

Dec 31, 2015

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSAPPEAL NO. 15F-07821
15F-07822

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCARESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 17, 2015, at 10:10 a.m., in Ft. Lauderdale, Florida.

APPEARANCESFor the Petitioner:  pro se.

For the Respondent: Linda Latson, Registered Nurse Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's action, through Amerigroup, in denying the petitioner's request for name brand incontinent supplies based on the request not meeting the medically necessary requirements. The respondent carries the burden of proving its case by a preponderance of the evidence.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were Dr. Mary Colburn, Medical Director, Carlene Brock, Quality Operations Nurse and Melinda Combast, Director of Long Term Care, all with Amerigroup.

The respondent submitted into evidence Respondent Exhibit 1 through 6. The petitioner submitted in to evidence Petitioner Exhibit 1.

Regarding appeal 15F-07822, a medical alert device, the Agency was unprepared and submitted no evidence for hearing. The Agency then requested the hearing be continued; however, the petitioner expressed she no longer wished to move forward with this matter. In light of this; 15F-07822 is treated as withdrawn on the record.

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. The petitioner is a Long Term Care Medicaid recipient receiving services through Amerigroup. Amerigroup is a Managed Care Organization authorized by AHCA to make prior service authorizations for individuals enrolled in the Long Term Care Program. The petitioner was recently enrolled and started receiving Medicaid services through Amerigroup.
2. The petitioner requested to continue receiving Tena pads and Depends incontinent supplies through Amerigroup.

3. On September 10, 2015, Amerigroup mailed the petitioner a Notice of Action stating:

Amerigroup has reviewed your request for continuation of your Depends Silhouette Pull up/Adult Diaper size XL and Tena Ultimate/Overnight Pad/Liners, which we received 9/2/15. After our review, this service has been: TERMINATED as of 9/20/15

We determined your requested services are not medically necessary because the services do not meet the reason checked below.

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

Amerigroup offered to provide generic brand pull-ups and pads and you declined to receive this product.

4. The petitioner requested this hearing and the terminated incontinent supplies were reinstated based on a timely hearing request.

5. The information as found in Petitioner Exhibit 1 was sent to the respondent witnesses during this hearing. Part of this exhibit included a copy of a letter from the petitioner's treating physician, Dr. Davilla. This letter states in part:

She has tried multiple adult protective garments and reports to me that the only one that is working for her is the Depend Silhouette underwear...brand only and Tena pads. She states the others do not provide her sufficient protection and therefore she requires the use of this for medical indications.

6. The respondent's physician witness indicated that the above doctor statement was reviewed along with the rest of the Petitioner Exhibit. She indicate this statement appears to be a letter of self-report from the petitioner. She indicated the petitioner's doctor cited no medical explanation about any medical problems. Thus, she indicated the decision remains the correct medically necessary decision. She indicated that the

generic incontinent supplies are equivalent to the name brand incontinent supplies.

She indicated Amerigroup is offering incontinent supplies for the petitioner which should be sufficient for her needs.

7. The petitioner argued she has tried at least twenty different incontinent products on her own, though she agreed that she may not have tried the supplies as offered by Amerigroup. She argued that only the Depends and Tena products are the only products that actually work for her.

CONCLUSIONS OF LAW

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

10. In accordance with Fla. Admin. Code R. 65-2.060 (1), the party having the burden shall establish his/her position by a preponderance of the evidence, to the satisfaction of the hearing officer.

11. Fla. Admin. Code R. 59G-1.010 states in part:

(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;

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...

12. As shown in the Findings of Fact, the Agency through Amerigroup, terminated the Tena pads and Depends incontinent supplies and offered the petitioner generic incontinent supplies as a replacement, based on medically necessary criteria.

13. For the case at hand, it is the respondent's position that that the generic equivalent incontinent supplies are equivalent to the name brand incontinent supplies and that the incontinent supplies offered to the petitioner should be sufficient for her needs. Additionally, the respondent's position is that the incontinent supplies as requested do not meet the medically necessary requirements that they be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. The hearing officer agrees with the respondent's position and arguments.

14. After considering the evidence and all of the appropriate authorities set forth above, the hearing officer concludes that the respondent has met its burden of proof

and the Agency's action to terminate the petitioner's request for continued Tena pads and Depends incontinent supplies is correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action 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 31 day of December, 2015,

in Tallahassee, Florida.



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