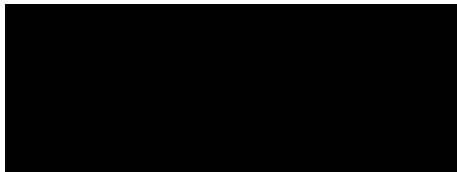


FILED

Feb 15, 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-09631

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 18 Brevard
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-styled matter on January 14, 2016, at approximately 10:30 a.m.

APPEARANCES

For Petitioner:



Petitioner's friend

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 termination of Petitioner's adult diapers, chucks (underpads), and wipes was correct. The burden of proof is assigned to Respondent.

PRELIMINARY STATEMENT

Petitioner was present at the hearing but chose to be represented by Ms. Brennan ("Petitioner's representative"). Respondent presented the following witnesses:

- Carlene Brock, Quality Operations Nurse, Amerigroup
- Dr. Amy Zitiello, Lead Medical Director, Amerigroup

Petitioner moved Exhibit 1 into evidence. Respondent moved Exhibits 1 through 8 into evidence. The undersigned took administrative notice of the following:

- Florida Medicaid Provider General Handbook, July 2012.
- Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook, July 2010.

FINDINGS OF FACT

1. Petitioner is a 56-year-old female. At all times relevant to this proceeding, Petitioner was eligible to receive Medicaid services.

2. Petitioner is enrolled with [REDACTED] as her Managed Medical Assistance (MMA) plan.

3. Petitioner has [REDACTED], among other conditions. She has been urine incontinent for approximately 10 years. She uses 10-12 adult diapers per day.

4. Petitioner has to wear her diapers for longer than she should because she cannot afford to pay for more of them out-of-pocket. She has had urinary tract infections and rashes as a result of wearing the diapers for an extended period of time. Petitioner's representative testified that she receives \$733 per month in SSI and does not have Medicare. She said approximately one-third (1/3) of Petitioner's income is expended on incontinence supplies.

5. On February 26, 2015, Petitioner's physician wrote a prescription for 60 or 90 chucks, 240 small or medium diaper pull-ups (8 per day), and 500 wipes, listing a diagnosis of incontinence.

6. [REDACTED]'s former vendor, [REDACTED] submitted a request for the diapers on March 9, 2015. The request did not list the chucks or the wipes.

7. On March 17, 2015, [REDACTED] issued a Notice of Proposed Action stating it was denying the request, for the certification period of March 9, 2015 through May 7, 2015.

(Respondent's Composite Exhibit 4). The Notice states, in pertinent part:

The outpatient service(s) is being denied because we cannot approve coverage for your adult pullups. Adult pullups are disposable and are not a covered benefit of your health plan. This decision is based on your health plan package and the Florida Medicaid Provider Handbook.

8. Despite the denial, Petitioner received diapers and underpads from [REDACTED] for March and April of 2015. Ms. Brock said they were never approved and Univita was never supposed to provide them.

9. Petitioner verbally requested two (2) appeals from [REDACTED], but both were dismissed due to lack of written follow up.

10. On June 10, 2015, [REDACTED] submitted a request for 90 underpads. On June 26, 2015, [REDACTED] issued a Notice of Action, denying the request. (Respondent's Composite Exhibit 6). The reason given for the denial was:

The facts that we used to make our decision are: We cannot approve your adult diapers. We know you have trouble holding your urine. Your health plan only covers these for people less than 21 years old. You are 56 years old. This decision was based on the Florida Medicaid provider handbook on durable medical equipment and supply services....

11. Petitioner requested 200 units of pullups on June 23, 2015. On July 10, 2015, [REDACTED] issued a Notice of Action, again denying the pullups on the basis that they are not a covered benefit under her plan.

12. Petitioner filed a complaint regarding the denial, which [REDACTED] received on October 14, 2015. On November 4, 2015, [REDACTED] issued a letter again denying the pullups on the basis that they are not a covered benefit. The letter suggested that Petitioner reach out to [REDACTED]'s Case Management department for assistance.

13. Dr. Zitiello testified that the pullups, chucks, and wipes are not covered under [REDACTED]'s MMA plan, but that they are covered under [REDACTED]'s Long Term Care (LTC) plan. She suggested Petitioner look into getting enrolled in the LTC plan. Ms. Sanchez said an organization called Senior Resource Alliance can help Petitioner with starting the process.

14. Dr. Zitiello testified the requests for the supplies were not reviewed for medical necessity because they are not covered benefits, and that she is unable to determine their medical necessity based upon the information provided.

CONCLUSIONS OF LAW

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

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

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

18. 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.). The burden of proof is assigned to Respondent in accordance with Fla. Admin. Code R.65-2.060(1) because Petitioner did in fact initially receive the supplies and then had them subsequently terminated, even if they were not supposed to be provided.

19. 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.

20. The July 2010 Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (“DME Handbook”) is promulgated into law by Chapter 59G of the Florida Administrative Code.

21. Page 2-48 of the DME Handbook states:

Disposable incontinence briefs, diapers, protective underwear, pull-ons, liners, shields, guards, pads, and undergarments are covered for recipients four (4), when a child would normally be expected to achieve continence, through twenty (20) years of age.

22. Page 2-97 of the DME Handbook also explicitly lists “Diapers and incontinence briefs of any kind for recipients 21 years and older” as non-covered items.

23. Dr. Zitiello testified she did not do a medical necessity analysis because the requested supplies are not covered. She said she could not conclude whether or not the supplies are medically necessary based upon the information provided.

24. Dr. Zitiello was correct. The requested supplies are non-covered items under [REDACTED]'s MMA plan, and Petitioner does not otherwise qualify for them under the DME Handbook, therefore no medical necessity analysis is required.

25. Respondent has met its burden of proof that it was proper to terminate providing Petitioner with incontinence supplies. The plain language of the DME Handbook states they are not covered.

26. Petitioner is encouraged to follow Dr. Zitiello's recommendation and contact AHCA and Senior Resource Alliance to try to enroll in a Long Term Care plan, where the incontinence supplies would be covered. Petitioner may also wish to inquire whether or not MMA plans offered by other Managed Care Organizations offer incontinence supplies as an expanded benefit.

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.

DONE and ORDERED this 15 day of February, 2016,
in Tallahassee, Florida.



Rick Zimmer
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Copies Furnished To: [REDACTED] Petitioner
Judy Jacobs, Area 7, AHCA Field Office