

Feb 26, 2016

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSOffice of Appeal Hearings
Dept. of Children and Families

APPEAL NO. 15F-08247

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 20 Lee
UNIT: AHCARESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-styled matter on January 11, 2016 at approximately 3:30 p.m.

APPEARANCES

For Petitioner:

A black rectangular redaction box covering the name of the petitioner's mother.
Petitioner's mother

For Respondent:

Suzanne Chillari
Medical/Health Care Program Analyst
Agency for Health Care Administration**STATEMENT OF ISSUE**

At issue is whether or not Respondent's denial of Petitioner's request for 25 additional hours per week of Companion Care, 84 additional hours per week of Personal Care, and 168 hours per week of Homemaker services through the Participant Directed Option ("PDO") was correct. The burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

Petitioner's mother represented him at the hearing. Respondent presented the following witnesses:

- Katrina Hill – Long-Term Care Supervisor – Sunshine Health
- Dr. John Carter – Long Term Care Medical Director – Sunshine Health
- Natalee Wright – Case Manager – Sunshine Health
- Paula Daley – Grievance and Appeals Coordinator – Sunshine Health

Erica Colon, Director of Case Management, Long-Term Care Plan, Sunshine Health and James Van Landingham, Associate Attorney with Hogan Lovells, attorneys for Sunshine Health, observed the hearing. Mr. Van Landingham did not participate in the hearing in any way and Petitioner's mother consented to his presence. Petitioner did not move any exhibits into evidence. Respondent's Exhibits 1 through 7 were entered into evidence.

FINDINGS OF FACT

1. Petitioner is a 37-year-old male. Petitioner is enrolled with Sunshine Health ("Sunshine") as his Long-Term Care ("LTC") plan.
2. Petitioner's medical conditions include:

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3. Petitioner lives in the family home, consisting of himself, his mother, his father, his sister, and his sister's two (2) children. Petitioner's mother sometimes pays his sister to watch him when she runs errands.

4. The current level of services Petitioner is receiving through PDO are 10 hours per week of Companion Care, 25 hours per week of Homemaker services, and 25 hours per week of Personal Care. At the time of the hearing, Petitioner was receiving seven (7) hours per week of Skilled Nursing Care [REDACTED] and one (1) hour bi-weekly of Skilled Nursing Care [REDACTED]. Petitioner can allocate the PDO hours however desired, including overlapping services at the same time, as long as he does not exceed the total number of approved hours.

5. On February 16, 2016, Petitioner's mother spoke to the Hearing Officer, at Ms. Wright's direction, to inform him that Petitioner no longer receives the Skilled Nursing Care. The record in this proceeding had closed at the time of this communication. Any subsequent termination of services is not at issue in this appeal and will not be addressed.

6. Petitioner's mother testified that he is [REDACTED] from the waist down, but only has small movement in his hands. His 701B Comprehensive Assessment ("701B") lists him as having [REDACTED] (Respondent's Exhibit 2).

7. Petitioner requires total assistance with all of his activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"). Because of this he requires care 24 hours per day, seven (7) days per week. Petitioner's mother works outside of the home eight (8) hours per day as a special education teacher. Petitioner receives services

from an outside provider, [REDACTED] while his mother is at work. Sixteen (16) hours of the home health services are provided by Petitioner's mother.

8. Petitioner needs to be repositioned every 30 minutes. His family members assist with this task. [REDACTED] also comes once or twice a week to bathe him. This takes between one (1) and two (2) hours. Petitioner's family also assists with this task. He also requires catheter care and care for changing his ostomy bag.

9. Petitioner has visited a hospital approximately 25 times within the last year, and an emergency room approximately 50 times within the last year.

10. On July 24, 2015, Sunshine received the request for the increase in services. On August 5, 2015, Sunshine issued a Notice of Action denying the request as not being medically necessary, specifically because it "Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs." (Respondent's Composite Exhibit 4). The Notice of Action stated:

You requested additional PDO/Participant [REDACTED] (The person you choose to take care of you) service hours of 25 hours per week of Companion Care (The person that helps assist and watch over you), 84 hours per week of Personal care (The person who helps care for you), and 168 hours per week of Homemaking (The person who helps with cleaning and chores).

Sunshine Health has also looked at your care needs and services. The care you are now getting, 32 hours per week of Personal Care (The person who helps care for you), 10 hours per week of Companion Care (The person that helps assist and watch over you) plus 25 hours per week of Homemaker Services (The person who helps with meals/cleans/chores), can meet your care needs. Your request for the additional hours of Companion Care, Personal care, and Homemaking services is denied. Your Case Manager will continue to assess your care needs.

The facts that we used to make our decision are: This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

11. Petitioner requested an internal appeal with Sunshine. On September 17, 2015, Sunshine issued a letter advising that the denial had been upheld (Respondent's Composite Exhibit 4). The letter states, in pertinent part:

This case was reviewed by Sunshine Health's Medical Director, who is Dual Board Certified in Emergency Medicine and Internal Medicine. Our decision is based upon the conclusion of our review of the additional medical documentation, clinical judgment, standards of practice and Sunshine Health Guideline. The appeal is denied and the denial is upheld for additional personal care, companion care, and homemaking hours. The member requires total assistance with all activities and instrumental activities of daily living. He is currently receiving 67 combined hours with and an additional 7 hours of skilled nursing. The request for an additional 25 hours of companion care per week, 84 hours of personal care hours per week, and homemaking of 168 hours per week is excessive. If there is a need for that many hours, consideration of placement into a nursing home for 24-hour care should be entertained.

The LT.UM.09 LTC (Long Term Care) Ancillary Services was used in making the decision.

12. Per Sunshine's Policy and Procedure, LT.UM.09, (Respondent's Exhibit 6), Adult Companion Care includes:

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. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services may be provided at the member's residence or anywhere in the community where supervision and care is necessary. The services cannot be provided by a family member.

13. Homemaker Services are defined as:

General household activities such as meal preparation and routine household care provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities, Chore services, including heavy chore services and pest control may be included in this service.

14. Personal Care Services are defined as:

A service that provides assistance with eating, bathing, dressing and personal hygiene and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The 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 member, rather than the member's family. Personal care services include the following:

- Providing assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines.
- Assisting the member in following through with physician orders. The Personal Care provider cannot administer medications, but may bring medications to the member and remind the member to take the medicine at specific times.
- Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member.
- Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location. Family members cannot be paid for Personal Care Services.

15. Companion Care, Homemaker Services, and Personal Care Services are all ancillary home health services under Sunshine's Policy and Procedure. Sunshine considers the level of support needed when determining the amount of services needed. The services are intended to "augment and support the existing informal care and community services being provided to allow the member to remain safely in their home."

16. One of the level of support considerations is the recipient's living situation.

Sunshine considers whether or not someone lives alone or with family. [REDACTED] said someone who lives alone would need more care than someone who lives with family. Sunshine also considers whether the recipient requires Minimum, Moderate, or Maximum support to complete their daily tasks. Petitioner requires Maximum support since he requires total assistance with all ADLs and IADLs and Sunshine defines Maximum support as support need for 75% of the task or more. Sunshine does not dispute that Petitioner requires total care. The only dispute regards the total number of hours required to meet his needs.

17. The Policy and Procedure includes time guidelines for the services, based upon the recipient's level of support needs. One unit of time is 15 minutes. Because Petitioner requires total care, he needs assistance with all services. The following paraphrased list contains the maximum amount of time for each service for Petitioner's living situation, per the guidelines:

1. Supervision and Socialization Support:

Lives with family who provide a minimum or moderate amount of supervision of the member's daily needs and/or socialization: 75 minutes per week.

2. Meal Preparation Assistance: breakfast, lunch, dinner, and additional meal alone (assuming no family member is in the home at his meal times): 75 minutes per day, 7 days per week = 525 minutes per week.

3. Shopping Criteria:

Lives with family who provide a minimum or moderate amount of the member's shopping: 75 minutes per week.

4. Housekeeping and Chore Services:

Lives with family who provide a minimum or moderate amount of the member's housekeeping or chores: 90 minutes per week.

5. Laundry Criteria:

Lives with family who provide a minimum or moderate amount for the member's laundry: 90 minutes per week.

6. Bathing Criteria:

Maximum assistance needed, full bath, once per day: 45 minutes per bath, 7 days per week = 315 minutes per week. Petitioner's mother testified he only bathes once or twice per week, however, this guideline assumes he could bathe once per day if desired.

7. Dressing and Grooming Criteria:

Maximum assistance: 20 minutes per task. Number of tasks (6): dressing, undressing, hair care, shaving, oral hygiene, nail care, for a total of 120 minutes per day, 7 days per week = 840 minutes per week.

8. Toileting Criteria:

Maximum assistance: 15 minutes per day of emptying urine from catheter bag, and 15 minutes per day of caring for ostomy bag: 30 minutes per day, 7 days per week = 210 minutes per week.

9. Mobility Criteria:

Maximum assistance: 30 minutes per task. The number of tasks is inherently variable depending upon how much mobility Petitioner needs on a given day. Assuming he leaves and returns to his home once a day, 30 minutes leaving and 30 minutes returning is 60 minutes per day, 7 days per week = 420 minutes per week.

10. Transferring Criteria:

Maximum assistance with one or more persons or totally dependent on other for transferring: 30 minutes per task. Petitioner's mother testified he needs to be repositioned every 30 minutes. Allowing 30 minutes per task would mean he is constantly being transferred every second of the day. The guideline for someone who is bed-bound and requires frequent turning and repositioning is up to 90 minutes per day, 7 days per week = 630 minutes per week.

11. Eating and Feeding Criteria:

Maximum assistance: 30 minutes per meal, 4 meals per day: 120 minutes per day, 7 days per week = 840 minutes per week.

12. Nutritional Assessment/Risk Reduction Services:

Two (2) one (1) hour visits within 2 weeks = 60 minutes per week.

13. Respite Services Criteria:

Care of the member for periods of time when the caregiver is absent. Petitioner's mother is absent eight (8) hours per day, five (5) days per week due to working outside of the home. Assuming there is no other caregiver in the home during the eight (8) hour period, even though other family members live in the home: 480 minutes per day, 5 days per week = 2,400 minutes per week.

18. The sum total of the maximum time guidelines for all services is 6,570 minutes per week, which is 109.5 hours per week. Petitioner's mother testified the services provided by [REDACTED] occur when she is at work, which is when Respite Care would be appropriate. Further, Respite Care was not requested. Removing Respite Care from the calculation yields 4,170 minutes per week, which is 69.5 hours per week.

CONCLUSIONS OF LAW

19. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to § 120.80, Fla. Stat.

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

21. This is a Final Order, pursuant to Sections 120.569 and 120.57, Fla. Stat.

22. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

23. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, is the single state agency that administers the Medicaid Program.

24. Section 409.978 (2) of the Florida Statutes states, in pertinent part: “[AHCA] shall make payments for long-term care, including home and community based services, using a managed care model...”

25. Section 409.98 of the Florida Statutes requires that LTC plans include, among other services, personal care, home-delivered meals, case management, medication administration, and nutritional assessment and risk reduction.

26. The October 2014 Florida Medicaid Home Health Services Coverage and Limitations Handbook (“Home Health Handbook”) is promulgated into law by Chapter 59G of the Florida Administrative Code.

27. Page 1-2 of the Home Health Handbook defines “Home Health Services,” stating:

Home health services are medically necessary services, which can be effectively and efficiently provided in the place of residence of a recipient. Services include home health visits (nurse and home health aide), private duty nursing and personal care services for children, therapy services, medical supplies, and durable medical equipment.

28. The definition of “medically necessary” is found in Fla. Admin. Code R.59G-1.010, which 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; 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.

29. Sunshine concluded the request for the additional hours is in excess of Petitioner's needs. The undersigned agrees. The total number of hours requested per week for each service is 109 hours of Personal Care and Skilled Nursing Care (25 existing plus 84 additional requested), 35 hours per week of Companion Care (10 existing plus 25 additional requested) and 193 hours of Homemaking Services (25 existing plus 168 additional requested), which totals 337 hours per week of services. The undersigned notes that there are 168 hours in a week, therefore Petitioner's request for Homemaker Services exceeds 24/7 service. This does not include the 7.5 hours per week of skilled nursing care, which has apparently been terminated subsequent to the hearing.

30. It is undisputed that Petitioner requires total care. His level of services at the time of the hearing was 67.5 hours per week, including the skilled nursing care. He has 60 hours per week of combined Personal Care, Companion Care, and Homemaker Services. The calculated maximum amount of home health services under Sunshine's LTC plan is 69.5 hours, under the assumption that Petitioner does not have any family member with him to assist with meal preparation and feeding.

31. Because the calculated maximum amount of the requested services is 69.5 hours per week, and Petitioner was receiving 67.5 hours per week at the time of the hearing, the undersigned concludes Petitioner has not shown, by preponderance of the evidence, that he requires the requested additional hours of services.

32. The 337 requested hours of services is clearly excessive. However, the undersigned has based this decision on the calculated maximum number of hours according to Sunshine's guidelines and the evidence presented. As noted above, Sunshine considers a number of factors when determining the level of support required for a member. Petitioner is encouraged to work with his Case Manager to re-evaluate his needs. When considering all factors, he may be able to receive additional home health services that are not in excess of his needs. In the event his needs cannot be met through home health services, Petitioner and his mother may wish to consider placement in a nursing home, as suggested by [REDACTED]

DECISION

Based upon the foregoing, 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 26 day of February, 2016,
in Tallahassee, Florida.



Rick Zimmer
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Copies Furnished To: [REDACTED] Petitioner
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