

Jan 26, 2016

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

APPEAL NO. 15F-08960

PETITIONER,

Vs.

CASE NO.

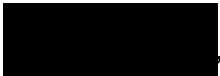
AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 17 Broward  
UNIT: AHCARESPONDENT.  

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 18, 2015, at 10:30 a.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's, through Humana, in denying the petitioner's request for five additional hours per day, Monday through Friday, of Personal Care Services (PCS) based on not meeting the medical necessity requirements. The petitioner carries the burden of proof.

### **PRELIMINARY STATEMENT**

Present as witnesses for the respondent were Mindy Aikman, Grievance and Appeals Specialist, Linda Robinson, Care Manager, and Dr. Teresita Hernandez, Medical Director, all from Humana Health Plan.

Present as an observer was LaToya Stevenson from Humana.

The respondent submitted into evidence Respondent Exhibit 1 and 2.

The petitioner submitted into evidence Petitioner Exhibit 1.

### **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 Medicaid recipient living in Broward County, Florida. She is eighty-seven years of age and has multiple medical problems.
2. The petitioner receives Medicaid services through Humana. The petitioner receives five hours per day, Monday through Friday, of PCS services. She requested five additional hours per day, Monday through Friday, of PCS services. She also receives three hours of respite care on Saturdays and four hours per month of companion services.
3. On September 9, 2015, 2015, Humana denied the petitioner's request for the above and mailed the petitioner a Notice of Action stating:

Humana American Eldercare has reviewed your request for personal care, 40 units, requested 10 hours daily, approved 5 hours weekly, 5 hours weekly denied...

We determined that your requested services are not medically necessary because...

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

It should be noted that even though this "notice" indicates approval of five hours weekly, it actually is five hours daily as indicated by the respondent witness.

4. The physician witness indicated the petitioner receives the PCS for help with all of her Activities of Daily Living (ADL's), which includes meal preparation. She indicated the petitioner can eat food by herself, if placed next to her. The petitioner's daughter is the caretaker for the petitioner. This witness also indicated the petitioner's daughter leaves to go to work at seven in the morning and arrives home at four in the afternoon. She also indicated that through "Medicare wound care," the petitioner can receive up to two hours a day of wound care from a nurse.

5. The petitioner was receiving the PCS service from nine in the morning to noon. The respondent physician witness indicated Humana added two hours of the PCS in the afternoon between two in the afternoon to four in the afternoon. She indicated that the petitioner can be left alone for short periods of time and that any more hours of PCS would be in excess of her needs and would be in excess of medical necessity.

6. The petitioner's representative argued that her mother is a rather large person and needs a lot of turning and lifting as part of her ADL care. She argued that her mother takes pain medication and is rather confused, thus needing more care. She argued that the PCS aide arrives at 9:30 a.m. until 2:30 p.m. She also argued that she herself leaves to go to work 6:00 a.m. and comes home about 4:30 to 4:45 p.m. She argued that she is very tired from her job and could use some help with the petitioner at

the time she comes from work. She argued that the “wound nurse” only comes for one visit per day.

7. The respondent's witness, the Care Manager, indicated that Humana can still provide split care for the petitioner in the morning and then afternoon, even if it is not from the same service agency. Additionally, she indicated that Medicare can provide an aide along with the wound nurse for the petitioner for another visit and provide bathing for the petitioner. She indicated that she can help the petitioner's representative with Medicare in getting this service.

### **CONCLUSIONS OF LAW**

8. 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.

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

10. 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.

11. 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...

12. As shown in the Findings of Fact, the Agency, through Humana, denied the petitioner's request for five additional hours per day, Monday through Friday, of Personal Care Services (PCS), based on the request not meeting the medical necessity requirements.

13. For the case at hand, the respondent argued that the petitioner can be alone for a short period of time and with the PCS aide working a split shift, the petitioner's ADL needs can be sufficiently met. Additionally, the respondent argued that any additional hours requested is in excess of the petitioner's medical needs as the service must 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. The hearing officer agrees with the above respondent argument.

14. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned concludes the Agency's action to deny the request for the additional five hours per day of PCS is proper, and the Petitioner's burden was not met.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action 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 January, 2016,  
in Tallahassee, Florida.



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