

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

**FILED**

Nov 25, 2015

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-07034

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 (Dade)  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 9, 2015 at 2:30 p.m.

**APPEARANCES**

For the Petitioner:



Petitioner

For the Respondent:

Monica Otalora, Senior Program Specialist  
Agency for Health Care Administration (AHCA)

**STATEMENT OF ISSUE**

At issue is whether the Respondent's reduction of the Petitioner's home health aide services was correct. Respondent bears the burden of proving its case by a preponderance of the evidence.

### **PRELIMINARY STATEMENT**

The Petitioner submitted his doctor's letter and medical records as evidence for the hearing, which were marked Petitioner Exhibits 1 and 2.

Appearing as witnesses for the Respondent were Mindy Aikman, Grievance Specialist, and Dr. Ian Nathanson, Medical Director, for Humana, which is the Petitioner's managed health care organization. Respondent submitted the following documents into evidence: Exhibit 1 – Service Request and Plan of Care; Exhibit 2: Denial Notice; and Exhibit 3: Medical Assessment Form.

### **FINDINGS OF FACT**

1. The Petitioner is a forty-seven (47) year-old Medicaid recipient who is enrolled in the Statewide Medicaid Managed Care (SMMC) – Managed Medical Assistance (MMA) plan. He receives services under the plan through Humana.
2. The Petitioner is blind in one eye and is non-ambulatory, although he can stand up and sit down by himself. He utilizes a wheelchair for mobility. He lives with his mother, who is sixty-seven (67) years of age and also wheelchair-bound.
3. On or about July 1, 2015, Petitioner's home health services provider submitted an authorization request to Humana for approval of two home health aide visits daily.
4. On or about August 25, 2015, Humana informed the Petitioner by written notice that his request for home health aide visits had been partially denied. Humana approved one home health aide visit daily for bathing. The following was stated as the reason for the partial denial: "You require some assistance with bathing. Medicaid home health aide visits do not cover light housekeeping or meal preparation."

5. The Petitioner had been previously receiving two home health aide visits daily – one in the morning and one in the afternoon.

6. The Petitioner testified he should continue receiving two home health aide visits daily because he needs assistance throughout the day. He states the aide helps bathe him during the morning visit, and this takes up to one and one-half hours. During the afternoon visit, the aide helps clean his room and wash his clothes and this visit takes approximately one-half hour. He also stated he needs help with walking to the toilet and preparing meals. Petitioner believes that one visit is the equivalent of one hour; therefore he believes two visits are necessary since the aide is providing two hours of assistance daily.

7. The Respondent's witness, Dr. Nathanson, testified that the partial denial of the Petitioner's request for home health services was appropriate because only one visit daily is medically necessary. He stated that home health aide visits do not include housekeeping or meal preparation, pursuant to Medicaid guidelines. He also stated that the Petitioner's primary needs were for bathing and skin care, and the medical records indicated he needed only minimal assistance with transfers and needed no assistance with toileting and elimination functions. He also pointed out that home health aide visits are not limited in time, so that one visit does not mean only one hour of service.

8. Home health services under the Medicaid State Plan in Florida are provided in accordance with the Respondent's Home Health Services Coverage and Limitations Handbook ("Home Health Handbook"), effective October, 2014.

**PRINCIPLES OF LAW AND ANALYSIS**

9. 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 Fla. Stat. § 120.80.
10. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.
11. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
12. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Respondent since it is seeking a reduction in Petitioner's services. The standard of proof in an administrative hearing is 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, 7<sup>th</sup> Ed.).
13. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Medicaid Program is administered by the Respondent. The Home Health Handbook is incorporated by reference in Chapter 59G-4, Florida Administrative Code.
14. The Home Health Handbook, on page 2-18, describes home health aide visits as follows:

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

  - Assisting with the change of a colostomy bag
  - Assisting with transfer
  - Reinforcing a dressing
  - Assisting the individual with prescribed range of motion

exercises that have been taught by the RN

- Measuring and preparing prescribed special diets
- Providing oral hygiene
- Bathing and skin care
- Assisting with self-administered medication

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

15. The Home Health Handbook, on page 2-12, also describes the following exclusion which is not reimbursable as a Medicaid home health service:

Housekeeping (except light housekeeping), homemaker, and chore services, including any shopping except grocery shopping when provided as an IADL for recipients under the age of 21 years

16. The Handbook provision cited above states that Medicaid does not cover housekeeping and homemaker services as part of home health aide visits. Petitioner testified that the second daily home health aide visit consists of the aide cleaning his room and washing his clothes. In addition, meal preparation is in the nature of homemaker services.

17. After considering all the documentary evidence and witness testimony presented, the undersigned concludes Humana properly reduced Petitioner's home health services to one visit daily. Petitioner's primary needs are bathing and skin care and these needs can be addressed in one home health aide visit daily.

**DECISION**

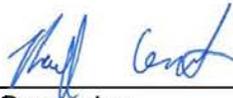
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

**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 agency has no funds to assist in this review, and any financial obligations incurred will be the Petitioner's responsibility.

DONE and ORDERED this 25 day of November, 2015,

in Tallahassee, Florida.



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Rhea Gray, AHCA Area 11, Field Office Manager