

Dec 23, 2015

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

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-08207

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 Dade  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned hearing officer convened a telephonic administrative hearing in this matter on November 4, 2015 at 11:38 a.m.

**APPEARANCES**

For the Petitioner:

Daughter

For the Respondent:

Dianna Chirino,  
Senior Human Services Program Specialist,  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

The Petitioner is appealing the Agency for Health Care Administration's (AHCA's) decision to deny the Petitioner's request for medical supplies (underpads, gloves, ointment, and chux). Because the issue under appeal involves a request for medical supplies, Petitioner carries the burden of proof.

### **PRELIMINARY STATEMENT**

Dr. Sloan Carver, Medical Director for Long-Term Care and Christian Laos, Senior Compliance Analyst, both from United Healthcare (UHC), appeared as witnesses for the Respondent.

Interpreter [REDACTED] from Proprio Language Services provided Spanish translation for Petitioner whose daughter only speaks Spanish.

Respondent submitted a 63-page document, which was entered into evidence and marked as Respondent Exhibit 1.

### **FINDINGS OF FACTS**

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. Petitioner is an 89 year-old Medicaid recipient enrolled with United Healthcare (UHC), a Florida Health Managed Care provider.
2. Petitioner has Medicare as her primary medical insurance provider.
3. UHC received a request for medical supplies on September 8, 2015. A Notice of Action was sent to the Petitioner on September 16, 2015 denying the request as not medically necessary and referencing "FS 409.910(1)" as the authority for the decision.
4. Respondent advised that the Petitioner's hospice service provider, Vitas, is responsible for providing all her necessary medical supplies.
5. Petitioner receives 80 underpads per month and asserts this amount is insufficient to meet her needs. Petitioner uses five or six underpads daily and needs more than what is currently being provided by her hospice service provider.
6. Medicare covers the Petitioner's hospice services.

7. Petitioner is satisfied with the hospice care being provided but is unsatisfied with the monthly amount of medical supplies provided. She is requesting that United Healthcare provide her medical supplies.

8. Medicaid and UHC accept Medicare's determination of medical necessity because Medicare is the Petitioner's primary medical insurance provider.

9. Medicaid is payor of last resort.

### **CONCLUSIONS OF LAW**

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

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

12. 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).

13. § 409.910(1), Fla. Stat. provides in relevant part :

It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients.

14. The Florida Medicaid Provider General Handbook, July 2012, incorporated in Fla. Admin. Code R. 59G, provides an explanation of Medicaid limits for Medicare Cross Over claims and provides on pages 1-2 and 4-3 in relevant part:

Responsibility For Exhausting TPL Sources  
Medicaid is the payer of last resort. If a recipient has other insurance

coverage through a third party source, such as Medicare, TRICARE, insurance plans, AARP plans, or automobile coverage, the provider must bill the primary insurer prior to billing Medicaid.

....

#### Medicaid Program Limits

Medicaid will not pay a crossover claim if:

Both Medicare and Medicaid cover the service, and Medicare has determined that the service is not medically necessary. **If Medicare determines that a service that Medicaid also covers is not medically necessary, it is also considered to be not medically necessary by Medicaid [emphasis added].**

15. Medicare has approved the hospice services for the Petitioner. Vitas is providing the hospice services, including the monthly medical supplies.

16. The Respondent, by a preponderance of the evidence and testimony, supported its decisions in denying Petitioner's request for medical supplies because Medicare is Petitioner's primary health insurance provider. The Petitioner has failed to meet her burden of proof.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Respondent'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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 23 day of December, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager