

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-01862

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 18, 2009, at 11:07 a.m., in Lake Worth, Florida. The petitioner was present. Representing the petitioner was _____ Esq., The Advocacy Center for Persons with Disabilities. Appearing as witnesses were: _____ Active Mobility Center; _____, physical therapist; _____, father; and _____, mother. Representing the respondent was Karen Dexter, Esq., assistant general counsel, Agency for Healthcare Administration (AHCA). Appearing as witnesses were David King, management analyst, AHCA; and Marian Browne, physical therapist and case reviewer, AHCA. The record remained open two weeks (until July 2, 2009) in order that both parties might submit proposed final orders. An extension on the July 2 date was requested by the respondent and was granted until July 17,

2009. Both parties submitted proposed orders and they were received by July 17, 2009.

ISSUE

At issue is whether the respondent was correct in denying a power recliner for a custom power wheelchair due to there being insufficient justification [no medical necessity] for the power recliner. The petitioner has the burden of proof.

FINDINGS OF FACT

1. It is noted and stipulated by both parties that the petitioner is a recipient of Medicaid benefits. The petitioner requested a new custom power wheelchair with accessories including a power recliner. Medicaid approved the requested chair with the exception of the power recliner. Medicaid offered to approve a manual recliner for the chair as a substitute for the power recliner. The manual recliner is a less expensive option. There is no dispute as to the petitioner's need for a power wheelchair or any of the options for that chair other than the power recliner. The sole issue to be resolved is whether the power recliner option is medically necessary or the petitioner's medical needs could be met by the manual recliner option.
2. For general reference purposes, AHCA will provide a new wheelchair to a recipient once every five years with possible modifications prior, depending upon the written durable medical equipment (DME) proposal.

3. The petitioner is a thirty-two year old (DOB _____) who is diagnosed with muscular dystrophy (MD). When not confined to his bed he is in his wheelchair. He has had rod surgery to keep his spine straight.
4. His present wheelchair, originally provided in 2001 and modified in 2005, does not have a recline function at all. A request was made November 2008 for a new custom wheelchair through AHCA and its durable medical equipment (DME) proposal. The total cost of the proposal, with the power recliner, was \$25,312.90.
5. Ms. Browne reviewed the proposal and concluded that all the requested equipment met the medical necessity requirement except the power recliner. A manual recliner was offered instead.
6. With the petitioner's current chair it is difficult for the petitioner to use a urinal. It is a process that involves sliding him and could result in a sheering or break down of the skin.
7. With a recliner the caretakers could recline the back of the chair and, therefore, make using the urinal less stressful on the petitioner's body.
8. When the petitioner is clothed in the chair and he is moved when reclining, there should be little sheering. In fact, even without a recliner presently, the petitioner has no evidence of skin sheering or breakdown. This is due to the care that his primary caregivers, his parents, are giving and have given.

9. The manual recliner will use only a portion of the petitioner's upper body weight to get into a recline position.
10. The other consideration for a recliner is in the use of transferring the petitioner from the chair to his bed and vice versa. In a reclined position this would be easier for the caretakers. Transferring is done with a Hoyer Lift system.
11. It is noted that with MD the petitioner's breathing ability decreases over the years and a recliner is needed to help the breathing process.
12. All of these needs for a recliner are agreed upon. The differences between a power recliner and a manual recliner are that a power recliner would offer an infinite number of positions and allow for the petitioner to do the adjusting himself. A manual recliner would have a certain number of "stops" and requires a caretaker to do the adjusting.
13. Included with the petitioner's proposal request was a detailed product description that his primary care physician, _____, MD, signed off on. He reviewed the equipment requested and agreed "that it is appropriate and medically necessary".
14. _____ offered an opinion that the petitioner, without a power recliner, would only be able to tolerate sitting in his chair for a few hours. The power recline would help eliminate pressure problems. This could also reduce the petitioner from sliding forward, reduce skin

breakdown (sheering), and help with transferring and toileting (two of the activities of daily living, ADL).

15. has no medical background. He agreed that the present wheelchair has no recline function and that there is no skin condition such as sheering present. He noted that the petitioner will continue to get weaker over the years which could result in more skin problems.

16. offered the opinion that a power recliner would help with the transferring and toileting by allowing less reliability on the parent caregivers who are not getting younger. For example, the father is 63 years old and the mother 61.

17. Because the parents are diligent in caring for their son, there is no record of skin breakdown. And, although a manual recliner would assist the parents in the petitioner's toileting and transferring, believes that a power recliner would be the best option for doing this.

18. the petitioner's father, explains that his son's weight has increased and he finds it more difficult to be the caretaker. With a power recliner the petitioner would be able to recline on his own, taking some of the burden from him. He does note that a manual recliner would also help but not as much as a power one.

19. On cross examination, , explains that he took his son to see numerous options at : facility but none were tried.

20. Finally, both parents agree that a recliner (either manual or power) would help their son's breathing, help in transferring, and help in toileting. There would also be less chance for skin sheering.

CONCLUSIONS OF LAW

59G-1.010 Definitions states in part:

The following definitions are applicable to all sections of Chapter 59G, F.A.C., unless specifically stated otherwise in one of those sections. These definitions do not apply to any Agency for Health Care Administration (Agency), Medicaid program rules other than those in Chapter 59G, F.A.C.:

(72) "Durable medical equipment (DME)" means medical equipment that can withstand repeated use; is primarily and customarily used to serve a medical purpose; is generally not useful in the absence of illness or injury; and is appropriate for use in the patient's home. Also see "Goods," "Medical supplies," and "Supplies and appliances."

(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.

(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.

59G-4.070 Durable Medical Equipment and Medical Supplies states in part:

(1) This rule applies to all durable medical equipment and supply providers enrolled in the Medicaid program.

(2) All durable medical equipment and medical supply providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook, July 2008, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated by reference in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent's Web Portal at <http://my.medicaid-florida.com>.

Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook Agency for Health Care Administration, July 2008 states in part:

Description A wheelchair is a seating device system mounted on wheels used to transport a non-ambulatory individual or an individual with severely limited mobility.

Service Requirements

Medicaid will reimburse for a wheelchair when the recipient is non-ambulatory or has severely limited mobility and it is medically documented that a wheelchair is medically necessary to accommodate the recipient's physical characteristics...

Customized Wheelchair Documentation

Medicaid will reimburse for a medically-necessary, customized wheelchair that is specially constructed for the individual recipient.

Medicaid will not approve a customized wheelchair or wheelchair custom upgrade without the medical necessity documentation that establishes the recipient's inability to perform activities of daily living within the recipient's home. Activities of daily living include bathing, eating, toileting, dressing, transferring in and out of a bed or chair, and moving about within the home.

Prior authorization is required for all custom wheelchairs, power wheelchairs, power operated vehicles (POV), and modifications and custom upgrades. The following information must be submitted with the prior authorization request:

- Either the Medicaid Custom Wheelchair Evaluation form (Appendix A) or another document that contains the same information that is requested on the form; and
- Medical necessity documentation; and
- Written documentation describing the physical status of the recipient with regard to mobility, self-care status, strength, cognitive and physical abilities, coordination, and activity limitations; and
- Wheelchair evaluations must be performed by and the evaluation information completed by or dictated by a registered physical or occupational therapist or a certified physiatrist and documented on either the Custom Wheelchair Evaluation, AHCA Med Serv Form 015, July 2007 (Appendix A) or another document that contains the same information that is requested on the form. The documentation must list a date of completion that is not more than six (6) months old and include the therapist's or physiatrist's signature and license number; and
- Discussion of the recipient's current mobility equipment and why the current equipment is no longer appropriate; and

- What physical improvement(s) can be anticipated; and
- What physical deterioration may be prevented with the type of wheelchair and specific features requested; and...

Medicaid will not approve a power wheelchair (custom or non-custom), poweroperated vehicle (POV), or wheelchair power upgrade, without 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.

The Agency for Health Care Administration (AHCA) is given the authority to administer Medicaid in the state of Florida. This includes reviewing all proposals for durable medical equipment (DME) to include wheelchairs.

In this instant case, a proposal was sent for review concerning the petitioner's need for a customized wheelchair with a power recliner. After reviewing the proposal, AHCA determined that the chair would be approved with a manual recliner, not a power one. This was based upon insufficient data to establish that the power option was medically necessary.

The petitioner's primary care physician, Dr. _____, submitted his proposal including the power recline option and signed that this was medically necessary. A great deal of weight is given to the opinion of the petitioner's physician in cases such as this. All that was submitted to show the treating physician's opinion was the hearsay statement submitted at the time of the request. The underlying facts upon which the doctor made his opinion regarding

the petitioner's need for a power recliner versus a manual recliner were not put on the record.

The rule provides that the power wheelchair will not be approved without documentation from the licensed physical therapist of the medical consequences that will occur with the requested equipment. The evidence at the hearing did not establish any medical consequences for the use of a manual recline function versus a power recline function. The evidence presented established that the manual recliner performs the same function as a power recliner, save for the convenience to the petitioner and/or his caretakers. That is, a manual recliner offers less chance for skin sheering, and better capabilities for toileting and transferring.

AHCA is willing to provide the customized wheelchair with a manual recliner. The evidence presented at the hearing did not show that a power recliner was medically necessary for the petitioner.

DECISION

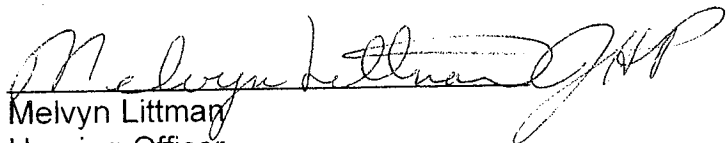
The appeal is denied. The respondent's action is affirmed. The petitioner always has the opportunity to submit new documentation in the future for review as his medical condition changes.

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 27th day of July, 2009,
in Tallahassee, Florida.


Melvyn Littman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: