

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

FILED

JUL 27 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03111

PETITIONER,

Vs.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 16, 2009, at 1:10 p.m., in Fort Lauderdale, Florida. The petitioner was present and represented himself. Also present was nursing assistant _____ The respondent was represented by Ken Hamblin, program operations administrator. Present on the telephone from the Department of Health Brain and Spinal Cord Injury Program was Kristen Russell, Medicaid waiver administrator. Also present from the Department of Health Brain and Spinal Cord Injury Program was John Wanecski and Jacquelyn Scheinkman, Medicaid waiver specialists.

ISSUE

At issue is the Agency's April 20, 2009 action of decreasing the petitioner's companion care services from 5 hours daily 7 days per week to 4 hours daily 7 days per week. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, who lives with his mother, receives companion care services. Included in the evidence is a copy of a Notice Of Decision from the Traumatic Brain And Spinal Cord Injury Medicaid Waiver Program dated April 20, 2009, stating that his companion care services were reduced to 4 hours daily 7 days per week.
2. The petitioner received a notice previously from the Traumatic Brain And Spinal Cord Injury Medicaid Waiver Program dated December 4, 2008, stating that his companion care services were reduced to from 6 hours daily 7 days per week to 5 hours daily 7 days per week.
3. The petitioner did not appeal the December 2008 reduction of companion care services hours, however he is appealing the April 20, 2009 reduction of companion care services from 5 hours daily 7 days per week to 4 hours daily 7 days per week.
4. The petitioner receives personal care, and this service is not being reduced. Personal care includes services such as helping the individual with bathing and dressing.
5. Companion care services includes care that helps an individual with meal preparation, laundry, and shopping.
6. Included in the evidence is a copy of a letter from Dr. _____ dated June 1, 2009, stating that the petitioner has quadriplegia, hx of the kidney stones, hx of lymphoma, and ankylosing spondylitis. He has a s/p bilateral hip replacement, he is paralyzed from the chest down, and he is wheelchair bound. According to Dr. _____, the petitioner should receive 12 hours of home health care per day.
7. Included in the evidence is a copy of a letter dated April 9, 2009 from Joseph Gibbons, Florida House of Representative, stating that funding for the BSCIP was not cut

during a special session, and that he was assured that there were no future cuts in the program proposed as of that time.

8. According to Ms. Russell at the hearing, there was a 5% budget cut in the program in February 2009 or March 2009, and a review of all recipients of the program in the state was done to determine medical necessity for companion care services. It was determined that 4 hours daily 7 days per week of companion care services is medically necessary for the petitioner, therefore his companion care services were reduced.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S. Fla. Admin. Code 59G-1.010 states in part:

(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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

The Traumatic Brain and Spinal Cord Injury Waiver Services Handbook explains companion services on page 2-27, and states in part:

Companion services are non-medical care, supervision and socialization, provided to a functionally impaired adult. Companions may assist or supervise the recipient with such tasks as meal preparation, laundry and shopping as specified by the plan of care. The provision of companion services does not entail invasive hands-on nursing care. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the recipient...Companion services are provided in accordance with a therapeutic goal in the plan of care, and cannot be purely diversional in nature...Companion services are limited to the amount, scope and duration of the services described in the recipient's plan of care and approved budget for cost of services...The maximum reimbursement for companion services is \$3.00 per unit , not to exceed 24 units (six hours) per day.

The petitioner's companion care services were reduced from 5 hours daily 7 days per week to 4 hours daily 7 days per week. These services includes care that helps an individual with meal preparation, laundry, and shopping. It is determined that companion care services of 4 hours daily 7 days per week is not in excess of the petitioner's needs. After careful consideration, it is determined that the action to reduce the petitioner's companion care services from 5 hours daily 7 days per week to 4 hours daily 7 days per week, is upheld.

DECISION

The 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

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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 22nd day of July, 2009,

in Tallahassee, Florida.

Stuart Imberman ss

Stuart Imberman
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Copies Furnished To