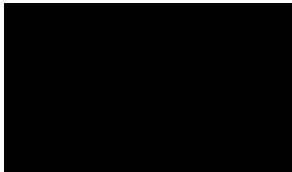


FILED

Feb 17, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09374

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 28, 2015 at 11:53 a.m. and reconvened on January 13, 2016 at 8:32 a.m.

APPEARANCES

For Petitioner:  Daughter

For Respondent: Dianna Chirino, Senior Human Services Program Specialist,
Agency for Health Care Administration

STATEMENT OF ISSUE

Whether it was appropriate for the Respondent to deny Petitioner's request for two additional hours of personal care services (PCS) five days per week. The Petitioner bears the burden of proof in this matter.

PRELIMINARY STATEMENT

Tracy Thomas, Appeals Coordinator II, and Dr. John Carter, Long-Term Care Medical Director, from Sunshine Health appeared as witnesses for the Respondent.

Appearing as Respondent's witnesses from Little Havana Activities and Nutrition Center were Gladys Johnson, Quality Assurance Director; Tatiana Sam, Case Manager Supervisor; Amparo Rodriguez, Case Manager; and Linda Albe, Director of Case Management.

The Respondent presented a composite document of 184 pages, which was entered into evidence and marked as Respondent Exhibit 1. The exhibit contained medical information, decision letters and documentation sent by the provider in support of the service request.

Petitioner has been receiving one hour of personal care services per day seven days a week as approved by the Sunshine Health LTC plan when she became a member of the plan effective December 1, 2013. Petitioner also received two hours of personal care services per day five days a week from AmeriHealth. From August 25, 2013 to February 13, 2015, Medicare covered skilled nursing as well as one hour of personal care services per day five days a week for the Petitioner. AmeriHealth provided the second hour of personal care services per day five days a week without reimbursement.

After AmeriHealth changed ownership, it terminated the two hours of personal care services per day five days per week effective November 2015. These services were being provided without reimbursement from February 2015 to November 2015. Because Medicaid did not authorize the additional two hours of personal care services

per day five days a week that the Petitioner received, Petitioner's request for the additional hours is a request for an increase in services approved by Sunshine Health.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. The Petitioner is a 68-year-old female who is a Medicaid and Medicare recipient.

She is diagnosed with

2. Petitioner attends adult day care five days a week from 9:00 a.m. to 4:00 p.m.

She also receives three hours of homemaker services per week and seven hours of personal care services per week. She receives a total of 40 hours of services per week.

3. Petitioner lives with her daughter and son-in-law. The daughter is the primary caregiver and works full-time, arriving home between 7:30-8:00 p.m. Monday through Friday. The son-in-law works full-time including some weekends. He is unable to provide care to the Petitioner because he has a weak stomach for cleaning her drool, excrement and urine.

4. A request for an additional two hours of personal care services per day five days a week was received by Sunshine Health on August 25, 2015. On August 26, 2015, Sunshine Health sent the Petitioner a Notice of Action advising the requested additional personal care hours were denied because, "Based on Sunshine State Health ancillary tool, the member's current care plan meets the member's medical needs."

5. Petitioner filed a timely request for a fair hearing on November 9, 2015.

6. Petitioner needs assistance with her activities of daily living (ADLs), including keeping her clean due to her incontinence. Because Petitioner's son-in-law is unable to provide her care, the Petitioner's daughter is requesting two hours of personal care services Monday through Friday between 4:00 p.m. and 8:00 p.m. The daughter gets home by 8:00 p.m. and feeds Petitioner at that time. Petitioner cannot self feed and needs to be reminded to swallow.

7. Respondent asserted the forty hours of services provided to the Petitioner are sufficient to meet her medical needs. In addition, forty hours a year of respite care have been approved for the daughter. Respondent suggested the ten hours of personal care services and homemaker hours could be provided one hour in the morning and one hour in the afternoon Monday through Friday, and the respite hours could be used for weekends when needed.

8. Petitioner's daughter advised the home health aide takes longer than the approved one hour to care for her mother in the morning.

CONCLUSIONS OF LAW

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat. § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

10. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

11. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

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

13. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

14. Fla. Stat. § 409.979 sets forth eligibility requirements for the Long-Term Care (LTC) Program:

(1) Medicaid recipients who meet all of the following criteria are eligible to receive long-term care services and must receive long-term care services by participating in the long-term care managed care program.

The recipient must be:

(a) Sixty-five years of age or older, or age 18 or older and eligible for Medicaid by reason of a disability.

(b) Determined by the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to require nursing facility care as defined in s. 409.985(3).

15. Covered services under the AHCA contract for LTC plans include Homemaker Services and Personal Care Services, among other services.

16. Personal Care services are defined in the contract as follows:

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.

17. Homemaker services are defined in the contract as follows:

General household activities such as meal preparation and routine household care provided by a trained homemaker when the individual AHCA Contract No. [XXXXX], Attachment II, Exhibit 5, Page 17 of 128 regularly responsible for these activities is temporarily absent or unable to manage these activities. Chore services, including heavy chore services and pest control are included in this service.

18. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (Medicaid Handbook), October 2014, has been promulgated by reference in the Florida Administrative Code at 59G-4.130(2). In order to receive services, the Handbook on page 2-2 states:

Medicaid reimburses services that are determined medically necessary and do not duplicate another provider's service.

Rule 59G-1.010 (166), Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:

"[T]he 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.

19. Petitioner needs assistance with her activities of daily living and maintaining her continence. She receives three hours of homemaker services per week which Respondent says can be changed to personal care hours. This change would give Petitioner ten hours of personal care service hours that could be used one hour in the morning and one hour in the afternoon, when she returns from her adult day care.

20. Petitioner does not receive her evening meal until the daughter returns from work by 8:00 p.m. Petitioner's daughter provided no adequate explanation for needing two hours in the afternoon except Petitioner has always received two hours and that the home health aide takes more than an hour in the morning. Petitioner has failed to meet her burden of proof.

21. Respondent has provided sufficient evidence and testimony that the personal care and homemaker service hours, as well as the adult day care services, are sufficient to meet Petitioner's medical needs.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is hereby DENIED and the Respondent'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 agency has no funds to assist in this review, and any financial obligations incurred will be the Petitioner's responsibility.

FINAL ORDER (Cont.)
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DONE and ORDERED this 17 day of February, 2016,
in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager