

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

FILED

JUN 26 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-03547

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 10, 2015 at 11:07 a.m.

APPEARANCES

For the Petitioner:

Petitioner's Wife

For the Respondent:

Dianne Soderlind
Registered Nurse Specialist

ISSUE

Whether respondent's denial of petitioner's request for an additional two days of Adult Day Health Care (ADHC) was correct. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

Petitioner was not present but represented by his wife. Petitioner entered no exhibits into evidence.

Respondent's proposed evidence had not been received by petitioner's representative. The representative requested the hearing proceed with evidence being explained on the record. Post hearing, respondent re-sent the exhibits.

Ms. Soderlind 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 Christian Laos, Senior Compliance Analyst. Respondent's exhibits "1" and "2" were entered into evidence. Administrative Notice was taken of:

- Florida Statute §409.913; §409.965; §409.978; §409.979; §409.98; §409.984; § 409.985; §429.90; and Florida Statute Chapter 429 Part III;
- Fla. Admin. Code R. 59G-1.010
- 42 C.F.R. §441.745

The record was held open through June 15, 2015 for respondent to provide a Plan of Care. Information was timely received and entered as respondent's exhibit "3".

Petitioner did not wish the record be held open to provide a written response to either the evidence sent post hearing or respondent's 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. Petitioner is 80 years of age and resides with his wife. The wife is petitioner's primary caregiver. There are no other individuals in the household.

2. Petitioner is enrolled in respondent's Long Term Managed Care Program (LTMC Program).

3. Respondent contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTMC Program.

4. All services in the LTMC Program must be determined to be medically necessary.

5. Respondent does not have a promulgated Coverage and Limitations Handbook for the LTMC Program. LTMC services descriptions are defined by contract.

6. Since December 1, 2013 petitioner's LTMC services have been provided by UHC. At the time of hearing, petitioner was approved to receive:

- Two hours a day of personal care services; two days per week.
- ADHC three days per week (6.5 hours per day).

7. Petitioner's Plan of Care also identifies homemaker services. A notation states "As of 4/21/15 homemaker services have not started. CM [Case Manager] will look into this and retask if necessary."

8. On March 11, 2015 a UHC case manager completed an in person functional assessment. Regarding the petitioner, the assessment provided the following information:

- Standby assistance required for bathing and grooming
- Requires no assistance with eating
- Able to use bathroom without assistance
- Able to transfer without assistance
- Occasional supervision required for ambulation (uses a cane or walker)

9. Additional information found in UHC case notes includes:

- Due to a stroke, some short term memory issues exist
- Continent of bowel and bladder
- No indication constant supervision is required
- History of depression
- Caregiver/wife is at risk of "burnout"
- No recent falls; emergency room visits; or hospitalizations

10. On or about March 13, 2015 petitioner requested the frequency of ADHC services be increased from three days each week to five days a week.

11. On behalf of UHC, Dr. Kaprow reviewed petitioner's request. On March 24, 2015, a Notice of Action was sent to the petitioner denying the request. The notice stated the following conditions of medical necessity had not been satisfied:

- Must be individualized, specific, consistent with symptoms of illness or injury and not be in excess of the patient needs.
- Must be able to be 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.
- Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

12. On April 10, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

13. Petitioner's representative was not able to identify the type of services her husband receives while in attendance at the ADHC program. The representative states she is 81 years of age and it is difficult to provide care for her husband.

14. Petitioner frequently screams at his wife. This type of behavior, however, is not directed toward others. Petitioner's behavior has created a stressful environment for his wife. The representative asserts having petitioner attend the ADHC program five days a week would provide additional relief for her.

Principles of Law and Analysis

15. 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.

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

17. 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.).

18. 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.

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

20. Regarding the LTMC Program, UHC and the respondent entered into a contractual relationship. The contract both enumerates and defines required services.

The contractual definition relevant to this proceeding is:

(2) Adult Day Health Care — Services provided pursuant to Chapter 429, Part III, F.S. Services furnished in an outpatient setting which encompass both the health and social services needed to ensure optimal functioning of an enrollee, including social services to help with personal and family problems and planned group therapeutic activities. Adult day health care includes nutritional meals. Meals are included as a part of this service when the patient is at the center during meal times. Adult day health care provides medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational and speech therapies indicated in the enrollee's plan of care are furnished as components of this service.

Nursing services, which include periodic evaluation, medical supervision and supervision of self-care services directed toward activities of daily living and personal hygiene, are also a component of this service. The inclusion of physical, occupational and speech therapy services, and nursing services as components of adult day health services does not require the Managed Care Plan to contract with the adult day health provider to deliver these services when they are included in an enrollee's plan of care. The Managed Care Plan may contract with the adult day health care provider for the delivery of these services or the Managed Care Plan may contract with other providers qualified to deliver these services pursuant to the terms of this Contract.

21. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary.

22. 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.

23. For additional ADHC services to be approved, the request must satisfy each condition of medical necessity. Medical necessity is not subject to a personalized definition. Rather, the definition in Fla. Admin. Code R. 59G-1.010 is the controlling authority.

24. It is noted the petitioner does not require extensive supervision and is relatively independent in most activities of daily living.

25. The type of services received by the petitioner at the ADHC Program is unknown. As such, Findings of Fact could not be made regarding how three days a week of ADHC benefits the petitioner. Such information would have been meaningful to establish why an additional two days might be warranted.

26. The stress experienced by the petitioner's wife is noted. This factor alone, however, does not warrant additional ADHC services. There must be a compelling demonstration of how the additional services are medically necessary for the petitioner.

27. A hearing officer must consider all evidence; judge the creditability of witnesses; draw permissible inferences from the evidence; and reach findings of fact based on competent substantial evidence. After reviewing all evidence and testimony on a comprehensive basis, petitioner has not demonstrated two additional days a week of ADHC are medically necessary. The greater weight of evidence does not demonstrate 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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider...

DECISION

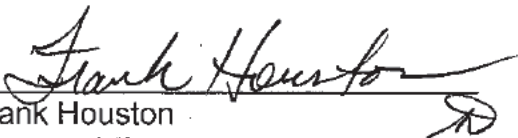
Based upon the foregoing Findings of Fact and controlling legal authorities,
petitioner's appeal is denied.

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 26th day of June, 2015,

in Tallahassee, Florida.


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