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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO.10F-00165

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION (AHCA)
CIRCUIT: 07 Volusia
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on February 12, 2010, at 11:45 a.m. The petitioner was present and testified; she was represented by her sister

administrator of Maxim Healthcare Service, Inc. was present as a witness for the petitioner. The respondent was represented Jill Hricz, AHCA senior human service program specialist. Debbie Crawford, Elder Source Medicaid waiver specialist and Lisa Lewis, director of Council on Aging were present as witnesses for the respondent.

ISSUE

The petitioner is appealing reduction of Medicaid waiver service hours.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was receiving homemaking (house cleaning and errands) and personal care services (grooming, etc.) through the Community Care for Disabled Adults Program (CCDA); she received five hours weekly of each service. The CCDA assists disabled adults ages 18 through 59 with in-home services designed to allow the adults to live in the community (instead of an institutional care facility or nursing home). The petitioner's impairments include bipolar disorder, chronic obstructive pulmonary disease (COPD), degenerative disk disease, reflux sympathy isotropy and chronic body pain.

2. In October 2009, two months before the petitioner's 60th birthday (her date of birth is December 28, 1949), a CCDA representative referred her case to the Council on Aging to determine if she qualified for continued homemaking and personal care services under another Medicaid waiver program. In November 2009, a representative from the Council on Aging completed a needs assessment with the petitioner via the telephone. The representative concluded that the petitioner required continued in-home services to prevent institutionalization; she was approved for the Aged and Disabled Adult Waiver (also known by the acronym ADA). The Council on Aging determined that her homemaking hours would be the same; five hours per week. Regarding the personal care hours, the Council on Aging, determined that the petitioner's needs could be met with two hours weekly as opposed to the five hours per week she was receiving under the CCDA Program. The petitioner's transition from CCDA to ADA was effective January 1, 2010; the petitioner was told verbally about the change in waiver programs and support services, but did not receive a written notice.

3. The petitioner disagreed with the service change and requested a hearing on January 8, 2010.

4. The Council on Aging representative explained that the level of waiver services a recipient is eligible to receive is based in part on the recipient's needs as determined by an assessment tool. The assessment score ranges from 0 (no waiver services required) to 100 (maximum waiver services required). The petitioner is verbal and ambulatory; she does not require help bathing, dressing or eating. She needs help washing her hair; she also requires help cleaning her home and running standard errands. The petitioner's assessment score was 21.3 (out of 100); this placed her in the moderate range in regards to her need for waiver services. Per the respondent, currently ADA waiver recipients with the highest scores (60 or more) receive three to four hours of homemaking services per week. The Council on Aging believes the petitioner's five hours per week of homemaking services are in excess of her needs, but decided not to reduce the petitioner's homemaking hours because she was accustomed to receiving them under the CCDA waiver. The council decided to reduce the petitioner's weekly personal care hours from five hours to two hours because she was not using the service five hours weekly. During the assessment, the petitioner allegedly told the representative that she was actually receiving homemaking services ten hours per week; she was not receiving any personal care services.

5. The petitioner denied telling the council's representative that she did not use any personal care service hours; however, she admitted that the home health aide did spend the majority of her time cleaning and running errands; approximately eight to nine hours per week. It is the petitioner's position that her household circumstances and lack

of transportation require more than five hours of weekly homemaking services; the CCDA program was able to accommodate her needs by informally shifting more her hours to homemaking. The petitioner does not understand why the ADA waiver will not do the same. The petitioner owns several in-home cats (they are her companions and aid her emotionally); additional housecleaning is an expected consequence of in-home pets. The petitioner lives in a rural community; it takes two or more hours to complete her errands (grocery shopping, picking up prescriptions, eyeglass repair, etc.) – this includes travel time. The petitioner would like to receive eight hours of homemaking services and two hours of personal care services per week. She would also like to receive the one hour monthly of registered nurse (RN) oversight service (blood pressure check once per month) that she received under the CCDA Program; she is not receiving this service under the ADA waiver.

6. The respondent was not aware that the petitioner received RN oversight services under the CCDA waiver and agreed to provide this service under the current ADA waiver. Regarding the petitioner's asserted reasons for increasing the homemaking service hours, the respondent explained that requests for additional service hours must be submitted to an internal review team upon recommendation from the waiver participant's case manager. As of the day of the hearing, the petitioner's case had not been submitted for service reconsideration.

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 Fla. Stat. ch. 120.80.

Fla. Stat. 410.602 sets forth the Legislative intent of the Aged and Disabled Adult Waiver and states in relevant part:

The purpose of ss. 410.601-410.606 is to assist disabled adults to live dignified and reasonably independent lives in their own homes or in the homes of relatives or friends. The Legislature intends through ss. 410.601-410.606 to provide for the development, expansion, and coordination of community-based services for disabled adults, but not to supplant existing programs. The Legislature further intends to establish a continuum of services so that disabled adults may be assured the least restrictive environment suitable to their needs. In addition, the Legislature intends that the Department of Children and Family Services encourage innovative and efficient approaches to program management, staff training, and service delivery.

Fla. Stat. 410.604 sets forth the requirements of the Aged and Disabled Adult Waiver and states in relevant part:

Community care for disabled adults program; powers and duties of the department.--

- (1) In each district, the department shall operate or contract for a community care for disabled adults program which shall have as its primary purpose the prevention of unnecessary institutionalization of disabled adults through the provisions of community-based services.
- (2) Any person who meets the definition of a disabled adult pursuant to s. 410.603(2) is eligible to receive the services of the community care for disabled adults program. However, the community care for disabled adults program shall operate within the funds appropriated by the Legislature. Priority shall be given to disabled adults who are not eligible for

comparable services in programs of or funded by the department or the Division of Vocational Rehabilitation of the Department of Education; who are determined to be at risk of institutionalization; and whose income is at or below the existing institutional care program eligibility standard.

(3) Each community care for disabled adults program shall include case management services and at least one other community service.

Community services may include, but are not limited to, the provision of: adult day care, homemaker and chore services, escort services, group activity therapy, health maintenance services, home-delivered meals, interpreter services, medical equipment or supplies, respite care, and transportation. Case management services shall ensure that arrangements are made for appropriate services.

(4) If independent living is no longer possible for a disabled adult, the case manager shall assist the person in locating the most appropriate and cost-effective living arrangement in the least restrictive setting.

(5) Existing community resources available to disabled adults in each district shall be coordinated to provide a continuum of services. The department shall ensure that all available funding sources have been explored prior to using funds of the community care for disabled adults program. Funds appropriated for community care for disabled adults shall be used only for the provision of services to disabled adults, case management, and directly related expenditures. The department may provide advance funding for community care for disabled adults programs.

The above authorities explain that the purpose of Aged and Disabled Adult Waiver is to allow Medicaid recipients to remain in their homes by providing services which will negate the need for care in a nursing home or institution.

Fla. Admin. Code 65C-2 sets forth the rules and regulations of the Community Care for Disabled Adults Program. This program assists disabled adults ages 18 through 59 by providing in-home services such as homemaker services and personal care services. Without these services, program participants would not be able to remain in the community.

The Aged and Disabled Adult Services Coverage and Limitation Handbook, on pages 2-3 through 2-11 in pertinent part states:

Who Can Receive Services - In addition to being Medicaid eligible, individuals receiving A/DA waiver services must meet the following criteria:

- Be 60 years or older, or be ages 18 to 59 and determined disabled according to Social Security Administration standards;
- Have an appropriate nursing facility level of care determination;
- Be enrolled in the A/DA Waiver Program. Recipient enrollment means being financially and functionally eligible for the waiver subject to the availability of respective Department of Elder Affairs (DOEA), Agency for Health Care Administration (AHCA) and Department of Children and Families (DCF) waiver funds.

Comprehensive Client Assessment

The case manager must conduct a comprehensive client assessment using a Department of Elder Affairs Assessment Instrument, DOEA Form 701B, for aged applicants, or a Department of Children and Families Assessment Instrument, CF-AA Form 1022, for disabled applicants. The assessment will evaluate the recipient's health status, functional status, support system and living environment. The case manager must make a face-to-face home visit with the recipient to complete the assessment and may speak with the recipient's formal and informal caregivers. The recipient must give the case manager permission to contact caregivers. The comprehensive client assessment must be placed in the recipient's case record as a separately identifiable document. All contacts and visits made in completing the assessment must be documented in the case narrative...

Plan of Care:

Description A plan of care is a written document that describes the recipient's service needs as determined by the client assessment instrument. The plan must specify the authorized services to be provided, the number of service units to be provided, the provider of services, the frequency of the provision of services, the projected begin and end dates of service provision, the estimated unit cost of each service, the funding source, and the expected outcome of each authorized service on the recipient's condition. The plan of care is based on a review of the client assessment on the Department of Elder Affairs Assessment Instrument, DOEA Form 701-B, or the Department of Children and Families Assessment Instrument CF-AA Form 1022, and the Physician Referral

and Request for Level of Care Form, CF-MED 3008. The information gathered through these instruments is used by the case manager to establish the recipient's plan of care and to identify both waiver and non-waiver services required to maintain the recipient in the community and reduce functional limitations in order to avoid nursing facility placement...

The above passages from the ADA Services Coverage and Limitations Handbook explain that the recipient's assessment and a referral from the recipient's treating physician are used to create a plan of care which describes the services needed by the waiver recipient and the expected outcome of the service.

The Aged and Disabled Adult Services Coverage and Limitation Handbook, on page 2-28 in pertinent part states:

Homemaker Services:

Description Homemaker services consist of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the person regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home.

Case Manager Responsibilities

The case manager must:

- Give specific instructions to the provider regarding tasks to be completed as part of the service authorization.
- Verify that the specific instructions are being followed and that the recipient is satisfied with the service. The case manager must call the recipient at least monthly to verify that service is satisfactory.

Scope of Service Homemaker services include the following:

- Meal planning and preparation.
- Housekeeping—when the waiver recipient occupies only a portion of the residence, the homemaker must maintain this area only.
- Laundry—only the waiver recipient's laundry is the responsibility of the homemaker.
- Clothing Repair—repair is restricted to the waiver recipient's clothing.
- Minor home repair such as changing light bulbs or tightening screws on a loose rail.
- Shopping assistance—this assistance is limited to the waiver recipient's needs.
- Reporting changes in the recipient's condition to the case manager.
- Following emergency procedures, when needed.

- Other related duties as specified in the care plan.

Service Limitations

The following service limitations apply to homemaker services:

- Homemaker services are limited to the amount, duration and scope of services described in the recipient's plan of care as authorized by the case manager.
- The services must be provided at the recipient's residence. The services can be authorized up to eight hours per day.

The above passage explains that ADA waiver participants may receive up to eight hours per day of homemaker services.

The Findings show that the petitioner was enrolled in the ADA waiver effective January 1, 2010 - after aging out of the CCDA waiver on her 60th birthday in December 2009. The petitioner's service hours were reduced from ten hours per week to seven hours per week. It is the respondent's position that the petitioner is already receiving the maximum hours allowed based on her assessment score. The controlling legal authorities explain that the assessment score and a referral from the participant's treating physician are used to develop a plan of care which sets forth the recipient's service needs. The respondent did not provide the petitioner's plan of care or the recommendation of her treating physician to support its determination regarding the level of waiver services she is eligible to receive. It is the petitioner's position that her in-home cats (companion animals) and residence in a rural area make it necessary for her to have eight hours weekly of homemaker services. The ADA handbook allows waiver participants to receive up to eight hours per day of homemaker services. The respondent's explanation of how it determined the petitioner's level of care did not adhere to the requirements of the controlling legal authorities.

After carefully reviewing all the evidence and the controlling legal authorities, the undersigned remands the petitioner's case to the agency for reconsideration through its internal service review team. A written notice of decision should be issued to the petitioner with appeal rights.

DECISION

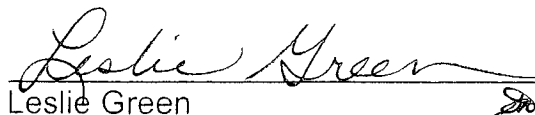
The appeal is granted and remanded to the agency for further development as explained in the above conclusions.

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 5th day of April, 2010,

in Tallahassee, Florida.



Leslie Green
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Copies Furnished To: