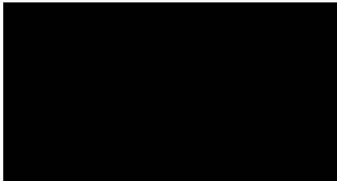


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

Dec 15, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07583

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 December 10, 2015 at 2:32 p.m.

APPEARANCES

For the Petitioner:



Petitioner's Daughter

For the Respondent:

Doretha Rouse
Registered Nurse Specialist

ISSUE

Whether respondent's action to reduce petitioner's personal care services from 56 hours per week to 49 hours per week was proper. The burden of proof is assigned to the respondent.

PRELIMINARY STATEMENT

A hearing was first scheduled for October 6, 2015. Due to the unavailability of the hearing officer, the matter was continued to October 29, 2015.

On October 29, 2015 respondent's witness from Humana failed to appear. Respondent's request for a continuance was granted. The matter was rescheduled for December 10, 2015.

Petitioner was not present for the December 10, 2015 hearing. Petitioner's exhibit "1" was entered into evidence.

Ms. Rouse appeared as both a representative and witness for the respondent. Present from Humana were: Dr. Axel Juan, Medical Director; Dr. Teresita Hernandez, Medical Director; and Stacey Larson, Clinical Guidance Analyst.

Respondent's exhibit "1" and "2" were entered into evidence.

Administrative notice was taken of the Florida Medicaid Provider General Handbook.

Present as an English to Spanish interpreter from Propio Language Services was interpreter [REDACTED]

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 78 years of age. She resides in her daughter's home. Also in the household is petitioner's husband, her son-in-law; and grandchildren. Petitioner's daughter and son-in-law are employed outside the household.

2. Petitioner's diagnoses include [REDACTED]
[REDACTED]

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

4. Respondent does not have a promulgated Coverage and Limitations Handbook for the LTMC Program. LTMC services are defined by contract.
5. All services in the LTMC Program must be medically necessary.
6. Respondent contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTMC Program.
7. Petitioner's LTMC services are provided by Humana/American Eldercare.
8. Petitioner requires total assistance with bathing; dressing; toileting; and transferring¹.
9. Petitioner was approved to receive 43 hours per week of personal care services. On or about May 21, 2015 the hours were increased to 56 hours per week on a temporary basis. The rationale for the increase was, in part, to facilitate the caregivers search for a skilled nursing facility.
10. Humana/American Eldercare suggested the Sunday through Saturday schedule be:
 - 7:00 a.m. to 9:00 a.m.
 - 11:00 a.m. to 1:00 p.m.
 - 3:00 p.m. to 5:00 p.m.
 - 7:00 p.m. to 9:00 p.m.
11. The schedule implemented by petitioner's representative was:
 - 8:30 a.m. to 1:30 p.m.: Sunday through Saturday
 - 5:30 p.m. to 8:30 p.m.: Sunday through Saturday

¹ See 701B Comprehensive Assessment: Respondent's exhibit "2".

12. Petitioner also receives Hospice services from a source other than the LTMC Program. Services include:

- One hour of personal care; three times per week
- A weekly home visit by a nurse
- Massage/Physical therapy

13. On August 17, 2015 Humana/American Eldercare issued to petitioner a Notice of Action. The notice reduced the weekly personal care hours from 56 to 42 hours. The rationale was that 56 hours was in excess of the petitioner's need.

14. On September 3, 2015 petitioner's representative contacted the Office of Appeal Hearings and requested a Fair Hearing.

15. A request for an internal appeal was thereafter received by Humana/American Eldercare.

16. On September 9, 2015 Humana/American Eldercare issued an appeal resolution letter. The correspondence stated, in part:

The Appeal Committee has decided to partially uphold the decision to reduce your personal care services – instead of 42 hours you will receive 49 hours of personal care services weekly. Based on our assessment of your current capabilities and family support, this amount of personal care hours is enough to provide you with the needed help with dressing, bathing, personal hygiene, and other activities of daily living.

17. Humana/American Eldercare states the 49 hours should be divided into the following daily seven hour segments:

- 3 hours each morning
- 2 hours each afternoon
- 2 hours each evening

18. Respondent has continued 56 hours per week of personal care services pending the outcome of this proceeding.

19. Petitioner's representative argues her mother is in the last stages of [REDACTED] [REDACTED] As such, around the clock assistance/supervision is required. Petitioner's husband has been injured while attempting to provide assistance. Petitioner's representative states a new schedule would be confusing for her mother.

20. Respondent argues petitioner's personal care needs can be met within 7 properly scheduled hours each day.

CONCLUSIONS OF LAW

21. 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.

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

23. 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.).

24. Regarding the LTMC Program, Humana/American Eldercare and the respondent entered into a contractual relationship. The contract enumerates and defines required services. The contractual definition relevant to this proceeding is:

Personal Care – 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.

25. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary. See § 409.905 (4) (c), Fla. Stat.

26. 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.

27. The Findings of Fact establish petitioner requires total assistance with most activities of daily living. In response to an assessment completed by Humana/American Eldercare, the number of personal care hours was determined.

28. The contractual definition for personal care does not include supervision. The purpose of the service is to address personal care needs and limited housekeeping duties.

29. A service need should match the service definition. In this appeal, the need for 56 hours per week also includes supervision.

30. Compelling evidence was not presented that personal care needs cannot be addressed by seven properly scheduled service hours each day.

31. It is noted petitioner also receives three hours each week of personal care through Hospice.

32. The role of a Hearing Officer is not to determine the number of medically necessary personal care hours. Rather, the undersigned must determine whether the party vested with the burden of proof has established its position in a preponderant manner.

33. After considering the documentary evidence and testimony, respondent has established, by the greater weight of evidence, that a reduction of personal care to 49 hours per week was proper.

34. If desired, petitioner's representative can review the definitions of the LTMC Program (see page 114 of respondent's evidentiary package) to determine if a service in addition to personal care meets medical necessity criteria.

DECISION

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

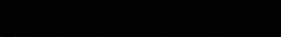
DONE and ORDERED this 15 day of December, 2015,

in Tallahassee, Florida.



Frank Houston
Hearing Officer
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Copies Furnished To:

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Judy Jacobs, Area 7, AHCA Field Office