

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

FILED

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OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03613

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 August 6, 2009, at 8:30 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her husband, and her son,                      The respondent was represented by Ken Hamblin, program operations administrator. Present from American Eldercare was Robert Schemel, president. Present on the telephone was Joyce Styrcula, program analyst from the Agency for Elder Affairs.

**ISSUE**

At issue is the Agency's August 5, 2009 action of cancelling the petitioner's home health respite services, and approving her for adult day care services. The respondent has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner, who lives with her husband, \_\_\_\_\_ receives home health respite services.
2. Included in the evidence is a copy of a notice dated May 8, 2009, stating that the petitioner was approved for home health services from Mondays through Thursdays for 36 hours, which is 9 hours per day 4 days per week. It states that this is a temporary approval, and effective June 1, 2009, she is expected to return to adult day care services.
3. Included in the evidence is a copy of a notice dated May 29, 2009, stating that the petitioner was approved for 9 hours of daily home health services twice per week, and two days of adult day care services.
4. The May 29, 2009 notice explains that after one month of receiving the home health services, and the adult day care services, which was a transitional care plan, the care plan manager would reevaluate to see if the petitioner can attend adult day care for four days weekly.
5. Included in the evidence is a copy of a statement dated August 5, 2009, from Mark Cornett, regional director of operations at American Eldercare, recommending adult day care for the petitioner. Mr. Schemel explained at the hearing that as described on the May 29, 2009 notice to the petitioner, her home health aide services were cancelled, and she was approved for four days of adult day care services.
6. Included in the evidence is a copy of a statement dated July 14, 2009, from Dr. \_\_\_\_\_ stating that the petitioner has advanced Alzheimer's type of dementia.

7. The petitioner has previously been in adult day care, and her husband is appealing the cancellation of the home health respite services. He does not want the adult day care for the petitioner, instead requesting the home respite services for her.

### 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.

Fla. Admin. Code at 59G-4.130 explains home health services. The Home Health Services Coverage and Limitations Handbook explains on page 2-14 that home health

services must be ordered by the attending physician and be medically necessary. The petitioner's home health respite services were cancelled, and she was approved for four days of adult day care services. Included in the evidence, and discussed at the hearing is information concerning the petitioner's advanced Alzheimer's condition, her husband's work schedule, his ability to care for her, her needs, and the services that she has received including home respite care, and adult day care. After careful consideration, it is determined that the Agency's action 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 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 3<sup>rd</sup> day of September 2009,

in Tallahassee, Florida.

Stuart Imberman

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