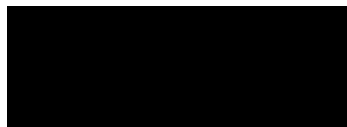


Feb 24, 2016

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

APPEAL NO. 15F-08244

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 17 Broward

UNIT: AHCA


RESPONDENT.  

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 19, 2015, at 1:20 p.m.

**APPEARANCES**

For the Petitioner:  the petitioner's daughter.

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

**STATEMENT OF ISSUE**

At issue is the Agency action, through Sunshine Health, in denying petitioner's request for bathroom modifications (walk-in shower with grab bars and widening of the bathroom door), a stair lift, and a shower chair. The petitioner carries the burden of proof in this matter.

**PRELIMINARY STATEMENT**

The petitioner was present as a witness. Present as witnesses for the respondent were India Smith, Grievance and Appeals Coordinator; Lynne Scullion, Case Manager; Dr. John M. Carter, Long-Term Care Medical Director; and Heather Ford, Long Term Care Supervisor, all from Sunshine Health. Present as an interpreter was [REDACTED]

The respondent submitted into evidence Respondent Exhibit 1 through 10. The petitioner submitted into evidence Petitioner Exhibit 1 and 2.

The record was left open for thirty days for the petitioner to submit additional information. The petitioner submitted additional information within the time frame allotted. The record was left open an additional fourteen days for the respondent to provide a response. No response was provided within the time frame allotted.

It was brought to this hearing official's attention that the information submitted by the petitioner may not have been provided to the respondent's witness. The undersigned issued an Order requiring the Agency to forward the additional information to Sunshine Health and for Sunshine Health to provide a response within fourteen days. A response was provided but after the deadline. This information was admitted after deadline, as it was needed to clarify the respondent's position on this issue.

**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 (LTC) Medicaid recipient living in [REDACTED]

[REDACTED] She is unable to ambulate on her own. She is seventy-seven years of

age and lives on the second floor of a two-story house. Sunshine Health is a Managed Care Organization authorized by AHCA to make prior service authorization decisions for individuals enrolled in Medicaid LTC Programs.

2. On July 31, 2015, the petitioner requested bathroom modifications (walk-in shower with grab bars and widening of the bathroom door), a stair lift, and a shower chair.

3. The petitioner lives in a two-story home where the full bathroom is on the second floor. She has numerous medical issues including [REDACTED] She was recently admitted to the hospital and was temporarily placed in a rehabilitation center before being sent home. The petitioner is approved for services that include personal care assistance on a weekly basis.

4. On August 12, 2015, Sunshine Health denied the petitioner's request and mailed a Notice of Action stating:

...After our review, this service has been denied, as of 08/10/2015...

We made this decision because:

We determined that your requested services are not medically necessary because the services do not meet the reason(s) checked below:

Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

The requested service is not a covered benefit.

Other authority-Lack of medical necessity.

You asked for, Home modification (A service provided to make your home safe and handicap accessible), chair lift (A chair that allows you to move easily between floors of a house). Walk in shower with grab bars (The bar that is used to hold onto while in the shower or tub), and widening of the bathroom door. After review, this has been denied. The information given

to Sunshine Health does not show that you cannot access the second floor. There is no Prescription (order written by your doctor) for shower chair (A chair you can sit on while you are in the shower) and in the picture provided to Sunshine Health you already have a shower chair. The chair lift is a non-covered benefit.

5. The respondent's witness, Dr. John Carter, Long-Term Care Medical Director, indicated the stair lift, as a home modification, is not a covered benefit under the plan. He indicated, however, that under certain circumstances, where there are no safety concerns, the stair lift may be provided as a covered service. For example, if an individual lives in a building with multiple housing units and there is no elevator and that person is quite mobile, has good posture, and is capable of using the lift safely to get to their home then it may be a covered service.

6. He indicated that the decision to deny was based on safety issues for the petitioner. He indicated he has concerns due to the petitioner's spinal problems, her mobility, and the fact that it is safer for her to be primarily on one floor. Subsequent to the issuance of the notice in this matter, petitioner was admitted to the hospital in October and November. Dr. Carter recommended a reassessment for the stair lift due to the change in petitioner's health status now that she has been discharged from rehab and the hospital.

7. Dr. Carter indicated, after hearing the petitioner's arguments on the stair lift, that he did not have or review any pictures of the petitioner's stairway. He indicated the petitioner should submit another request for the stair lift and provide more information such as pictures of the stairway. It was agreed that the record would be left open and information submitted by the petitioner would be reviewed and a response would be provided.

8. For the bathroom modifications, Dr. Carter indicated he agreed that other than shower chair, the modifications should be made for the petitioner's bathroom. The Case Manager testified she is familiar with petitioner's home and there is not enough space in the bathroom for petitioner or for any other individual to assist her.

9. The Grievance and Appeals Coordinator indicated that the petitioner's representative told the plan that the petitioner's house was in foreclosure. She indicated that based on this information, it would appear that the petitioner may not be living at her place of residence very long. She also indicated that this situation also played a role into the plan's decision not to approve any of the petitioner's request for home modification. She pointed out that according to the plan's contract as found on page 50 of Respondent Exhibit 8, under service limitations, it states: "The member has no plans to move either to another residence or institutional setting within the next three months." She indicated that the petitioner would need to present some type of documentation to show that she will continue to live at her current address.

10. Submitted as part of Petitioner Exhibit 2 were copies of pictures of the petitioner's stairway. It should be noted the pictures are not very clear. Petitioner submitted a copy of a price quote for the stair lift that equaled \$11,766. She submitted a copy of a United States Bankruptcy Court document related to a request for Mortgage Modification Mediation filed on December 1, 2015.

11. The petitioner's representative argued that the petitioner cannot in anyway go up or down the stairway on her own. She argued that the petitioner's health has deteriorated recently increasing the need for a stair lift. She argued that the stairway in the home is suitable for the stair lift to be installed. She argued that the petitioner owns

her home and they have worked out the problems with the foreclosure. She argued the petitioner intends to continue living in her home.

12. Based on the additional information provided by the petitioner (pictures of the stairway, the price quote for the stair lift, and documentation regarding home modification), the undersigned left the record open for respondent to provide a response. That response is as follows:

Based on further review of information about the stair lift and bathroom modification request the original denial should continue to stand. The information provided does not demonstrate a safe modification or alteration of a winding staircase. Sunshine Health continues to recommend that the member consider living on the ground floor, for safety reasons in case of need for emergency exit from the house plus the fact that the member should only safely be maintained on one level due to medical conditions regarding her spinal/musculoskeletal health.

Member is currently receiving 14 hours of Personal Care weekly, 12 hours of Companion Care weekly, Respite Care 16 hours per week...

### **CONCLUSIONS OF LAW**

13. 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.

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

15. 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.

16. 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.

17. The AHCA Long-Term Care Program contract, page 50 of the Respondent's evidence packet, states in part:

The criteria for home accessibility adaptation services include the following:

Physical adaptations to the home must be based on each of the three (3) below criteria:

Adaptation to the home is necessary for the health, welfare and safety of the member.

The adaptation to the home will enable the member to function with greater independence in the home.

Without the adaptation to the home, the member would be institutionalized.

18. As shown in the Findings of Fact, the Agency, through Sunshine Health, denied the petitioner's request for bathroom modifications (walk-in shower with grab bars, widening of the bathroom door), a stair lift, and a shower chair.

19. Regarding the bathroom modifications (widening of the bathroom door and walk-in shower with grab bars), both the Long-Term Medical Director and Case Manager were in agreement at hearing that the bathroom indeed warranted modification. The evidence shows petitioner requires these adaptations to her home to maintain a safe living environment.

20. Regarding the stair lift, the Agency argued safety is a primary concern as petitioner has spinal problems, issues with mobility, and would be primarily safer staying on one floor. Subsequent to the issuance of the notice in this matter, petitioner had several admissions to the hospital and an admission to a rehab facility. The Agency's position would be in line with the above medical necessity rule "[b]e 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." In view of the evidence, the undersigned concludes petitioner did not meet her burden in showing that the denial of the stair lift was incorrect.

21. Petitioner's condition may change in the future. If the petitioner's needs increase or her condition changes, a new request may be submitted at that time. Her family is encouraged to work with her caseworker and the plan regarding future assessments.

22. Regarding the shower chair, the Agency denied this request because no physician prescription was submitted and petitioner already had a shower chair. No



evidence was submitted to rebut these assertions. The controlling legal authorities make clear that Medicaid services cannot be in excess of the patient's needs.

Therefore, the undersigned concludes petitioner did not meet her burden in showing that the denial of the shower chair was incorrect.

23. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned concludes the petitioner failed to meet her burden in showing that the denial of the stair lift and shower chair was incorrect.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is GRANTED in part and DENIED in part as follows:

- The request for bathroom modification (widening of the bathroom door and walk-in shower with grab bars) is granted.
- The request for a stair lift and shower chair 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 24 day of February, 2015,  
in Tallahassee, Florida.



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