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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

STATE OF FLORIDA
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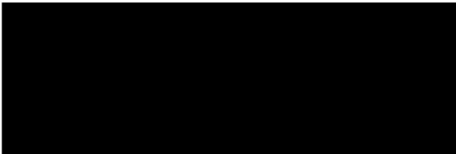

APPEAL NO. 15F-02392

PETITIONER,

VS.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 13 HILLSBOROUGH
UNIT: AHCA

RESPONDENT.
_________________________________/

FINAL ORDER

Pursuant to notice, a telephonic hearing in the above-styled matter convened on April 22, 2015 at approximately 11:11 a.m.

APPEARANCES

For the Petitioner: Petitioner

For the Respondent: Stephanie Lang
Registered Nurse Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether Respondent's denial of Petitioner's request for Durable Medical Equipment (DME), specifically a power wheelchair, was proper. Petitioner had the burden of proof on this issue.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration (AHCA or Agency) is responsible for administering Florida's Medicaid Program. AHCA contracts with Health Maintenance

Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Appearing as witnesses for the Respondent from Staywell were Dr. Bruce Himelstein (State Medical Director) and Robert Walker (Regulatory Research Coordinator). Lou Esposito, Medical Healthcare Program Analyst with the Agency, was present but did not provide testimony.

Petitioner's Exhibit 1 was entered into evidence. Respondent submitted 13 exhibits into evidence, marked and entered as Respondent's Exhibits 1 through 13.

The hearing officer took administrative notice of the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010), Florida Statutes 409.910, 409.962 through 409.965, and 409.973. Administrative notice was also taken of Florida Administrative Code Rules 59G-1.001 and 1.010, as well as 42 C.F.R. 441.745

FINDINGS OF FACT

Based upon 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 an adult female that recently had knee surgery following a shattered knee and tibia injury in September 2012. She uses a cane. She is able to navigate within her home with her cane and assistive devices.

2. She has no assistance other than a visiting home health nurse and a helpful neighbor. She can manage her ADLs within her home without a power wheelchair. Petitioner wants a power wheelchair to go out into the community, such as grocery shopping. She cannot walk very far with the cane and has a history of falls. A manual

wheelchair would not work for her because she has physical limitations due to shoulder bursitis and decreased arm strength.

3. Petitioner has not tried out any power wheelchairs and no one has been to her house to assess the situation.

4. In order to obtain authorization for DME, a Medicaid recipient's DME provider or ordering physician must submit a request for the DME to the health plan. Following that submission, the plan reviews the medical necessity of the requested DME, pursuant to the requirements and limitations of the Florida Medicaid Program. Based upon that review, AHCA (through its designee, the HMO), determines whether the recipient's request will be approved or denied.

5. Staywell is Petitioner's current managed care plan. Petitioner's doctor requested a power wheelchair for Petitioner on January 29, 2015. Staywell denied the request for the power wheelchair via letter dated February 3, 2015. The letter stated the denial was because "clinical information submitted was not sufficient to establish the medical necessity for this equipment. Medicaid guidelines for approval of this equipment are very specific and we did not get enough information to meet the criteria in your case...." Respondent's Exhibit 3.

6. Petitioner appealed the denial with the plan. The original decision was upheld by letter dated March 6, 2015. The letter states, "The denial was upheld because you have not had a proper wheelchair evaluation." Respondent's Exhibit 6. Petitioner then requested the instant appeal on March 13, 2015.

7. Her orthopedic doctor provided a prescription for a power wheelchair. Petitioner provided office visit notes from 2014 to the Respondent and it relied upon those notes

for its decision. The notes do not indicate any lack of upper body strength to propel a chair nor any problems with completing activities of daily living (ADLs). Respondent's Exhibit 10.

8. The orthopedic doctors' notes do not discuss Petitioner's ability to perform activities of daily living. The most recent note, from February 6, 2015, suggests Petitioner continue to use her brace, walker, cane, and crutches. Doctors' progress notes are not wheelchair evaluations. Petitioner's Exhibit 1.

9. According to Petitioner, she saw a doctor in St. Petersburg that recommended the power chair. That doctor sent her evaluation to Petitioner's primary care doctor. The plan did not receive this evaluation and Petitioner did not have a copy of it.

10. The Agency's position is that the submitted documentation was insufficient to support the request. Specifically, the provided documentation was not in compliance with the Medicaid DME handbook requirements.

11. Petitioner's position is that she needs the power wheelchair in order to leave her house. She is unhappy with the lack of communication between the plan, providers, and herself to understand what she needed to do in order to get approval. She will contact her doctor's office to try and obtain the correct documentation and referrals.

CONCLUSIONS OF LAW

12. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes Chapter 120.

13. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

14. The DME and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook") has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.070(2).

15. This is a Final Order, pursuant to Sections 120.569 and 120.57, Florida Statutes.

16. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

17. The burden of proof was assigned to the Petitioner in accordance with Florida Administrative Code Rule 65-2.060(1). The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

18. Section 409.912, Florida Statutes (2014), provides that AHCA shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. In addition, the statute provides AHCA may contract with HMOs to provide these services, which AHCA has done with Sunshine Health.

19. Section 409.905, Florida Statutes (2014), addresses mandatory Medicaid services under the State Medicaid Plan:

> Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were

> provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law....

20. With regard to the need for DME, Section 409.906(10), Florida Statutes (2014), states in relevant part, "The agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary."

21. Similarly, the Handbook defines the guidelines for DME on page 1-2, as follows:

> Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

22. Consistent with the law, AHCA's agent, Staywell, performs prior authorization reviews for Medicaid recipients in the state of Florida. Once it receives a DME request, its medical personnel conduct file reviews to determine the medical necessity of requested equipment, pursuant to the authorization requirements and limitations of the Florida Medicaid Program.

23. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, as follows:

> "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.

24. In order to determine medical necessity, a requester must provide the information listed on page 2-94 the DME Handbook. Relevant to the instant case, the request must include:

> ...documentation from an independent licensed physical therapist or occupational therapist or physiatrist, which documents the recipient's inability to perform activities of daily living in the home and the medical consequences that will occur without the equipment requested.

25. For a motorized wheelchair or power scooter, the request must also include clinical documentation of a trial supervised by the physical therapist, occupational therapist, or physiatrist, detailed documentation of home accessibility, and clinical documentation of the recipient's current ADL abilities. *Id.*

26. Petitioner's submitted request does not contain the required information. Nothing was completed by a physical therapist, occupational therapist, or physiatrist. There was no evidence that a trial was done. In fact, Petitioner testified that she has not tried to use a power chair, indicating she hasn't had an evaluation done. There is no clinical documentation of her inability to complete ADLs in the home, and Petitioner asserts she can complete ADLs in the home.

27. Petitioner wants the device for use in the community setting. The Handbook specifies at page 2-94 that "[a]lternative funding sources should be explored for power

or motorized wheelchairs and power mobility devices needed specifically for community leisure, vocational, or school use."

28. The Agency cannot approve DME without the necessary supporting documentation justifying the request. Therefore, the undersigned concludes the Agency's action in this case was proper.

29. If the Petitioner provides more documentation to the plan, the plan may take new action on her case. This order does not limit the Petitioner's hearing rights on future plan actions related to the power wheelchair request.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby 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 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 2nd day of June, 2015,

in Tallahassee, Florida.

Danielle Murray
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished To: [redacted] Petitioner
Don Fuller, Area 6, AHCA Field Office Manager