

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-05334

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 06 Pinellas
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned hearing officer on September 30, 2009, at 10:00 a.m. The petitioner was not present. He was represented by the petitioner's power of attorney. The respondent was represented by Joyce Carpenter, senior human program specialist. Witnesses for the respondent appearing by telephone were Kris Russell, program administrator for the Brain and Spinal Cord Traumatic Injury Waiver Program and Phyllis Rothman, Medicaid waiver specialist with the Brain and Spinal Cord Traumatic Injury Waiver Program.

ISSUE

The petitioner is requesting eight hours a day of personal care services and eight hours a day of companion services. As the petitioner's representative is

requesting eight hours of personal care and eight hours of companion care, the petitioner has the burden of proof for that request.

The action of the respondent for the notice of August 11, 2009 was to reduce companion services from four hours a day to three and one-half hours a day. The respondent would have the burden of proof for the reduction of half hour a day of companion services.

FINDINGS OF FACT

1. The petitioner is eligible for Medicaid and the Traumatic Brain and Spinal Cord Injury Waiver Program. The petitioner was receiving attendant care two hours, three times a week, six hours a day of personal care services and four hours a day of companion service as part of the services he received through the Traumatic Brain and Spinal Cord Injury Waiver Program.

2. The Agency for Health Care Administration authorizes the Department of Health to operate and oversee the Traumatic Brain and Spinal Cord Injury Waiver Program. As the authorizing agency, the Agency for Health Care Administration is the respondent in this case. In November 2008, the respondent notified the community support coordinator that all services were to be reduced due to budget availability consistent with handbook. The respondent reviewed the cases of all individuals receiving services through the Traumatic Brain and Spinal Cord Injury Waiver Program at each individual's review date.

3. The respondent reviewed the petitioner's case notes. The respondent determined that the reduction of thirty minutes a day of companion services would not risk the petitioner's safety and three and one-half hours a day of

companion care would meet the criteria of medically necessary to meet the petitioner's needs. The respondent reduced the petitioner's companion services to three and one-half hours a day. A Notice of Decision was sent to the petitioner on August 11, 2009.

4. The petitioner's representative disagreed with the reduction. The petitioner is a total quadriplegic. He cannot feed, get a drink of water, dress himself or perform any activities of daily living. He has no roommate and is alone and scared. He needs help with everything. The petitioner has been in the hospital frequently. The petitioner was hospitalized on September 25, 2009 with infected bed sores. The respondent notified on September 29, 2009. The petitioner is in the critical care unit with no anticipated discharge. The respondent responded that that the petitioner's frequent hospitalization may be a medical stability problem.

5. The petitioner's representative opined that it was medically necessary for the petitioner to have eight hours a day of personal care services and eight hours a day of companion services and requested that the respondent provide those hours. The respondent responded that the service limits are four hours a day for personal care assistance and six hours a day for companion service.

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.

Florida Administrative Code 59.G-1.010, "Definitions", states for medical necessity:

(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...

(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.

The Florida Administrative Code at 59G-13.130 "Traumatic Brain and Spinal Cord Injury Waiver Services" states:

- (1) This rule applies to all traumatic brain and spinal cord injury waiver services providers enrolled in the Medicaid program.
- (2) All traumatic brain and spinal cord injury waiver services providers enrolled in the Medicaid program must be in compliance

with the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook, April 2006, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, Non-Institutional 081, which is incorporated by reference in Rule 59G-13.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

(3) The following forms that are included in the Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook are incorporated by reference: Appendix C contains the Home and Community-Based Waiver Referral Agreement, April 2006, seven pages; Appendix D contains the Brain and Spinal Cord Injury Program Request for Level of Care, April 2006, two pages; Appendix E contains the Notification of Level of Care, which is incorporated by reference in Rule 59G-13.030, F.A.C.; Appendix F contains the Brain and Spinal Cord Injury Program Waiting List Policy for the Traumatic Brain/ Spinal Cord Injury Medicaid Waiver Program, April 2006, five pages, and Home and Community-Based Medicaid Waiver Prioritization Screening Instrument, April 2006, four pages; Appendix G contains the Notice of Decision, April 2006, two pages; and Appendix H contains the Brain and Spinal Cord Injury Program Medicaid Home and Community-Based Waiver Service Plan, April 2006, one page.

The Florida Administration Code at 59G-8.200, defines personal care

service:

(3)(p) Homemaker, and Homemaker and Personal Care Services provide assistance with daily living activities and household tasks related to supporting clients in a home setting. Services include assistance with bathing, dressing, eating, maintenance of personal belongings, and performance of light housekeeping, and meal planning and preparation.

The Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook sets forth the description and service limitation for personal care services on page 2-36:

Description

Personal care services are assistance with eating, bathing, dressing, personal hygiene, and activities of daily living.

Personal care services may include assistance with preparation of meals, but does not include the cost of the meals themselves.

When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming, which are incidental to the care furnished, or which are essential to the health and welfare of the recipient, rather than the recipient's family.

Limitations

... The maximum reimbursement for personal care services is \$5.00 per unit of service, not to exceed 16 units (four hours) per day. A unit is defined as a 15-minute time period or portion thereof.

The Florida Administration Code at 59G-8.200, defines companion

service:

(g) Companion Services include those activities necessary to assist the recipient in performing household or personal tasks and providing social stimulation to relieve the negative effects of loneliness and isolation.

The Florida Medicaid Traumatic Brain and Spinal Cord Injury Waiver Services Coverage and Limitations Handbook sets forth the description and service requirements for companion services on page 2-27:

Companion Services

Description

Companion services are non-medical care, supervision and socialization, provided to a functionally impaired adult. Companions may assist or supervise the recipient with such tasks as meal preparation, laundry and shopping as specified in the plan of care. The provision of companion services does not entail any invasive hands-on nursing care. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the recipient.

Service Requirements

Companion services are provided in accordance with a therapeutic goal in the plan of care, and cannot be purely diversional in nature...

Limitations

... The maximum reimbursement for companion services is \$3.00 per unit, not to exceed 24 units (six hours) per day. A unit is defined

as a 15-minute time period or portion thereof. Companion services cannot be concurrent with attendant care services or personal care services.

I. As to the issue of the petitioner's request for eight hours a day of personal care and eight hours a day of companion services.

The handbook incorporated by rule sets forth that the maximum number of hours for personal care is four hours a day. The petitioner is receiving the maximum number of hour of personal care set forth in rule. As the service limitation is four hours a day, the petitioner's request for eight hours a day of personal care is not within the rules of the Program.

The petitioner's representative argued that the petitioner at one time was receiving eight hours a day of companion services and the petitioner's hours were reduced by four hours already. The April 2006 handbook incorporated by rule sets forth that the maximum number of hours for companion service is six a day. As this four hour limit has been the rule since at least April 2006, the hearing officer concludes that the petitioner has not received eight hours of companion services in at least the last three and one-half years and could not have had his service reduced by four hours in at least the last three and one-half years. As the service limitation is six hours a day, the petitioner's request for eight hours a day of companion services is not within the rules of the Program.

II. As to the issue of the respondent reduction of one-half hour a day of companion services from four hours a day to three and one-half hours a day.

The petitioner is a total quadriplegic. He needs help with everything. The petitioner has been in the hospital frequently. The petitioner was hospitalized on

September 25, 2009 with infected bed sores. The petitioner is in the critical care unit with no anticipated discharge. The respondent responded that that the petitioner's frequent hospitalization may be a medical stability problem. The hearing officer notes that there has not been a termination of services by the respondent based on medical stability or sufficient evidence proffered for the hearing officer to make that finding. The action by the respondent was a reduction of one-half hour a day of companion due to budget constraints and non-medical necessity. Based on the new evidence presented at the hearing of the petitioner's hospitalization, the hearing officer concludes that the medical necessity criteria is met for the petitioner to received four hours a day of companion care for supervision, meal preparation, laundry, shopping and light housekeeping tasks that are incidental to the petitioner's care and supervision. Based upon the above cited authorities, the respondent's action to reduce companion services from four hours a day to three and one-half hours a day is reversed.

DECISION

This appeal is found as follows.

As to the petitioner's request for eight hours a day of personal care service and eight hours a day of companion service, the appeal is denied.

As to the issue of the respondent's reduction of companion service from fours to three and one-half hours, the appeal is granted.

