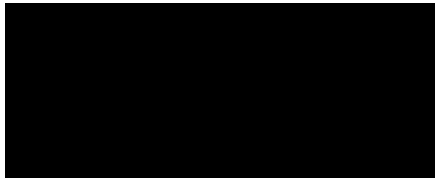


Feb 17, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09690

PETITIONER,

Vs.

CASE NO. 

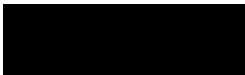
AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 23, 2015 at 1:43 p.m.

APPEARANCES

For Petitioner:  Mother

For Respondent: Linda Latson, Registered Nurse Specialist,
Agency for Health Care Administration

STATEMENT OF ISSUE

Whether it was appropriate for the Respondent to deny Petitioner's request for four hours of personal care services (PCS) six days per week for the certification period,

September 1, 2015 through February 29, 2016. Because this appeal involves an initial request for personal care services, the burden of proof was assigned to the Petitioner.

PRELIMINARY STATEMENT

Dr. Ellyn Theophilopoulos, physician reviewer with eQHealth Solutions, appeared as a witness for the Respondent. Carlos Rocha, Waiver Support Coordinator Supervisor, and Maria Figueredo, Waiver Support Coordinator, appeared as witnesses for the Petitioner.

The Respondent presented a composite document of 142 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.

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 19-year-old male who is a Medicaid recipient. He is diagnosed with

Petitioner is ambulatory, continent, and independent with ADL care (bathing, toileting, grooming and dressing). He needs meal set up but can feed himself.

2. Petitioner attends two classes at Miami Dade Community College. He is enrolled in a special program for students with learning disabilities.

3. Petitioner lives with his mother and eight-year-old sister. The mother works from 9:00 a.m. to 12:00 p.m. Monday through Saturday. The mother has no medical limitations and can provide Petitioner assistance with his ADLs before and after work.

4. A request for service is submitted by a provider along with all information and documentation required for the Agency to make a determination of medical necessity for the level of service requested. A review is conducted for every new certification period but a request for modification may be submitted by a beneficiary at any time.

5. EQHealth Solutions has been contracted by the Agency to make Prior Authorization decisions for private duty nursing and personal care services for home health care. The Petitioner's request for four hours of personal care services was submitted on August 27, 2015 by the provider, Coordinating Solutions, Inc.

6. A "Notice of Outcome" was sent to the Petitioner on October 20, 2015 and provided the reason for denial as:

...the services are not medically necessary as defined in 59G-1.010 (166), Florida Administrative Code (F.A.C.)...

7. A "Notice of Outcome" sent to the provider on October 20, 2015 gave the following clinical rationale for the decision:

The patient is a 19 year old with [REDACTED] The patient is ambulatory, continent, and on a regular diet. The patient is independent with ADLs. The patient requires meal set up but can feed self. The patient lives with his mother who works 9 am to noon Monday through Saturday and has no medical limitations. The clinical information provided does not support the medical necessity of the requested services. The request appears to be for supervision which not a covered service. The PCS request is denied.

8. A reconsideration was requested on November 2, 2015 and a Notice of Reconsideration Determination was sent November 4, 2015. The reconsideration upheld the denial and provided the medical basis for the decision:

The information submitted for reconsideration provided no evidence to support the reversal of the previous decision. The original decision is upheld.

9. The Petitioner filed a timely request for a fair hearing on November 20, 2015.

10. Petitioner needs assistance with meal preparation, organizing his room, completing homework, and returning to school to pick up his sister. He also likes to go to other places such as the library. The Petitioner's mother explained her son needs supervision because he acts without understanding the consequences. As an example, on one occasion he wrote checks for his sister for school forging the mother's signature. On another occasion, he walked into a lake and would have drowned if the mother had not been home at the time.

11. The Petitioner's Waiver Support Coordinator Supervisor stated the Petitioner needs the PCS services to be safe and that need meets Medicaid's medical necessity definition that the services are needed to protect life

12. The Respondent's witness from eQHealth noted that Petitioner was high functioning and had no need for personal care services. The mother is currently available to meet Petitioner's ADL needs. If her work schedule changes, the mother can re-request the services.

CONCLUSIONS OF LAW

13. 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.

14. 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.

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

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

17. 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).

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:

Home health services are not considered emergency services.

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. The Medicaid Handbook, page 1-2, also provides the following regarding personal care services, in relevant part...

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) that enable the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability.

ADLs include:

- Eating (oral feedings and fluid intake);
- Bathing;
- Dressing;
- Toileting;
- Transferring; and
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions).

20. On page 1-3 of the Medicaid Handbook, the following definition of babysitting is provided:

The act of providing custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

Babysitting services as defined in the Handbook are not medical services and are not covered by Medicaid.

21. Because the Petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be considered. Florida Statute § 409.905, Mandatory Medicaid services, provides that Medicaid services for children must include:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.--The agency shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

22. Petitioner's primary need for personal care services is supervision to ensure his safety. As noted above, supervision is not a Medicaid covered service.

23. Respondent explained Petitioner is high functioning and does not have a need for personal care services beyond what the mother can provide before and after her work hours. Respondent's decision complies with the EPSDT standards for medical necessity. Petitioner has failed to meet his burden of proof.

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.

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