FILED
JUL 22 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 09F-3495

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA
RESPONDENT.
_______________________________/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on June 23, 2009, at 8:17 a.m., in Miami, Florida. The petitioner was not present but was represented by her son, ______. The respondent was represented by Margaret Warner, program specialist for the Agency for Health Care Administration (AHCA). Appearing telephonically as a witness for the respondent was Robert Schemel, president American Eldercare Inc. Also present telephonically as an observer was Joyce Styrcula, program analyst with the Department of Elder Affairs. Blanche Rodriguez served as translator.

ISSUE

At issue is whether the respondent's action May 4, 2009, to reduce adult day care (ADC) services being received through American Eldercare (AEC) effective May 18, 2009, was correct. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is elderly (age 80) and a Medicaid beneficiary in the state of Florida. American Eldercare Inc. is contracted by AHCA to provide services to Medicaid's Long-Term Care Diversion Program recipients. The petitioner has diagnoses to include major depression; heart problems; hypertension, type 2 diabetes, and mild dementia.
2. Prior to the action under appeal, the petitioner was receiving ADC services at the rate of 5 days a week, plus 4 hours (2 hours for shopping and 2 hours for a homemaker) of service on Saturdays.
3. An internal review of the petitioner's care plan was conducted by the petitioner's case manager and the service approval committee. The committee determined that a service reduction was justified from 5 days a week to 3 days a week (Mon. Wed. & Fri.), as it was adequate socialization and medical necessity had to be met as well. If more socialization was needed, then the committee determined it would be met with 3 days a week approval of ADC and 2 days a week at an Adult Living Facility (ALF). The 4 hours on Saturdays remained the same. The petitioner is under the care of a psychiatrist and is on medication.
4. On May 4, 2009, the provider (American Eldercare) issued a notice to the petitioner informing her that ADC services would be reduced, to 3 days a week, effective May May 18, 2009.

5. The committee also determined that if mental health treatment was necessary, they would recommend another facility. The petitioner filed for an in-house appeal with American Eldercare.
6. On May 14, 2009, the in-house appeal was denied and the provider documented, "...mem needs can be met with three days of ADC...3 days at current ADC & transition to 2 days @ ADC based out of an ALF in order to slow the transition member to full time ALF placement."
7. On May 26, 2009 the Office of Appeal Hearings received a request for a hearing on the matter.

CONCLUSIONS OF LAW

Fla. Stat. §409.031 assigns responsibility for the administration of social service funds and states as follows:

> The department is designated as the state agency responsible for the administration of social service funds under Title XX of the Social Security Act."

Fla. Stat. §430.705 refers to long-term care community diversion and states in part:

> Implementation of the long-term care community diversion pilot projects-- (1) In designing and implementing the community diversion pilot projects, the department shall work in consultation with the agency.
>
> (2)(a) The department shall select projects whose design and providers demonstrate capacity to maximize the placement of participants in the least restrictive appropriate care setting. ...
>
> (9) Community diversion pilot projects must:
>
> (a) Provide services for participants that are of sufficient quality, quantity, type, and duration to prevent or delay nursing facility placement.

(b) *Integrate acute and long-term care services*, ...

(c) Encourage individuals, families, and communities to *plan for their long-term care needs.*

(d) Provide skilled and intermediate nursing facility care for participants who cannot be adequately cared for in noninstitutional settings. ...

Fla. Admin. Code Rule 59G-1.001 applies to the Florida Medicaid Program and states in part:

> Purpose-The agency adopts these rules to comply with the requirements of Chapter 409, Florida Statutes. All rules in Chapter 59G, F.A.C., must be read in conjunction with the statutes, federal regulations, and all other rules and regulations pertaining to the Medicaid program.

Fla. Admin. Code Rule 59G-1.010 (166) defines medical necessity and medically necessary as follows:

> "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 petitioner's representative stated that he does not understand why if his mother has psychiatric problems, the respondent would pay for the two days at the ALF and not at the current adult day care program. A cost of services was not provided during the hearing. He states that his mother is doing well in the day care program, but if she is not allowed to continue there she may have to be "committed." The petitioner takes 14 medications daily.

The representative presented a letter from the petitioner's psychiatrist stating, "...This letter is to request for Mrs. continue treatment 5 days a week, she is benefiting greatly from her everyday involvement in this activity." A second letter was presented by the petitioner's physician (internist) listing only her medical problems, but with no recommendation for adult day care as a medical necessity.

The provider argues that the petitioner has been approved for three days weekly in order to meet her needs. Their goal is to keep the petitioner in the least restrictive environment, but medical necessity must be met in order to justify the level of service. The provider states that adult day care is not a recognized plan of care for mental health treatment and an alternative (2 days in ALF) was offered. He states that the psychiatrist may recommend that the petitioner continue with the adult day care five days a week, however it does not mean that it is a medically necessary service.

Based on the evidence, the rules and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the respondent met its burden in establishing that the services were correctly reduced from five days to three days a week. Given the representative's concerns on his mother's mental health, the alternative service (ALF) is justified for the two days of the week. Saturday hours remain unchanged.

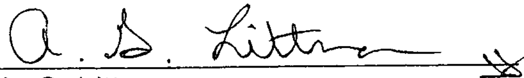
DECISION

The appeal is denied and the agency's action 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 22nd day of July, 2009, in Tallahassee, Florida.



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