

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

FILED  
APR 02 2010  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 10F-00713

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 March 30, 2010, at 11:02 a.m., in Lake Worth, Florida.

The petitioner was not present. Representing the petitioner was her daughter,

Appearing as a witness was \_\_\_\_\_, grandson. Representing the respondent was Dave King, management analyst, Agency for Health Care Administration (AHCA). Appearing as witnesses, telephonically at their request, were Gregory Schemel, chief compliance officer, American Eldercare, and Janice Miller, contract manager, Department of Elder Affairs (DOEA).

**ISSUE**

At issue is whether the respondent was correct in reducing Home Health Aide hours from 20 to 10 per week due to the services being deemed not medically necessary. The respondent has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner is an eighty-four year old (DOE) recipient of Nursing Home Diversion Waiver Program benefits. She has been receiving these benefits since October 2008.
2. On an approximate quarterly basis, the respondent will review the petitioner's Plan of Service. In this instant case a review was done January 2010.
3. In reviewing the Home Health Aide service, the petitioner was receiving 20 hours per week. With the daughter coming to the home to help with the meal preparation and shopping, it was determined that these hours were no longer needed. Also not needed were respite hours.
4. Because the petitioner can feed herself and needs some help in dressing, the respondent sought to reduce the service by ten hours weekly. It is noted that the respondent would add two hours of companion care for socialization purposes.
5. It is also noted that the daughter's husband has health problems so the respondent added five hours back in February 2010. However, these extra five hours would be eliminated March 31, 2010.
6. The respondent has explained that the petitioner would best be served if she went to an assisted living facility (ALF) or an adult daycare that the Waiver would pay for. However, the petitioner does not want to leave her home where she feels most comfortable.

7. The representative explains that her mother's medical condition is worsening, including her dementia. Also, the husband's medical condition has not improved so she must work full time. This means less time with her mother, the petitioner.
8. The mother can no longer assist in the meal preparation. The representative would like to keep the five hours or a total of fifteen hours per week.

### **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. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration and its website explains:

Medicaid is the state and federal partnership that provides health coverage for selected categories of people with low incomes. Its purpose is to improve the health of people who might otherwise go without medical care for themselves and their children. Medicaid is different in every state. Florida implemented the Medicaid Program on January 1, 1970, to provide medical services to indigent people. Over the years, the Florida Legislature has authorized Medicaid reimbursement for additional services. A major expansion occurred in 1989, when the United States Congress mandated that states provide all Medicaid services allowable under the Social Security Act to children under the age of 21.

**42 C.F.R. § 440.230 Sufficiency of amount, duration, and scope**, states in

part:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

**Florida Administrative Code 58G-1.010 Definitions** 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; 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.

## Home Health Services Coverage and Limitations Handbook July 2008

**Covered Services, Limitations, and Exclusions** states in part:

### **Home Health Aide Service Requirements**

Home health aide services may be reimbursed only when they are:

Ordered by the attending physician;

Documented as medically necessary;

Provided by an appropriately trained aide;

Consistent with the physician approved plan of care; and

Delegated in writing and provided under the supervision of a registered nurse.

### **Home Health Aide Services**

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

Assisting with the change of a colostomy bag;

Assisting with transfer or ambulation;

Reinforcing a dressing;

Assisting the individual with prescribed range of motion exercises that have been taught by the RN;

Assisting with an ice cap or collar;

Conducting urine test for sugar, acetone or albumin;

Measuring and preparing special diets;

Providing oral hygiene;

Bathing and skin care; and

Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

In this instant case, the respondent carries the burden of proof when reducing or terminating benefits or services. Evidence and testimony provided has shown that the petitioner was able to perform certain functions at home, such as meal preparation. She was assisted by her daughter with certain activities of daily living (ADL) such as dressing and bathing.

However, the daughter must now spend more time working due to her husband's medical condition. Also, the petitioner's medical condition is deteriorating.

The petitioner's care manager recommended the decrease in Home Health Aide hours to ten per week. These hours were temporarily increased to fifteen hours per week when the husband fell ill.

Prior hearings with this hearing officer regarding the reduction of service hours had the Agency gradually reduce hours offered. This is to allow the aide or relative to become acclimated to the reduced hours. An immediate reduction of 10 hours or 50 percent is too drastic.

### **DECISION**

The appeal is granted. The reduction to 15 hours per week of Home Health Aide will remain pending the evaluation of the new medical evidence concerning the daughter's husband and the daughter's ability to be at the home to help the petitioner.

Also, new medical evidence should be evaluated concerning the petitioner, particularly the dementia.

The daughter should make every effort to have the petitioner placed in an adult daycare or ALF. Here the services would be more readily available.

**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 2<sup>nd</sup> day of April, 2010,

in Tallahassee, Florida.

  
Melvyn Littman  
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Copies Furnished To