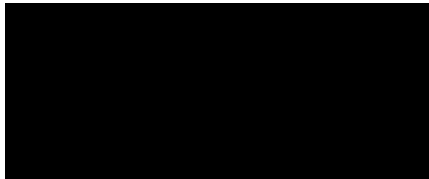


Feb 01, 2016

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-09438

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 07 Flagler
UNIT: AHCA

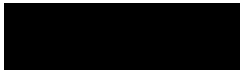
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 14, 2015 at 11:35 a.m.

APPEARANCES

For the Petitioner:  husband

For the Respondent: Sheila Broderick, registered nurse specialist

STATEMENT OF ISSUE

Whether it is medically necessary for the petitioner to receive a Personal Emergency Response System (PERS) through Medicaid. The burden of proof was assigned to the petitioner.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (Agency or AHCA or respondent) administers the Florida Medicaid Program. Medicaid rules require that most recipients receive their Medicaid services through the Managed Care Plan. The Agency contracts with numerous health care organizations to provide medical services to its program participants. United Healthcare (United) is the contracted health care organization in the instant case.

By notice dated July 2, 2015, United informed the petitioner that her request for PERS through Medicaid was denied. The notice reads in pertinent part:

You are not left alone for a long time. You have not had a bad fall. You can use a phone. A response system is in excess of your needs. Needs in Florida Medicaid are defined by law. For a service to be needed it must treat a problem. It must also be a common practice. It must also be just for you. ... It must also be safe. It must also be the least costly treatment in the state that meets your needs. It must also not be for the convenience of you or another person. ... Services in excess of your needs are not medically necessary. The health plan will not cover an emergency response system for you.

The petitioner requested reconsideration. In August 2015, United informed the petitioner that the original denial decision was upheld.

On November 13, 2015, the petitioner timely requested a hearing to challenge the denial decision.

There were no additional witnesses for the petitioner. Petitioner's Composite Exhibit 1 was admitted into evidence.

Christian Laos, senior compliance officer with United, and Dr. Sloan Karver, medical director of United's Long Term Care Program (LTCP), were present as

witnesses for the respondent. Respondent's Composite Exhibit 1 was admitted into evidence.

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 (age 75) is a Florida Medicaid recipient. The petitioner is enrolled in United's LTCP. LTCP provides home health goods and services to individuals who would otherwise require nursing home placement.

2. The petitioner suffered a stroke which left her unable to walk or independently perform any of the activities of daily living. The petitioner is fed by G-tube. She has a catheter. The petitioner uses a wheelchair for mobilization.

3. The petitioner lives in the family home with her husband (age 77). He is the petitioner's primary caretaker; he has no disabling conditions and is not employed outside the home. The petitioner also receives 23 hours of home health care weekly through United LTCP.

4. The petitioner submitted a request for PERS to United on June 30, 2015.

5. PERS is an electronic device that connects to the phone line and includes a remote control which enables a patient to obtain emergency assistance.

6. All Medicaid goods and services must be medically necessary as determined through a prior service authorization process.

7. PERS is intended for bedbound patients who live alone or spend large periods of time alone. United determined that it was not medically necessary for the

petitioner to have PERS because she is never home alone. Her husband or a Medicaid funded home health aide is in the home with her at all times and can seek emergency medical services for her via traditional methods, such as calling 911.

8. PERS is to be utilized by the patient. United determined that the petitioner does not have the cognitive ability to use PERS. The petitioner's United case manager describes her condition in case notes dated June 29, 2015:

C[ase] M[anager] visited member at her home...to complete plan of care. ... Member's husband [REDACTED] was present. Member is alert, with minimal verbalization. Member can repeat small words with cues from husband. Member is oriented to person only. Member is not oriented to place and time. Member unable to answer CM questions...

9. United determined that PERS would be used by the petitioner's husband, who has no disability which prevents him from calling 911 to obtain emergency medical services.

10. Medicaid rule prohibits the provision of good or services for the convenience of the member or the member's caretakers.

11. The petitioner's husband argued that her medical condition is complex. It is necessary to obtain emergency medical services as quickly as possible. In the past, 911 operators have asked him too many questions in an attempt to assess the situation instead of relying on his judgement that emergency medical services are necessary. PERS bypasses the assessment process and immediately deploys emergency services.

12. The petitioner's husband acknowledged that he would be the primary operator of PERS, but believes his wife could be taught to use the remote control device because he taught her how to use the garage remote control in their home.

13. The petitioner's husband argued that PERS is inexpensive, \$20 to \$30 per month.

14. The petitioner's husband argued that Medicaid guidelines provide for PERS when an enrollee is at high risk for institutionalization.

CONCLUSIONS OF LAW

15. By agreement between 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.

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

17. At issue is denial of an emergency response system through Medicaid. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

18. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 65-2.060(1)). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

19. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid Program is administered by the

respondent. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

20. All Medicaid goods and services must be medically necessary. The definition of medically necessary is found in the Fla. Admin Code. R. 59G-1.010 which 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.

21. The respondent denied the petitioner's request for PERS. The respondent determined that the system was not medically necessary because the petitioner is never without a caretaker who can seek emergency medical services through traditional methods. In addition, the respondent determined that PERS was in excess of the petitioner's needs because the petitioner does not have the cognitive ability to use the system. The system would be used by the petitioner's husband; he has no disability which prevents him from utilizing traditional methods, like calling 911, to obtain emergency medical services.

22. The petitioner's husband argued that 911 operators ask too many questions, he would like medical services to come to the home without going through an assessment process; PERS is inexpensive; and petitioner could be taught how to operate PERS.

23. The controlling legal authorities state that Medicaid goods and services must be medically necessary and cannot be in excess of a recipient's needs. In addition, good and services cannot be provided for reasons of convenience. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes that

the petitioner did not meet her burden in this matter. The petitioner did not prove that it is medically necessary for her to have an emergency response system. The petitioner is never home alone. Her husband or a Medicaid caregiver is always with her. She has 24/7 access to emergency medical services through traditional methods.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 01 day of February , 2016,
in Tallahassee, Florida.



Leslie Green
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

FINAL ORDER (Cont.)

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Copies Furnished To [REDACTED] Petitioner

Debbie Stokes, Area 4, AHCA Field Office Manager