

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

FILED
OCT 21 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04641

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 September 21, 2009, at 11:30 a.m., in Fort Lauderdale, Florida. The hearing was rescheduled at the petitioner's request from August 14, 2009. The petitioner was present, and was represented by _____, attorney from _____.

Also present was _____ her mother; _____ her aunt; _____ administrator from _____ and _____, director of clinical services from _____. The respondent was represented on the telephone by William Blocker, attorney. Also present from AHCA were program operations administrators, Ken Hamblin and Jose Rodriguez. Present on the telephone from Kepro was Dr. Stuart Chesky, medical director, and Melanie Clyatt, review operations supervisor.

ISSUE

At issue is the Agency's action of approving the petitioner's home health aide services for 60 visits from January 17, 2009 through March 17, 2009. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____ is 23 years old. She is a Medicaid recipient in Broward County, Florida.
2. Included in the evidence is a copy of an Internal Focus Review Findings form dated April 16, 2009, stating that the petitioner's diagnosis is cerebral palsy, developmental disability, and dyspnea on exertion.
3. According to the Internal Focus Review Findings form, home health aide services was approved for the petitioner from January 17, 2009 to March 17, 2009. It states that home health aide services was approved for 60 visits, and 240 visits was denied. This is an approval of one visit per day from a home health aide, and a denial of four visits per day from a home health aide.
4. The petitioner requested home health aide visits of four per day, which is listed on the Internal Focus Review Findings form. They are visit 1. Assistance with ambulation, and transfers. Visit 2. Bathing, dressing, skin care, and assistance with ambulation, and transfers. Visit 3. Oral care, and assistance with ambulation, and transfers. Visit 4. Dressing, oral care, and assistance with ambulation, and transfers.
5. Included in the evidence is a copy of a Synopsis of Case form dated April 16, 2009. It explains that all of the home health aide services for the petitioner described in the four visits per day can be done in one visit per day.

6. According to the Synopsis Of Case, a physician consultant from Kepro, who is board certified in family practice, determined that one visit per day from a home health service aide is approved, and four visits per day is denied, because the services can be done in one visit instead of four visits per day.

7. According to the Synopsis Of Case, a second physician consultant from Kepro, who is board certified in family practice, did a reconsideration determination, and agreed that one visit per day from a home health service aide is approved, and four visits per day is denied, because the services can be done in one visit instead of four visits per day.

8. According to Dr. Chesky at the hearing, he agrees with the determination of the petitioner receiving one visit per day from a home health service aide instead of four visits per day, because the services can be done in one visit instead of four visits per day.

9. Dr. Chesky explained that it does not matter how long the home health aide visit takes. This visit is not limited to a length of time, but rather the length of time needed to provide the medically necessary home health aide visit, as defined in the Home Health Services Handbook.

10. According to the Synopsis of Case, the provider was notified of the home health aide determinations on July 24, 2009, and per ACHA, denial notices are not sent on retrospective cases. A notice informing the petitioner of a denial was not sent to her.

11. According to [redacted] from [redacted], she disagreed with providing the petitioner with one visit per day of a home health aide. In her opinion, this is due to the Medicaid Program not paying enough for one visit per day.

12. The petitioner's representative agreed at the hearing with the determination of one visit per day from a home health aide for the petitioner, as long as she is provided the

home health aide services that she medically needs. She has a concern that if the provider of the services is not adequately paid by the Medicaid program, then the provider may not give the home health aide service to the petitioner.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, 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.

The Home Health Services Coverage and Limitations Handbook on page 1-2 states in part:

A home health aide visit is not limited to a specific length of time, but is defined as an entry into the recipient's place of residence, for the length of time needed, to provide the medically-necessary nursing or home health aide service(s).

Fla. Admin. Code 59G1.010 explains the medically necessary criteria. The Agency approved 60 home health aide visits for the petitioner, which is one visit per day, and denied 180 visits, which is four visits per day, from January 17, 2009 to March 17, 2009. The above cite explains that the visit is not limited to a length of time, but rather it is the length of time needed to provide the medically necessary home health aid service. The petitioner's representative agreed with the determination of one visit per day from a home health aide for the petitioner, as long as she is provided the home health aide services that she medically needs.

At the hearing, a representative of the petitioner's provider disagreed with providing the petitioner with one visit per day of a home health aide. In her opinion, this is due to

the Medicaid Program not paying enough for one visit per day. According to the petitioner's representative, she has a concern that if the provider of the services is not adequately paid by the Medicaid Program, then the provider may not give the home health aide service to the petitioner.

In accordance with Fla. Admin. Code 65-2.056:

Basis of Hearings.

The Hearing shall include consideration of:

(1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.

(2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.

The provider is concerned about getting paid by the Medicaid Program, and this is not within the jurisdiction of this hearing. The petitioner was approved for one visit per day from a home health aide, and denied for four visits per day. As explained, home health aide services can be done in one visit instead of four visits per day. It is determined that there is no basis for an appeal because there is no loss of benefits to the petitioner, therefore this appeal is denied.

DECISION

This appeal is denied.

NOTICE OF RIGHT TO APPEAL

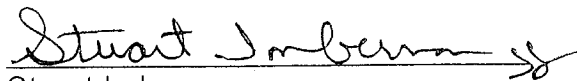
This decision is final and binding on the part of the Agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for

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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 21st day of October, 2009,

in Tallahassee, Florida.



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

Copies Furnished To