

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

FILED

NOV 17 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-07036

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in this matter telephonically on October 1, 2015, at 1:05 p.m.

APPEARANCES

For the petitioner:



Petitioner's daughter

For the Respondent:

Linda Latson, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly denied a portion of her request for personal care services and homemaker services?

PRELIMINARY STATEMENT

██████████ the petitioner's daughter, appeared on behalf of the petitioner, ██████████ ("petitioner"), who was not present. ██████████ may sometimes hereinafter be referred to as the petitioner's "representative".

Linda Latson, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency: Mary Colburn, R.N., Long-Term Care Medical Director for Amerigroup; and Carlene Brock, L.P.N., Quality Operations Nurse for Amerigroup.

The respondent introduced respondent's Exhibits "1" through "5", inclusive, at the hearing, which were accepted into evidence and marked accordingly. The hearing record in this matter was left open until the close of business on October 8, 2015 for the respondent to provide the Amerigroup Long-Term Care Member Handbook and the portions of the contract between the Agency for Health Care Administration and Amerigroup pertaining to personal care and homemaker services. Once received, this information was accepted into evidence and marked as respondent's Composite Exhibit "6". The hearing record was then closed.

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 94-year-old female.

2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.

3. The petitioner is an enrolled member of Amerigroup. Amerigroup is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. The petitioner's effective date of enrollment with Amerigroup was July 1, 2015.

5. The petitioner is a participant of the Long-Term Care Program.

6. The petitioner's medical history is remarkable for the following: gait disorder; macular degeneration; chronic obstructive pulmonary disease ("COPS"); arthritis; hypertension; dyslipidemia (high cholesterol); and hearing loss.

7. The petitioner has a problem with short-term memory loss.

8. The petitioner ambulates with the assistance of a walker.

9. The petitioner is generally continent of bladder but incontinent of bowel. She uses incontinence products during the day but not during the night.

10. The petitioner presently has a privately paid aide with her from 10:30 a.m. to 5:00 p.m. daily.

11. When the petitioner wakes in the morning, she is able to turn-on a coffee maker prepared with coffee and water for her the previous evening by her aide.

12. The petitioner is able to make toast for breakfast independently.

13. The petitioner's aide prepares lunch and dinner for the petitioner.

14. The petitioner is unable to shop or cook for herself.

15. The petitioner requires assistance with her activities of daily living.

16. Activities of daily living include eating, bathing, dressing, oral care, skin care, toileting and elimination, incontinent care, and range of motion and positioning.

17. The petitioner's aide helps the petitioner get ready for bed before she leaves at 5:00 p.m.

18. The petitioner resides alone. She is alone from the time her aide leaves at 5:00 p.m. until the following day at 10:30 a.m. when her aide returns.

19. The petitioner is able to transfer independently during the evening and nighttime hours in order to meet her toileting needs.

20. The petitioner has a Personal Emergency Response System ("PERS") provided to her by Amerigroup. This system is intended to assist the petitioner with calling for help in the event of an emergency.

21. The petitioner's aide assists the petitioner with the following: taking her medication; using her nebulizer and oxygen concentrator; preparing lunch and dinner; laundry; food shopping; picking up prescriptions; and transportation to and from doctor's and other medical appointments.

22. On or about July 8, 2015, the petitioner submitted a request to Amerigroup for 18 hours per week of personal care and homemaker services. The request was unspecified as to how many hours of personal care and how many hours of homemaker services were being requested.

23. Personal care services and homemaker services may be performed by the same individual.

24. The petitioner intended to use the hours in the following manner: six hours per day on Friday, Saturday, and Sunday.

25. The petitioner's family intended to continue paying for a privately paid aide on the other days of the week.

26. Amerigroup reviewed the petitioner's request on July 14, 2015.

27. In a Notice of Action dated July 14, 2015, Amerigroup approved personal care services and homemaker services three hours per day, three days per week, and denied the remainder of the petitioner's request.

28. The Notice of Action states, in part:

■ We determined that your requested services are not medically necessary because the services do not meet the reasons(s) checked below: (*See Rule 59G-1.010*)

- Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider. ...

29. The three hours per day, three days per week, of personal care services and homemaker services approved by the respondent were rejected by the petitioner.

30. It is the position of the petitioner's representative that three hours per day are insufficient to assist petitioner with all of the activities with which she requires help.

31. The Long-Term Care Medical Director set forth the respondent's position that the petitioner's needs may be met with three hours of personal care services per day. The Medical Director explained the hours may be bifurcated with two hours being provided in the morning to assist the petitioner with bathing, dressing, meal preparation, and toileting, and one hour being provided in the afternoon to assist the petitioner with any remaining activities of daily living and to assist with placing the petitioner safely in bed for the evening.

32. This appeal is the result of an initial application for services.

CONCLUSIONS OF LAW

33. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80, Fla. Stat.

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

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

36. This appeal is the result of an initial application for services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the respondent.

37. The standard of proof in an administrative hearing is 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.).

38. The Florida Medicaid program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid program is administered by respondent.

39. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

40. Under § 1915(c) of the Social Security Act (42 USC § 1396n(c)), a state may obtain a Medicaid waiver that allows the state to include in the state's Medicaid

program the cost of home or community-based services (other than room and board) provided to individuals who otherwise would require care in a hospital, nursing facility, or intermediate care facility.

41. Home or community-based services include personal care services, habilitation services, and other services that are "cost effective and necessary to avoid institutionalization." See 42 CFR § 440.180.

42. Section 409.978, Florida Statutes, provides that the "Agency shall administer the long-term care managed care program," through the Department of Elder Affairs and through a managed care model. Fla. Stat. § 409.981(1), authorizes AHCA to bid for and utilize provider service networks to achieve this goal. In the instant case, the provider network/HMO is Amerigroup.

43. The definition of medically necessary is found in the Fla. Admin. Code. R. 59G-1.010 which 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.

44. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Chapter 59G-4. In accordance with the above Statute, the Handbook states on 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.

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

46. AHCA Contract No. FP021, Attachment II, Exhibit II-B, Effective 07/15/15, Page 15 of 91 defines Personal Care as follows:

A service that provides assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service includes assistance with preparation of meals, but does not include the cost of the meals. This service may also include housekeeping chores such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the enrollee, rather than the enrollee's family.

47. The Amerigroup Long-Term Care Member Handbook discusses personal care services on Page 16. It explains these services include: help at home with bathing,

dressing, eating, personal hygiene and other activities; and help with light cleaning, bed making, meals, and chores.

48. AHCA Contract No. FP021, Attachment II, Exhibit II-B, Effective 07/15/15,

Page 13 and 14 of 91 Homemaker Services as follows:

General household activities such as meal preparation and routine household care provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. Chore services, including heavy chore services and pest control may be included in this service.

49. The Amerigroup Long-Term Care Member Handbook discusses homemaker services on Page 15. It explains these services include: household help such as meal preparation and routine household care; a trained homemaker; and chore and pest-control services.

50. In the present case, the petitioner has not demonstrated that six hours per day of personal care services and homemaker services are medically necessary. The three hours per day of personal care services and homemaker services approved by the respondent are sufficient to assist petitioner with the activities that may be completed by a personal care assistant or professional homemaker.

51. Pursuant to the above, the petitioner has not met her burden of proof to show the respondent incorrectly denied her request for personal care and homemaker services in the amount of six hours per day.

52. A primary intent of the Long-Term Care Program is to promote care of the individual at home and to prevent institutionalization. If the petitioner requires assistance every day of the week, the petitioner is entitled to request services for every day of the week. The family may then choose to pay for a privately paid aide for any times they

feel the petitioner requires services but for which services have not been approved. In addition, the petitioner is not restricted to asking for only personal care and homemaker services. If the petitioner can potentially benefit from additional socialization, she may want to consider requesting companion services. The petitioner is also encouraged to review the Member Handbook carefully to determine if there are any additional services for which she may qualify. Any denial of a request for services by the petitioner is accompanied by independent fair hearing rights.

DECISION

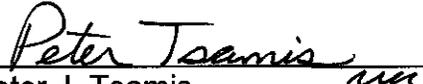
The petitioner's appeal is hereby DENIED.

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 17th day of November, 2015,

in Tallahassee, Florida.


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FINAL ORDER (Cont.)

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Copies Furnished To:

[REDACTED] Petitioner

Rhea Gray, Area 11, AHCA Field Office Manager