

Dec 28, 2015

Office of Appeal Hearings  
Dept. of Children and FamiliesSTATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-07802

VS. PETITIONER,

CASE NO.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 06 PINELLAS  
UNIT: AHCARESPONDENT.  

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**FINAL ORDER**

Pursuant to notice, a hearing in the above-styled matter convened on November 4, 2015 at 10:41 a.m. All parties appeared telephonically from separate locations.

**APPEARANCES**

For Petitioner: Petitioner's Mother

For Respondent: Stephanie Lang, RN Specialist  
Agency for Health Care Administration**STATEMENT OF ISSUE**

Whether Respondent properly denied Petitioner's request for durable medical equipment (DME), specifically a bariatric hospital bed and air mattress. Petitioner held the burden of proof on this issue.

### **PRELIMINARY STATEMENT**

Petitioner was not present. Petitioner's daughter, [REDACTED] served as a witness for Petitioner. Respondent's witnesses included India Smith (Grievance and Appeals Coordinator), Dr. John M. Carter (Long Term Care Medical Director), Sylvia Jordan (Long Term Care Case Manager) and Stacia Hammond (Supervisor for Region 5), all with Sunshine Health Plan.

Respondent's Exhibits 1 through 8 were entered into evidence. Petitioner did not submit any documentary evidence. The undersigned took administrative notice of Florida Statutes Sections 409.910, 409.962 through 409.965, and 409.973, Florida Administrative Code Rules 59G-1.001, 59G-1.010, and 59G-4.070, and the Florida Medicaid Durable Medical Equipment and Medical Supply Services Fee Schedule.

### **FINDINGS OF FACT**

Based upon 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. Petitioner is an adult female diagnosed with [REDACTED]. She is bed bound and suffers with bed sores. She requires total assistance with all activities of daily living. She receives services through Sunshine Health's Long Term Care plan.
2. Petitioner was in a nursing facility prior to home placement. Her physician wrote a script for a bariatric bed and an air flow (pressure reducing) mattress. The air flow mattress is intended to help the bed sores and the bariatric bed is to replace a current non-working, unsafe bed.

3. The requests were received on or about July 30, 2015. Sunshine Health denied the requests by notice dated August 6, 2015. The items were denied as not medically necessary. The relevant explanation from the letter stated:

...Sunshine Health did not get any documentation (letter or note from your doctor) indicating you require rapid change in position, you have a condition to which (sic) requires you to be maintained at a 30 degree angle, or the Medical need for an Air Mattress (A special mattress that helps relieve pressure). Your case manager will continue to assess your needs.

4. Petitioner's physician provided a script, but Sunshine Health never received any supporting medical records or clinical information to indicate why the items were necessary. Without any supporting documentation to determine medical need, the requests were denied as not medically necessary.

5. Petitioner's prior case manager and current case manager attempted to get records from the physician. The physician's office claimed the records were sent, but Sunshine Health never received them. Sunshine Health did not otherwise get a copy from the physician or case manager as of the hearing date.

### **CONCLUSIONS OF LAW**

6. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes Chapter 120.

7. Legal authority governing the Florida Medicaid Program is found in Florida Statutes Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

8. The DME and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook") has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.070(2).

9. This is a Final Order, pursuant to Sections 120.569 and 120.57, Florida Statutes.

10. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

11. The burden of proof was assigned to the Petitioner in accordance with Florida Administrative Code Rule 65-2.060(1). The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

12. Section 409.905 of the Florida Statutes 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....**

13. With regard to the need for DME, Section 409.906(10), Florida Statutes, states in relevant part, "[t]he agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary."

14. Similarly, the Handbook defines the guidelines for DME on page 1-2, as follows:

**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).**

15. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, 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.

16. In order for any service to be paid for by Medicaid, it must meet the above definition. Whether it meets the definition is determined by medical records and clinical documentation. Although a doctor provided the prescription, that does not automatically make the item medically necessary or covered per the above rules.

17. Sunshine Health has guidelines it uses for different requests to determine medical necessity. For the bariatric bed, Petitioner will need to show that her medical condition requires positioning that cannot be met with a standard bed and needs more than a 30 degree angle elevation; that a standard bed does not allow proper positioning to alleviate pain, promote proper body alignment, prevent contractures, or avoid

pulmonary complications; that heart failure, chronic pulmonary disease, or aspiration risk requires head of bed elevation over 30 degrees; and/or that a hospital bed is required for attachment of traction equipment. See Respondent's Exhibit 8. Sunshine Health's submitted records indicate the air flow mattress was denied as a non-covered item, but testimony indicated it was denied due to lack of information.

18. Petitioner agreed to work with her doctor to get the needed documentation for the bed and mattress. She should ensure the documentation explains how the equipment will meet her needs over lesser cost alternatives. She can also work with her doctor to verify whether her medical needs meet Sunshine Health's criteria for the bed, and locate a suitable alternative if necessary.

19. After reviewing the totality of the evidence and legal authority, the undersigned finds that the Agency's action was correct and consistent with the governing rules and laws.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is denied and the Agency'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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 28 day of December, 2015,

In Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
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