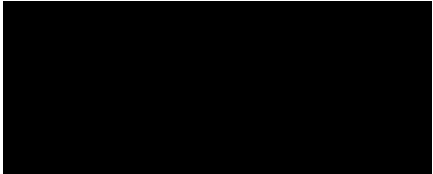


Feb 17, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09813

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

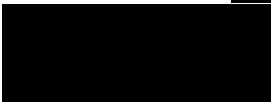
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 30, 2015 at 8:34 a.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 7.5 hours of Personal Care Services (PCS) seven days per week. Because this appeal involves an initial request for personal care services, the burden of proof was assigned

to the Petitioner.

PRELIMINARY STATEMENT

Appearing as Respondent's witnesses from South Florida Community Care Center (SFCCN) were Dr. Joselyn Mateo, Medical Director; Dr. Ruiz Venero, Chief Medical Officer; Catherine Ruiz, Grievance and Appeals Coordinator; Alex Fabano, Contract Manager; and Maria Jam-Crese, Director of Medical Management.

The Respondent presented a composite document of 52 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 presented a composite document of 15 pages, which was entered into evidence and marked as Petitioner Exhibit 1. Petitioner presented a second document of 2 pages, which was entered into evidence and marked as Petitioner Exhibit 2.

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. Petitioner is a seven-year-old male Medicaid recipient. He is diagnosed with

[REDACTED] which is a severe bleeding disorder which can result in

[REDACTED] He requires immediate

attention whenever he [REDACTED] Failure to adequately address this promptly and effectively can result in the need for emergency services.

2. Petitioner attends a small private school at which the staff have been provided training by the [REDACTED] on the Petitioner's condition and care needs. The school requires an aide to accompany the Petitioner during school hours and the parents have paid for an aide for the past two years. The aide has also been trained by the [REDACTED]

3. Petitioner is also diagnosed with [REDACTED]

4. Petitioner is requesting Personal Care Services (PCS) during his school hours and on days when school is out. Because the mother's work schedule varies, the request is for 7.5 hours a day seven days a week. The mother explained most weeks would only require 7.5 hours a day for five days to cover the school days.

5. A request for prior authorization for a Home Health Aide (HHA) was received by the South Florida Community Care Network (SFCCN) on November 17, 2015. On November 19, 2015, SFCCN sent the Petitioner a Notice of Action and provided the following facts as the basis for its denial:

Medical necessity for personal care services could not be established.

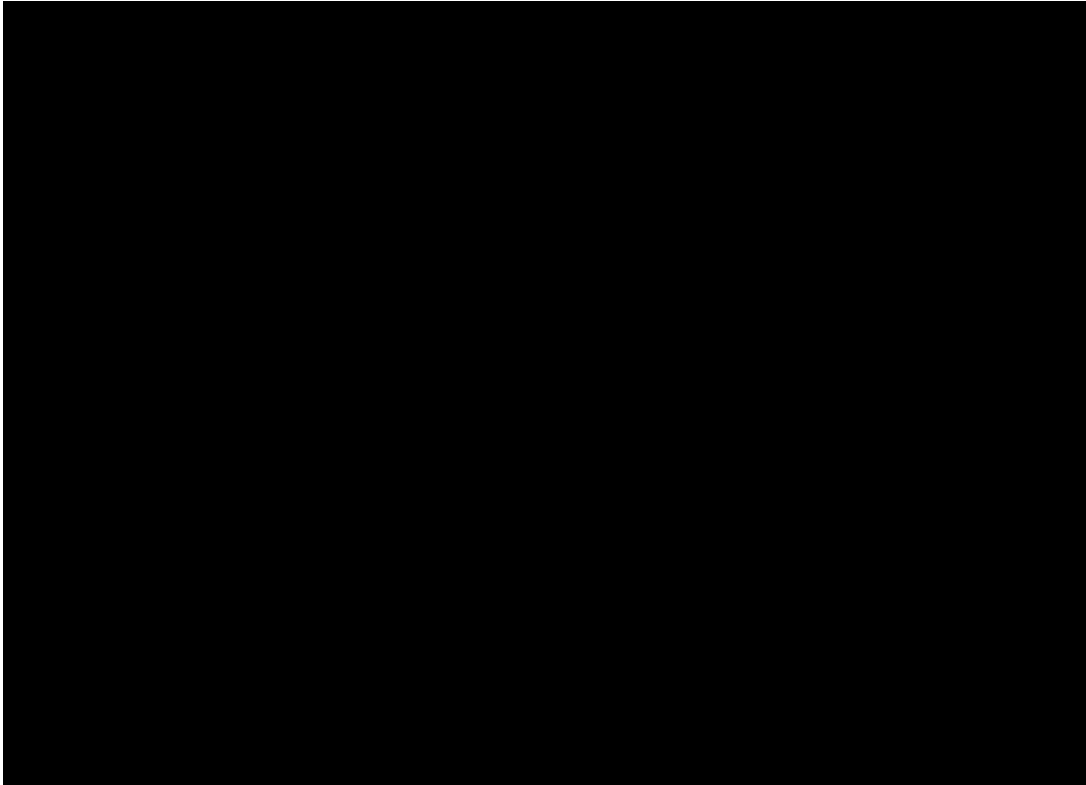
1.) Personal care services are covered when there is a level of functional impairment. All functional impairments must be age-appropriate and consistent with the level of functional impairment.

2.) Medicaid will not cover:

- Mental health and psychiatric services
- Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications
- Baby-sitting
- Social services
- Escort services
- Day care or after school care
- Assistance with homework
- Companion sitting or leisure activities.

6. The Petitioner filed a timely request for a fair hearing on November 23, 2015.

7. In terms of the services requested, Petitioner's mother stated that what her son needs he cannot do for himself. The following is a list of many of the tasks the aide needs to perform (See page 3 of Petitioner Exhibit 1) while Petitioner is at school:



8. Respondent's doctor from South Florida Community Care Center (SFCCN) explained that many of the required tasks to be done necessitate clinical assessment skills which home health aides are not trained to provide. Additionally, much of the time requested involves supervision which is not a Medicaid covered service. The doctor acknowledged the Petitioner has medical needs that need to be addressed but the personal care services being requested were not appropriate.

9. Petitioner's mother noted the current aide is already trained in providing the services her son needs and should be covered by Medicaid. The mother has been paying for the aide for the last two years since the aide was required by the private

school as a condition of the Petitioner's attendance. The mother explained the private school was small and afforded more security and oversight for her son than could be expected in a large public school.

CONCLUSIONS OF LAW

10. 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.

11. 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.

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

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

14. 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).

15. 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.

16. The Medicaid Handbook, page 1-2, provides the purpose and scope of home health services and states in relevant part:

The purpose of home health services is to provide medically necessary care to an eligible Medicaid recipient whose medical condition, illness, or injury requires the care to be delivered in the **recipient’s place of residence** [emphasis added].

Home health services are medically necessary services, which can be effectively and efficiently provided in the **place of residence** of a recipient. Services include home health visits (nurse and home health aide), private duty nursing and personal care services for children, therapy services, medical supplies, and durable medical equipment [emphasis added].

17. 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).

18. 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.

19. 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.

20. Petitioner's primary need for personal care services is supervision at school to ensure his safety. As noted above, supervision is not a Medicaid covered service and home health aide services are provided in the recipient's home. Petitioner's secondary needs

[REDACTED] These secondary needs are beyond the service tasks and training associated with a home health aide.

21. Respondent explained Petitioner has medical needs that need to be addressed but the home health aide services requested are not appropriate. Petitioner has failed to meet his burden of proof. Petitioner's mother is encouraged to work with the Petitioner's primary care provider and South Florida Community Care Center (SFCCN) to determine how the Petitioner's medical needs can be met. Respondent's decision is consistent with the EPSDT medical necessity requirements.

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

FINAL ORDER (Cont.)

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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.



Warren Hunter
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

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