

FILED

Nov 18 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-07047

PETITIONER,

Vs.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 2, 2015, at 10:00 a.m.

APPEARANCES

For the Petitioner: [REDACTED] Petitioner's wife

For the Respondent: Dianna Chirino, Senior Program Specialist

STATEMENT OF ISSUE

At issue is the Agency action denying the Petitioner's request for additional respite services, companion services, and personal care services under the Long Term Care Program. Petitioner bears the burden of proof in this matter.

PRELIMINARY STATEMENT

The Petitioner did not submit any documents as evidence for the hearing.

Appearing as witnesses for the Respondent were Dr. John Carter, Medical Director; Paula Daley, Grievance and Appeals Coordinator; Cynthia Morisaki, Case Manager Supervisor; and Gretchen Curtis, Case Manager, from Sunshine Health, which is Petitioner's managed health care organization.

The Respondent submitted documents as evidence for the hearing consisting of the following which were marked as Respondent Exhibits: Exhibit 1 – Denial letters; Exhibit 2 – Medical Assessment Form; Exhibit 3 – Plan of Care; Exhibit 4 – Letter from Petitioner's wife; Exhibit 5 – Letter from Petitioner's physician; Exhibit 6 – Long Term Care Plan Policy and Procedures.

Also present for the hearing was a Spanish language interpreter, [REDACTED] Interpreter Number [REDACTED] from Propio Language Services.

FINDINGS OF FACT

1. The Petitioner is seventy-four (74) years of age and lives with his wife, who is sixty-nine years of age and is his sole caregiver. He is ambulatory, incontinent, and needs assistance with personal hygiene and activities of daily living (ADLs). He suffers from [REDACTED] and [REDACTED]

2. The Petitioner is a Medicaid recipient who is enrolled in the Statewide Medicaid Managed Care (SMMC) – Long Term Care (LTC) Plan. He receives services under the plan from Sunshine Health.

3. The Agency For Health Care Administration (AHCA) is responsible for management of the managed long-term care plan contracts; statewide policy decisions and interpretation of all federal and state laws; and rules and regulations governing the contract. Managed Care Organizations such as Sunshine Health provide services to Medicaid recipients pursuant to a contract with AHCA.

4. The Petitioner currently receives the following LTC services through Sunshine Health: fourteen (14) hours weekly of personal care assistance, seven (7) hours weekly of homemaker services, and five (5) days weekly of adult day care services.

5. The Petitioner made a request to Sunshine for additional home care services consisting of eight (8) hours weekly of respite care and three (3) hours weekly of companion care services. On July 16, 2015, Sunshine sent a letter to Petitioner denying his request for the additional home care services. The letter stated the requested services were denied because the currently approved services were sufficient to meet his care needs.

6. The Petitioner also made a request to Sunshine for an additional thirty (30) minutes daily of personal care services. On August 27, 2015, Sunshine sent a letter to Petitioner denying his request for the additional personal care services. The letter stated the additional service was denied because the currently approved services were sufficient to meet his care needs.

7. Petitioner's wife stated he utilizes the currently approved twenty-one hours of weekly home services as follows: 1.5 hours in the morning and 1.5 hours in the afternoon. She states her husband needs an additional thirty minutes of assistance in

the afternoon visit because he becomes more agitated later in the day and it becomes more difficult to take care of him. His behavior problems include trying to eat soap and dishwashing liquid. The Petitioner goes to bed at approximately 6:00 p.m. every day.

8. Petitioner's wife stated she is requesting the companion services so that someone can accompany her when she takes her husband to doctor's appointments because he sometimes tries to abscond from the office. She is requesting respite services to be used on the weekends so she can travel to visit her grandchildren and someone can watch her husband at home. She utilizes the time her husband is at the adult day care facility on Monday to Friday to run errands, clean the home, and go to her own medical appointments.

9. At the time of the hearing, Petitioner had been hospitalized for the past two weeks due to a [REDACTED] and was expected to return home within another two weeks. At that time, Sunshine Health indicated it would conduct a re-evaluation of the Petitioner's needs after he returns to the home.

CONCLUSIONS OF LAW

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

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

12. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Petitioner since the issue involved a request for an increase in services. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

13. Fla. Stat. § 409.979 sets forth eligibility requirements for the Long-Term Care Program and states:

(1) Medicaid recipients who meet all of the following criteria are eligible to receive long-term care services and must receive long-term care services by participating in the long-term care managed care program. The recipient must be:

(a) Sixty-five years of age or older, or age 18 or older and eligible for Medicaid by reason of a disability.

(b) Determined by the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to require nursing facility care as defined in s. 409.985(3).

14. As stated in the Findings of Fact, the Petitioner was determined to be eligible and enrolled in the Long Term Care Program.

15. The Petitioner requested a fair hearing because he believes his services under the Program should be increased.

16. Fla. Stat. § 409.98 lists the services which must be covered by Long-Term Care plans. Respite care, companion care, personal care assistance, homemaker services, and adult day care services are among the services available from Long-Term Care plans and are addressed in the AHCA contract.

17. Respite Care services are defined in the contract as:

Services provided to enrollees unable to care for themselves furnished on a short-term basis due to the absence or need for relief of persons normally providing the care. Respite care does not substitute for the care usually provided by a registered nurse, a licensed practical nurse or a therapist. Respite care is provided in the home/place of residence, Medicaid licensed hospital, nursing facility or assisted living facility.

18. Adult companion care is defined in the contract as:

Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. This service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

19. The Petitioner currently receives Homemaker services, which are defined in the contract as:

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 are included in this service.

20. The Petitioner also currently receives Personal Care services, which are defined in the contract 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.

21. The Petitioner also currently receives Adult Day Care services, which are defined in the contract as follows:

Services furnished in an outpatient setting which encompass both the health and social services needed to ensure optimal functioning of an enrollee, including social services to help with personal and family

problems and planned group therapeutic activities. Adult day health care includes nutritional meals. Meals are included as a part of this service when the patient is at the center during meal times. Adult day health care provides medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational and speech therapies indicated in the enrollee's plan of care are furnished as components of this service. Nursing services, which include periodic evaluation, medical supervision and supervision of self-care services directed toward activities of daily living and personal hygiene, are also a component of this service.

22. The AHCA contract also provides that a Plan "may place appropriate limits on a service on the basis of such criteria as medical necessity, as defined by the Agency, or for utilization control, consistent with the terms of this Contract, provided the services furnished can be reasonably expected to achieve their purpose."

23. Fla. Stat. § 409.912 requires that Respondent "purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care."

24. The Florida Medicaid Provider General Handbook ("Medicaid Handbook"), effective July 2012, and Fla. Admin. Code R. 59G-1.010(166) define 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;
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.

25. After considering the evidence and testimony presented, the hearing officer concludes that the Petitioner has not demonstrated that his services under the LTC Program should be increased by adding eight hours weekly of respite care, three hours weekly of companion care, and an additional thirty minutes daily of personal care.

26. The Petitioner clearly needs assistance with all his activities of daily living (ADLs). The evidence presented, however, establishes that the Petitioner's needs can be met with the twenty-one (21) hours weekly of in-home assistance which has already been approved by Sunshine, as well as the adult day care facility which the Petitioner attends Monday to Friday. The in-home assistance is being provided in the morning and afternoon each day. Petitioner's attendance at the adult day care facility also provides his wife with respite from having to provide his care during those hours. Any additional services would appear to be in excess of Petitioner's needs and more for the convenience of the caregiver.

DECISION

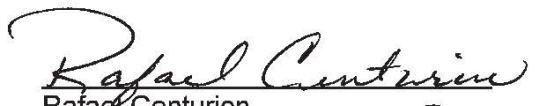
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED.

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 18 day of November, 2015,

in Tallahassee, Florida.


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