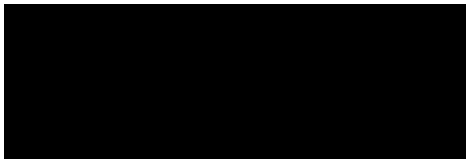


Jan 20, 2016

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08528

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 Orange
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-styled matter on November 30, 2015 at approximately 3:30 p.m.

APPEARANCES

For Petitioner:



Petitioner's daughter

For Respondent:

Lisa Sanchez
Senior Human Services Program Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether or not Respondent's denial of Petitioner's request for one (1) additional hour of companion care in the evening, seven (7) days per week, was correct. The burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

Petitioner's daughter, [REDACTED] ("Petitioner's representative") represented her at the hearing. The following witnesses were present for Petitioner:

- [REDACTED] – Petitioner's daughter
- [REDACTED] – Petitioner's son

Respondent presented the following witnesses:

- India Smith – Grievance and Appeals Coordinator – Sunshine Health
- Dr. John Carter – Long Term Care Medical Director – Sunshine Health
- Emily Fry – Case Manager – Sunshine Health
- Kritzia Torres – Supervisor of Case Management – Sunshine Health
- Tonya James – Clinical Manager - Cenpatico
- Mary Stoker – Service Care Coordinator – Cenpatico

Petitioner's Exhibits 1 and 2 were entered into evidence. Respondent's Exhibits 1 through 9 were entered into evidence. The Hearing Officer inadvertently marked two of Respondent's exhibits as Exhibit 9. The Exhibits are now marked for identification as Exhibit 9A and Exhibit 9B. The record was held open for both parties to submit additional evidence. Petitioner submitted additional evidence, entered as Exhibits 3 through 5. Respondent submitted additional evidence, entered as Exhibits 10 through 15. The undersigned took administrative notice of Fla. Stat. § 409.978.

FINDINGS OF FACT

1. Petitioner is an 82-year-old female. Petitioner is a dual-enrolled Medicare/Medicaid recipient with Sunshine Health ("Sunshine") as her Long Term Care ("LTC") plan.

2. Petitioner's medical conditions include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. Petitioner lives in her home with her husband. Petitioner's representative said he is starting to get [REDACTED]. Petitioner's current services are 15.5 hours per week of companion care, 15.5 hours per week of homemaker services, two (2) home-delivered meals per day, five (5) days per week, and three (3) times per day of medication administration.

4. On September 4, 2015, Sunshine received a request from Petitioner's representative requesting an extra hour per day of companion care in order for someone to supervise her during dinner. On September 11, 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 Exhibit 3). The Notice of Action stated:

You asked for 7 more hours per week of Companion Care (The person that helps assist and watch over you), this [is] denied. Your case manager looked at your care needs and your current care plan of 15 hours and 30 minutes per week of Companion Care (The person that helps assist and watch over you), 15 hour 30 [minutes] per week of Homemaker Service (The person that cleans for you), 10 Home Delivered Meals (Meals that are sent to your home) per week and Skilled Nursing (The nurse that helps you with your medication) meets your needs. Your case manager will continue to assess your needs.

The facts that we used to make our decision are: Sunshine Health Policy LT.UM.09 Ancillary Service Criteria.

5. Petitioner's physician, [REDACTED] wrote a prescription for the extra hour of companion care on November 13, 2015 (after the hearing request date of October 9,

2015) on the basis of her [REDACTED] and [REDACTED] (Petitioner's Exhibit 1).

After the hearing, in support of this request, he submitted a letter dated December 7, 2015, stating he felt she would benefit from the extra hour due to her mental status. He did not include any clinical documentation. (Petitioner's Exhibit 4).

6. Per Sunshine's Policy and Procedure (Respondent's Exhibit 9B), 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.

7. Companion care does not include hands-on care. The companion can prompt Petitioner to eat and observe her eating, but cannot force her to eat.

8. Companion care and homemaker services are provided by a home health aide. In

Petitioner's case, the services are provided by [REDACTED] with [REDACTED]

9. Sunshine's Medicaid Fair Hearing Summary (Respondent's Exhibit 2) states:

On 9/10/2015, the assigned CM received call from [REDACTED] staffing coordinator at [REDACTED] with the following information: the aide that is there around dinner time can and has been encouraging the member to eat her dinner. As per the member's assessment findings, there is no indication for the need of additional hours at this time; therefore, a notice of action letter (NOA) was sent to the member's listed address on 9/11/2015.

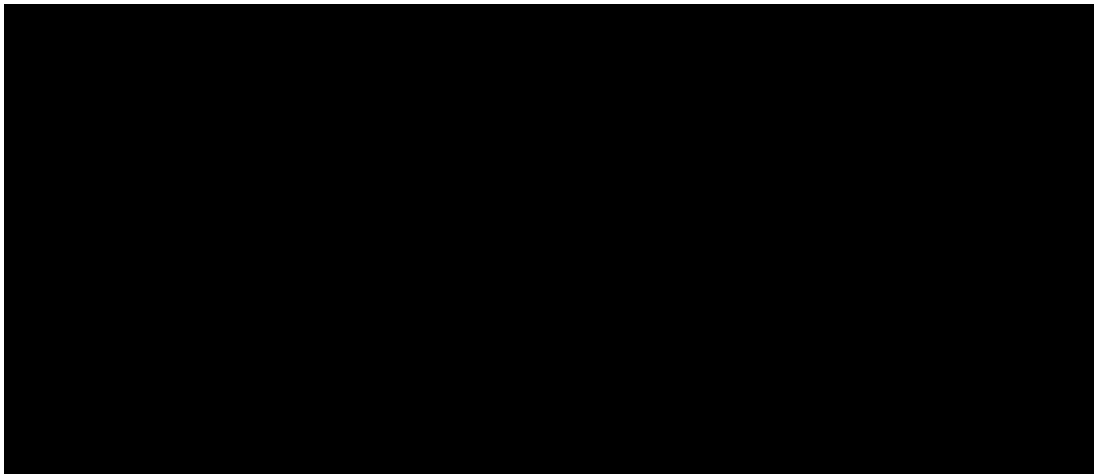
10. According to her timesheets and the testimony provided by Petitioner's

representative [REDACTED] typically arrives at Petitioner's home between 6:30 a.m. and 7:00

a.m. and leaves between 10:30 a.m. and 11:00 a.m. Petitioner's children are concerned that their mother does not have someone to remind her to eat dinner. The timesheets indicate Ivonne occasionally (less than once a week) visits Petitioner in the late afternoon or early evening. (Respondent's Exhibit 14). The timesheets, therefore do not match the information communicated by [REDACTED] with [REDACTED] on September 10, 2015. Petitioner's family is correct that Ivonne is usually not with her at dinner time.

11. After the hearing, Respondent submitted Exhibit 15, which states a call was placed to [REDACTED] on December 2, 2015 requesting the timesheets. It also says she was asked if Petitioner was only being seen in the morning and that she indicated yes. Another telephone call was placed on December 4, 2015 inquiring whether the hours could be split in the morning and the afternoon and that [REDACTED] said yes.

12. Respondent's Exhibit 15 indicates Petitioner's Case Manager, Ms. Fry, spoke directly with Petitioner on December 3, 2015. The note regarding the call states:



13. On September 3, 2015, Ms. Fry conducted a 701B Comprehensive Assessment on Petitioner. (Respondent's Exhibit 7). Petitioner's representative was present during the assessment. She stated this is when she requested the extra hour of companion care.

14. In the Memory Section, Ms. Fry concluded Petitioner has cognitive problems, noting she has a diagnosis of [REDACTED] with behavioral disturbances. At hearing, Petitioner's representative said her mother still has legal capacity, despite her diagnoses.

15. Petitioner can feed herself, but needs assistance with meal preparation and needs reminders to eat. In the Notes & Summary portion of the Instrumental Activities of Daily Living Section, Ms. Fry wrote "Member receives formal assistance with homemaking. Member is able to use telephone to make and receive calls. Member's son is POA and manages finances. Member's homemaker and husband provide meal preparation, assistance with shopping, and transportation...." (Respondent's Exhibit 7).

16. In the Nutrition Section, Petitioner responded she does not typically eat at least two meals per day. She said on a typical day she says she has eggs and toast for breakfast, soup for lunch, a sandwich for dinner, and cookies, chocolate, and ice cream for snacks. These inconsistent statements are likely due to her cognitive problems. Petitioner did not know her height or weight. She was listed as being 5'0" and 140lbs, which was taken from her previous annual assessment. No changes were reported to Ms. Fry. Petitioner's weight is in the normal range for her height.

17. On November 20, 2015, Ms. Fry visited Petitioner for her quarterly assessment. Petitioner's husband was home at the time. According to her notes: "Member reports she feels she is currently having enough oversight of her health care through [Sunshine] and reports and with her caregiver [REDACTED]. She states she is eating [home delivered

meals] and caregiver providers supervision and occasional meal preparation.”

(Respondent’s Exhibit 12).

CONCLUSIONS OF LAW

18. 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.

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

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

21. 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.).

22. 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.

23. 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...”

24. Fla. Stat. 409.98 requires that LTC plans include, among other services, personal care, home-delivered meals, case management, medication administration, and nutritional assessment and risk reduction.

25. 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.

26. 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.

27. 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.

28. Sunshine concluded the request for the additional hour per day of companion care in order to supervise Petitioner at dinner time is in excess of her needs. The undersigned agrees.

29. It is undisputed that Petitioner is able to feed herself, but that she needs to be reminded to eat. Ms. Fry included this in her 701B Assessment, and Petitioner's representative was present during the assessment and testified to this at hearing.

30. There is no evidence that Petitioner is malnourished. She may be confused as to how much she eats and how often, but she is at a normal weight for her height and no evidence was presented to indicate she has any nutritional deficiencies.

31. Sunshine provided Petitioner with an alternative where she could reallocate her hours so that she would have a caregiver present both in the morning and at dinner time. Petitioner has capacity and rejected this alternative saying she doesn't want any changes.

32. While it may be desirable for Petitioner to have companion care at dinner time, it is not medically necessary because it is in excess of her needs. There are multiple alternative ways for Petitioner to be reminded to eat dinner. One alternative was to reallocate the service hours. Petitioner rejected this alternative.

33. Petitioner lives with her husband. Petitioner's representative said he is starting to get [REDACTED] however, when Ms. Fry first called to inquire about reallocating the service hours, he informed her that Petitioner was at a doctor appointment. It appears that he has enough control of his mental faculties to have the ability to remind Petitioner to eat at least some of the time.

34. Even if her husband does not have the ability to remind her to eat, she has the ability to make and receive telephone calls. One of Petitioner's family members could call her at dinner time to remind her. Or, an alarm clock or other device, such as a cell phone, could be used to signal to Petitioner that it is time for dinner.

35. The level of concern for her health and safety expressed by Petitioner's children is admirable. There is no dispute that she is quite ill and requires significant care.

However, the undersigned concludes Petitioner's current services are sufficient to meet her needs at the present time.

36. Petitioner's condition may change in the future. This Order is based on Petitioner's current circumstances. Her family is encouraged to monitor her condition and stay in communication with her case manager regarding future assessments. In the event Petitioner's needs increase, a new request can be submitted at that time.

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.

FINAL ORDER (Cont.)

15F-08528

PAGE - 11

DONE and ORDERED this 20 day of January, 2016,
in Tallahassee, Florida.

Rick Zimmer

Rick Zimmer
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To [REDACTED] Petitioner
Judy Jacobs, Area 7, AHCA Field Office
JoAnn Chase