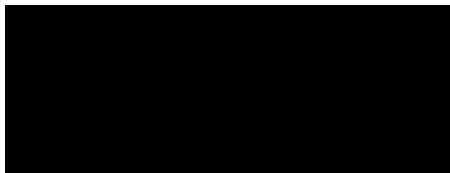


Feb 10, 2016

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSOffice of Appeal Hearings
Dept. of Children and FamiliesAPPEAL NO. 15F-09071
15F-09818

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCARESPONDENT.

_____ /**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in West Palm Beach, Florida on January 28, 2016 at 11:01 a.m.

APPEARANCES

For the Petitioner:



Petitioner's Son

For the Respondent:

Linda Latson
Registered Nurse Specialist**ISSUE**

15F-09071: Whether the termination of disposable liners was proper. The burden of proof was assigned to the respondent.

15F-09818: Whether respondent's denial of 24 hours per day of Personal Care Services (PCS) was proper. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

Telephonic hearings were first scheduled for December 18, 2015. After scheduling, petitioner's request for face to face hearings was received. The hearings were thereafter rescheduled for January 28, 2016.

The hearings were scheduled to commence at 10:00 a.m. Respondent's representative contacted the Office of Appeal Hearings stating a transportation issue had arisen. The expected time of arrival was 11:00 a.m. Petitioner agreed to wait until 11:00 a.m. At 11:00 the representative for the respondent had not arrived. The hearing commenced at 11:01 a.m. Respondent's representative arrived at approximately 11:30 a.m.

Petitioner was not present. Petitioner entered the following exhibits into evidence:

15F-09071: No exhibits
15F-09818: Petitioner's exhibit "1"

Present by telephone from Sunshine Health were Jennifer Arteaga, Grievance and Appeals Coordinator; Dr. David Gilchrist, Medical Director; Lisa Simshauser, Long Term Care Supervisor; and Marsha Santana, Case Manager.

Respondent entered the following exhibits into evidence:

15F-09071: Respondent's Exhibit "1"
15F-09818: Respondent's exhibit "1"

SHARED 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. Petitioner's date of birth is [REDACTED]

2. In 1998 petitioner was diagnosed with [REDACTED]
3. Petitioner resides with her son, who is her primary caregiver. He is not currently employed outside the household.
4. Petitioner is enrolled in respondent's Long Term Managed Care Program (LTMC Program).
5. Respondent administers Florida's Medicaid Program and contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients enrolled in the LTMC Program.
6. Respondent does not have a promulgated Coverage and Limitations Handbook for the LTMC Program. LTMC services descriptions are defined by contract.
7. Petitioner's LTMC services are provided by Sunshine Health.
8. Through the LTMC Program, petitioner is approved to receive 14 hours per week of PCS and 14 hours of homemaker services. The designated service hours are 9:00 a.m. to 1:00 p.m.; Sunday through Saturday.
9. Petitioner also receives disposable pull-up briefs; gloves; disposable liner pads; and underpads.
10. Petitioner is also enrolled in respondent's Patient Directed Option (PDO). The program allows family members to be paid for caregiver services.
11. Since December 2015 PCS and homemaker services have been provided by petitioner's representative.
12. On May 11, 2015 a Sunshine Health case manager completed a 701 B Comprehensive Assessment. Regarding the petitioner, the assessment provides the following information:

- Unable to speak.
- Unable to walk. A wheelchair is utilized.
- Incontinent.
- Has difficulty swallowing.
- At risk for aspiration.
- Total assistance required with toileting; dressing; and bathing.

13. The above assessment contained, in part, the following narrative:

The member is able to answer yes/no questions by moving her head. Member appears to be alert and is aware of her surroundings; however, due to [REDACTED] Son denied any history or diagnosis of [REDACTED]
...

The member is mainly total care with ADL's (Activities of Daily Living). Member is w/c bound. However, the member is still weight bearing and able to stand for at least 3-5 minutes with extensive assist. Member is able to hold on grab bars but balance is unsteady as per observation. Member is able to transfer with extensive assist of 1 ...

15F-09071 – Disposable Liners

14. For additional protection, liner pads were placed in petitioner's disposable underwear.
15. The type of disposable underwear approved for the petitioner was changed from regular to extra absorbent.
16. On October 6, 2015 Sunshine Health issued a Notice of Action denying ongoing funding for the disposable liner pads. The notice states, in part: "You asked to stop getting Disposable liners (Pad you place in your underwear that can be thrown away after use). Your request to terminate (stop) this service has been approved. Please let your case manager know if your needs change."
17. On October 28, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

18. Petitioner's representative does not refute agreeing to the termination of the disposable liners. He now believes, however, both the extra absorbent disposable underwear and the disposable liner are now needed.

15F-09818 – Personal Care Services

19. On September 30, 2015 Sunshine Health received a request for 24 hours per day of care. The request was based on an order from petitioner's neurologist that 24 hour care was needed.

20. A Sunshine Health physician thereafter reviewed petitioner's 701 B Comprehensive Assessment and Plan of Care.

21. On October 29, 2015 Sunshine Health issued a Notice of Action which denied petitioner's request as not being medically necessary.

22. On November 24, 2015 the Office of Appeal Hearings timely received petitioner's request for a fair hearing.

23. Petitioner's representative argues:

- The assessment was copied from a prior assessment.
- Petitioner's disease is progressive.
- Payment has not been received for services provided through the PDO Program.
- The representative has no private time due to the needs of the petitioner.

24. Respondent notes a caretaker is present in the household. Should the representative find employment outside the household, the service hours could be re-evaluated. Additionally, the request for 24 hours of PCS is in excess of the petitioner's need.

CONCLUSIONS OF LAW

25. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

26. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

27. The standard of proof in an administrative hearing is by 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.).

28. Regarding the LTMC Program, § 409.978, Fla. Stat. states:

(1) ... the agency shall administer the long-term care managed care program ...

(2) The agency shall make payments for long-term care, including home and community-based services, using a managed care model.

29. Sunshine Health and the respondent entered into a contractual relationship.

The contract identifies 26 services to be offered through the LTMC Program.

30. Contract service definitions relevant to this proceeding are:

(11) Homemaker Services — 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 may be included in this service.

(14) Medical Equipment and Supplies — Medical equipment and supplies, specified in the plan of care, include: (a) devices, controls or appliances that enable the enrollee to increase the ability to perform activities of daily living; (b) devices, controls or appliances that enable the enrollee to perceive, control or communicate the environment in which he or she

lives; (c) items necessary for life support or to address physical conditions along with ancillary supplies and equipment necessary to the proper functioning of such items; (d) such other durable and non-durable medical equipment that is necessary to address enrollee functional limitations; (e) necessary medical supplies not available under the State Plan including consumable medical supplies such as adult disposable diapers. This service includes the durable medical equipment benefits available under the state plan service as well as expanded medical equipment and supplies coverage under this waiver. All items shall meet applicable standards of manufacture, design and installation. This service also includes repair of such items as well as replacement parts.

(19) Personal Care — 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.

31. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary. See § 409.905 (4) (c), Fla. Stat.

32. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and states:

(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.

15F-09071 – Disposable Liners

33. The Findings of Fact establish petitioner's representative agreed to the termination of disposable liner pads. This agreement also appears in the Notice of Action issued by Sunshine Health on October 6, 2015. That notice also advised that if conditions change, the case manager should be contacted.

34. Petitioner is afforded the opportunity to once again request disposable liner pads. If denied, hearing rights would be associated with that action.

35. Sunshine Health's Notice of Action dated October 6, 2015 formalized a mutually accepted agreement. The fair hearing process is not the appropriate forum to request a new service. Until a new request for disposable liners is made through Sunshine Health's prior authorization process, the matter is not yet ripe for appeal.

36. Based on petitioner's initial agreement that disposable liners should be terminated, respondent's action in this matter was proper.

15F-09818 – Personal Care Services

37. Petitioner's need for assistance with all activities of daily living is not disputed. The issue, however, focuses on whether 24 hours of personal care is medically necessary.

38. To warrant 24 hours of personal care, it must be demonstrated the service is medically necessary for the entire timeframe. It is noted the definitions for personal care and homemaker do not include supervision. Rather, each service is task oriented.

39. The undersigned notes a neurologist ordered 24 hours of care. Fla. Admin. Code R. 59G-1.010, however, is clear that a prescription alone does not make the requested service medically necessary.

40. A service need must match a service description. As such, it has not been demonstrated that the tasks associated with PCS is medically necessary on a continuous 24 hour basis.

41 The role of a hearing officer is not to determine the actual number of medically necessary PCS hours. In this matter, the issue solely focuses on whether medical necessity has been demonstrated for 24 hours of PCS.

42. If desired, petitioner can ask the case manager whether the LTMC Program covers services that include 24 hours supervision. This might include either assisted living or nursing facility services.

43. The petitioner has not established, by the greater weight of the evidence, that respondent's action in this matter was improper.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law:

- Petitioner's appeal regarding the termination of disposable liners (15F-09071) is denied.
- Petitioner's appeal concerning the denial of 24 hours of PCS (15F-09818) 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.

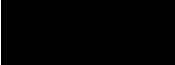
DONE and ORDERED this 10 day of February, 2016,

in Tallahassee, Florida.

Frank Houston

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