not meet the burden of proof to show the agency's action was incorrect.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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.

DONE and ORDERED this 10th day of June, 2015,

in Tallahassee, Florida.

Frank Houston
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Copies Furnished To: [redacted] Petitioner
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