

...

You asked your Case Manager to increase your Companion Care (The person that helps assist and watch over you) from 3 hours per day x3 days per week to 4 hours per day x3 days per week. The extra hours have been denied. Sunshine Health has looked at your care needs and the current hours you are getting for Companion Care ... 3 hours per day x3 days per week (12 hours per week)², meets your needs.

11. The above notice informed the petitioner she could request an appeal with Sunshine Health and/or request a Medicaid Fair Hearing. For services to continue at the current level pending the outcome of either an appeal or fair hearing, the notice stated:

If you are now receiving the service that was reduced, suspended or terminated, you have the right to keep getting those services until a final decision is made in an appeal or fair hearing. You MUST file your appeal or request for a fair hearing AND ask for continued services within these time frames:

For an appeal:

File the appeal with Sunshine Health no later than 10 days after this letter was mailed OR no later than 10 days after the first day our action will take place, whichever is later. You can ask for an appeal by phone. If you do this, you must also make a request in writing. Be sure to tell us that you want your services to continue.

For a fair hearing:

File the request with the Office of Appeal Hearings no later than 10 days after this letter was mailed or before the first day our action will take place, whichever is later. Be sure to tell the hearing officer that you want your services to continue.

12. On July 13, 2015 Sunshine Health received petitioner's written request for an internal appeal. Petitioner requested the 12 hours of companion services be continued.

² It is not clear how 3 hours per day/3 days per week equals 12 hours per week.

13. On July 31, 2015 Sunshine Health issued a notice upholding the decision to deny 12 hours per week of companion services. The notice stated, in part:

The member currently receives 4 hours of homemaking per week and 9 hours of companion care per week, for a total of 13 hours per week. She is able to perform all activities of daily living without assistance. She is able to perform all instrumental activities of daily living without assistance, except for chores, in which she needs total assistance.

14. On August 17, 2015 petitioner contacted the Office of Appeal Hearings and requested a fair hearing.

15. The undersigned finds at the time of notices issued by Sunshine Health on July 1, 2015 and July 31, 2015 petitioner was receiving 12 hours per week of companion services. As such, respondent's action represents a reduction in service hours.

16. Petitioner argues she was recently in a car accident and received a concussion. Her other medical conditions cause poor [REDACTED] and [REDACTED]. She has multiple out of town medical appointments and must go by ambulance. The companion is a backup when a transportation issue emerges. The companion also picks up prescriptions from the pharmacy.

17. Petitioner also argues additional companion services are needed to help with medical related paperwork; faxes; and telephone calls.

18. A letter from petitioner's physician, [REDACTED] states, in part: "While medication management and fall avoidance in her home are important reasons for assistance, I suspect her need for transportation trumps all others, and is indeed specific to this individual's unusual needs, not in excess thereof."

19. Respondent states the July 31, 2015 notice upheld the original denial. As such, an additional 10 day advance notice was not required.

CONCLUSIONS OF LAW

20. By agreement between the Agency for Health Care Administration (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.
21. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.
22. The standard of proof in an administrative hearing is by 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.).
23. Analysis is first directed to notices issued by Sunshine Health.
24. 42 C.F.R. requires the following:
- §431.211 Advance notice.
The State or local agency must send a notice at least 10 days before the date of action, except as permitted under §§431.213 and 431.214.
25. Respondent’s notice of July 1, 2015 identifies July 10, 2015 as the date of action. The notice of July 31, 2015 does not identify a date of action. The focus of that notice was to uphold the original decision. Regardless, the Findings of Fact establish 12 hours per week of companion services were approved through August 31, 2015. No notice was provided which notified the petitioner that, effective September 1, 2015, companion services would return to nine hours per week.
26. 42 C.F.R. continues by stating:
- §431.213 Exceptions from advance notice.
The agency may send a notice not later than the date of action if—
(a) The agency has factual information confirming the death of a beneficiary;

- (b) The agency receives a clear written statement signed by a beneficiary that—
 - (1) He no longer wishes services; or
 - (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) (d) The beneficiary's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See §431.231 (d) of this subpart for procedure if the beneficiary's whereabouts become known);
- (e) The agency establishes the fact that the beneficiary has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the beneficiary's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
- (h) The date of action will occur in less than 10 days, in accordance with §483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of §483.12(a)(5)(i).

§431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the beneficiary; and
- (b) The facts have been verified, if possible, through secondary sources.

27. The greater weight of evidence does not establish there is an exception from advance notice.

28. 42 C.F.R. §431.230 further requires:

Maintaining services

- (a) If the agency sends the 10-day or 5-day notice as required under §431.211 or §431.214 of this subpart, and the beneficiary requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless—
 - (1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and
 - (2) The agency promptly informs the beneficiary in writing that services are to be terminated or reduced pending the hearing decision.

29. 42 C.F.R. further requires:

§431.231 Reinstating services.

(a) The agency may reinstate services if a beneficiary requests a hearing not more than 10 days after the date of action.

(b) The reinstated services must continue until a hearing decision unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.

(c) The agency must reinstate and continue services until a decision is rendered after a hearing if—

(1) Action is taken without the advance notice required under §431.211 or §431.214 of this subpart [Emphasis Added];

30. Sunshine Health's actions are not in compliance with 42 C.F.R. §431.211.

Petitioner was not provided a 10 day notice regarding the reduction of companion services to 9 hours per week effective September 1, 2015. The only advance notice provided was in association with the July 1, 2015 notice. It is noted, however, that petitioner's companion provider was authorized to provide 12 hours of companion services per week through August 31, 2015.

31. It is noted petitioner's request for a fair hearing was received 17 days after the last notice was issued on July 31, 2015. Petitioner, however, was not afforded the opportunity to challenge the September 1, 2015 reduction from 12 to 9 hours a week of companion services. A notice was not issued regarding this revised date of action.

32. Although notice concerns exist, the undersigned lacks jurisdiction to order services be reinstated for a timeframe which has passed. In this instant appeal, the provider did not continue providing 12 hours of uncompensated companion services a week. This frequency ended August 31, 2015.

33. Regarding the LTMC Program, § 409.978, Fla. Stat. states:

(1) ... the agency shall administer the long-term care managed care program ...

(2) The agency shall make payments for long-term care, including home and community-based services, using a managed care model.

34. In this instant appeal, the managed care plan is Sunshine Health.

35. Regarding the LTMC Program, Sunshine Health and the respondent entered into a contractual relationship. The contract both enumerates and defines required services.

The contractual definition relevant to this proceeding is:

Adult Companion Care – Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services may be provided at the member's residence or anywhere in the community where supervision and care is necessary. The services cannot be provided by a family member.

36. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary. See § 409.905 (4) (c), Fla. Stat.

37. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and 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.

38. Petitioner's need for 12 hours per week of companion does not focus on socialization activities. Petitioner does not require either assistance or supervision with activities of daily living. The companion provider is picking up prescriptions from the pharmacy and provides back up transportation.

39. The greater weight of evidence does not establish petitioner requires an elevated level of supervision.

40. In addition to companion services, Sunshine Health approved four hours a week of homemaker services.

41. Petitioner's need for assistance with medically related paperwork; faxes; and telephone calls is noted. This type of assistance, however, does not fall under the general guidelines of meal preparation; laundry; shopping; housekeeping; or general supervision. Rather, the duties are clerical in nature.

42. After considering all evidence and testimony, respondent has met its evidentiary burden. Petitioner's request for 12 hours per week of companion services fails to satisfy the following conditions of medical necessity:

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;

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied.

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 19 day of November, 2015,

in Tallahassee, Florida.



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