

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

FILED

JUN 29 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 15F-03344

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 May 11, 2015 at 8:32 a.m.

APPEARANCES

For Petitioner:  Daughter

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

ISSUE

Whether Respondent's action to partially deny Petitioner's request for two Home Health Aide visits seven days a week for the certification period of February 25, 2015 through April 25, 2015 was appropriate. Because the matter under appeal involves a reduction in Home Health Aide visits from two per week to one per week, the Respondent carries the burden of proof.

PRELIMINARY STATEMENT

Dr. Ellen Theophilopoulos, Physician Reviewer with eQHealth Solutions, appeared as a witness for the Respondent.

The Respondent submitted a 65 page document which was marked and entered into evidence as Respondent Exhibit 1.

The Petitioner requested two Home Health Aide (HHA) visits a day, seven days a week, for the certification period February 25, 2015 through April 25, 2015. This is the frequency of HHA visits in the preceding certification period. The Agency approved one HHA visit a day, seven days week, thus reducing HHA visits by one visit a day, seven days a week. Petitioner continues to receive two HHA visits a day, seven days a week, 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 a 71 year-old female Medicaid recipient. She is diagnosed with functional decline, lung cancer, hypertension, shortness of breath and has a history of falls. She has limitations that affect her daily living such as severe weakness, shortness of breath with moderate exertion, poor vision, hard of hearing, bladder incontinence, and inability to safely leave the home unassisted.

2. Petitioner lives in an apartment in her daughter's home. The daughter works but her work hours were not presented as a factor considered by the Respondent in determining the Petitioner's need for home health aide services. The daughter

requested two home health aide visits, one in the morning and one in the afternoon, to ensure her mother had two meals before the daughter got home in the evening.

3. 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 and frequency 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.

4. EQHealth Solutions has been authorized to make Prior (service) Authorization decisions for the Agency. The Petitioner's provider submitted a request for two Home Health Aide (HHA) visits on February 23, 2015.

5. A "Notice of Outcome" was sent to the Petitioner on February 27, 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.)...

6. A "Notice of Outcome" sent to the provider on February 27, 2015 gave the following clinical rationale for the decision:

The patient is a 71 year old who is alert and oriented, ambulatory and continent. Only daily HHA visits are medically necessary due to moderate functional limitations. The additional requested visits are not approved as they are deemed excessive.

7. A reconsideration was requested on March 6, 2015 and completed on March 10, 2015. The original decision was upheld and notice to the provider indicated the "submitted information does not support the medical necessity for requested frequency and/or duration."

8. The Petitioner filed a timely request for hearing on April 2, 2015.

9. The Respondent's witness reviewed the documentation contained in Respondent's Exhibit 1. She noted the Petitioner's multiple medical issues, the physician's order for services, the physician visit documentation, and the Petitioner's Plan of Care. The February 10, 2015 skilled nurse assessment completed by the provider indicates the Petitioner has pain in her lower limbs and has poor endurance which interferes with her ability to ambulate. On page 51, it further indicates the Petitioner uses a walker and cane to assist her walking.

10. The Respondent's witness noted an eQHealth nurse summary from a visit made to the Petitioner. The summary is dated February 25, 2015 and states in relevant part:

The recipient [Petitioner] was observed walking more than 50 feet independently, with steady gait, and without any other limitations. She stated that her aide is coming once x day and stays two hours because "the gas is too expensive and she has no money to buy gas". The recipient stated that she needs the 2nd visit for "cleaning her windows". The recipient was moving her extremities with minimal limitations. She ...answered all questions correctly. Denied urinary incontinence.

11. After reviewing the documents, the Respondent's witness asserted the services being provided could be done in one visit per day and agreed with the two previous eQHealth physician reviewers who approved one Home Health Aide (HHA) visit a day, seven days a week, as sufficient to meet the Petitioner's needs for assistance with her activities of daily living (ADLs). She explained that the visits were not limited by time; an HHA visit lasts until all the services needed at the time of the visit are met.

12. The Petitioner's daughter reiterated the medical limitations her mother has, explaining that her mother has sustained 17 fractures and has metal rods in her limbs as a result of her falls. She explained her mother denied her urinary incontinence

because of embarrassment and stated her mother wears diapers during the day and night because of her urinary incontinence.

PRINCIPLES OF LAW AND ANALYSIS

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 Chapter 120.80, Florida Statutes.

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 Florida Statutes § 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. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence.

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

Medicaid reimburses home health services provided to an eligible Medicaid recipient when it is medically necessary to provide those services in the recipient's place of residence or other authorized setting.

On the same page, it provides the following regarding Medical Necessity:

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

59G-1.010 (166), Florida Administrative Code defines medically necessary 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.

19. The Medicaid Handbook, page 2-18 also provides the following regarding home health aide services:

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

- Assisting with the change of a colostomy bag;
- Assisting with transfer ;
- Reinforcing a dressing;
- Assisting the individual with prescribed range of motion exercises that have been taught by the RN;
- Measuring and preparing prescribed special diets;
- Providing oral hygiene;

- Bathing and skin care; and
- Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

20. The Respondent explained that the Petitioner demonstrates a significant level of independence and that her need for assistance with her activities of daily living (ADLs) would be met with one Home Health Aide (HHA) visit.

21. The Petitioner's daughter asserted that her mother needs two HHA visits so she can be cleaned and have a meal prepared in the morning and one in the afternoon.

22. Based on evidence and testimony provided during this appeal, the Respondent has met its burden to support reducing the number of home visits from two to one per day, seven days a week. The Petitioner has been observed ambulating without difficulty. She also denied having any incontinence. Requesting two home visits to ensure that the Petitioner has two prepared meals appears unnecessary. The aide could prepare two meals during a visit with the second meal re-heated by the Petitioner at her convenience.

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 24th day of June, 2015,

in Tallahassee, Florida.

Warren Hunter

Warren Hunter *PH*
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:  Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager