

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

[REDACTED]

APPEAL NO. 11F-06606

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 Orange
UNIT: AHCA

RESPONDENT.

FILED
Nov 14, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 3, 2011 at 8:41 a.m. by telephone.

APPEARANCES

For Petitioner: [REDACTED]
Father

For Respondent: [REDACTED]
Agency for Health Care Administration

ISSUE

Whether respondent's action of reducing and terminating petitioner's personal care service hours provided by a home health aide is proper.

PRELIMINARY STATEMENT

At the hearing, respondent was represented by [REDACTED] a Human Services Program Specialist with the Agency for Health Care Administration (AHCA). [REDACTED]
[REDACTED] a Physician Reviewer with [REDACTED], presented testimony

on AHCA's behalf as a witness from the Agency's Peer Review Organization (PRO). Respondent presented eleven exhibits, which were marked and entered as respondent's exhibits "1" through "11" respectively. Petitioner was represented by his parents, [REDACTED]. Petitioner submitted no items into evidence.

The record was held open until October 10, 2011 to allow petitioner's parents to submit documents into evidence not previously received. The documents were received timely and marked and entered into evidence as petitioner's composite exhibit "1." Respondent was given until October 17, 2011 to file a response to the documents; no response was received.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner is a sixteen-year-old recipient of personal care services through the Florida Medicaid State Plan Program (Medicaid State Plan). Petitioner has diagnoses of cerebral palsy, mental retardation, ADHD, and autism. Petitioner is non-verbal and ambulates with the assistance of a wheelchair or by crawling. He requires assistance to complete his activities of daily living (ADLs).
2. Petitioner lives in the family home with his mother and father. His mother works 10:30 a.m. to 8:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. Saturday and Sunday. Petitioner's father does not work. Petitioner does not attend school, he is hospital home bound. He receives three hours of occupational therapy, three hours of physical therapy, and three hours of speech therapy weekly.

3. The Agency contracts with a Peer Review Organization (PRO) to perform medical utilization reviews for private duty nursing and personal care services through a prior authorization process for Medicaid State Plan beneficiaries. The prior authorization review determines the medical necessity of the hours requested pursuant to the requirements and limitations of the Medicaid State Plan. As of June 1, 2011, the Agency's PRO is [REDACTED]. Prior to June 1, 2011, the Agency was under contract with [REDACTED] to make petitioner's initial prior authorization determinations. Although [REDACTED] did not make the initial determinations, they are currently authorized to represent the Agency and provide additional authorizations as necessary. For the purposes of this order, both organizations will be referred to as the PRO.

4. A request for service is submitted by a provider along with all information and documentation required for the PRO to make a determination of medical necessity for the level of service requested. A medical necessity review is conducted every 180 days (six-month period) and if necessary, a request for modification may be submitted by the provider.

5. Petitioner previously received personal care services through the Home and Community Based Services Medicaid Waiver (Medicaid Waiver) and transitioned to the Medicaid State Plan to receive these services. The Agency for Persons with Disabilities administers the Medicaid Waiver program. Petitioner previously received eight (8) HHA hours daily, seven (7) days a week through the Medicaid Waiver.

6. Petitioner receives respite service hours through the Medicaid Waiver program at a weekly rate of 22.75 hours. Petitioner is currently using respite services to assist with completing his ADLs.

7. On May 25, 2011, a request for home health aide (HHA) services to be provided at a rate of eight (8) hours daily, seven (7) days a week was submitted by Caring First on petitioner's behalf for coverage through the Medicaid State Plan.

8. A physician consultant from respondent's PRO completed a review of the requested services and denied all of the requested hours. A denial letter was subsequently issued to petitioner.

9. Petitioner's request was subsequently reviewed by respondent's PRO for medical necessity. Upon review, the requested services were denied entirely. A denial letter was subsequently issued to petitioner.

10. On August 18, 2011, petitioner's father requested a hearing because he disagreed with respondent's reduction and termination of petitioner's HHA hours.

11. Petitioner's Physician's Order for personal care services dated March 15, 2011, provides that he receive HHA services eight (8) hours per day, seven (7) days per week.

12. Petitioner's Plan of Care completed by his physician specifies the services to be provided as: bathing and grooming, toileting and elimination, oral hygiene, and range of motion and positioning. Additionally, the plan indicates petitioner has a g-tube and provides for the PCA to provide g-tube feedings several times throughout the day. The plan also indicates petitioner has no safety awareness.

13. [REDACTED] argued that an HHA is not authorized to provide g-tube feedings or administer medications.

14. A letter dated September 20, 2011 by [REDACTED] provides: "It is medically necessary for [Petitioner] to be supervised at all times to ensure his safety, deliver all feedings by gastronomy tube, provide daily care, and prevent complications related to his numerous medical conditions." See Petitioner's Exhibit 1, page 10.

15. Petitioner's father has various medical limitations preventing him from lifting petitioner; petitioner's mother does not have any medical limitations.

16. Respondent argued petitioner's request for hours exceed the requirements of medical necessity and are excessive. [REDACTED] maintained that since petitioner's mother has no medical limitations, she can provide transfers and lifting assistance before and after her scheduled work hours and petitioner's father can provide for other care not requiring lifting.

17. Petitioner's father argued the requested hours are appropriate due to his medical limitations and the level of care petitioner requires. He explained that he is unable to lift petitioner or adequately ensure petitioner's safety. Further clarification was provided concerning petitioner's mother's work hours.

18. After hearing testimony regarding petitioner's mother's work schedule, [REDACTED] [REDACTED] offered to authorize two (2) HHA hours daily Monday through Friday in the evenings. She explained the authorization in that petitioner's father is unable to assist petitioner with transfers, so the HHA will be able to provide such assistance in the evening, during the extended absence of petitioner's mother.

19. [REDACTED] maintained that petitioner's mother can provide lifting and ADL assistance before work Monday through Friday and before and after work on Saturday and Sunday based on her indicated work hours. [REDACTED] further argued that while petitioner's mother is working, his father can provide ADL assistance that does not require lifting or bending due his medical limitations.

CONCLUSIONS OF LAW

20. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat. § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

21. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

22. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

23. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

24. The burden of proof was assigned to the respondent pursuant to Fla. Admin. Code R. 65-2.060(1).

25. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

26. Florida's Administrative Code, 59G-1.010(166), defines medical necessity as:

"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.

27. The Florida Medicaid Home Health Services Coverage and Limitations

Handbook (Medicaid Handbook) has been promulgated by reference in the Florida Administrative Code at 59G-4.130 (2).

28. The Medicaid Handbook, pages 2-22 and 2-23 states in relevant part:

Personal Care Services Definition

Personal care services are to provide medically necessary assistance with activities of daily living that support a recipient's medical care needs.

...

Personal Care Services Requirements

- Documented as medically necessary;
- Prescribed by the attending physician if provided through a home health agency;
- Supervised by a registered nurse if provided through a home health agency;
- Supervised by the parent or legal guardian if provided by a non-home health agency;
- Provided by a home health aide or independent personal care provider;
- Consistent with the physician, support coordinator, or case manager approved plan of care; and
- Authorized prior to providing services

...

Reimbursable Personal Care Services

Services may include:

- Bathing and grooming (including hair care and shaving);
- Toileting and elimination;

- Oral hygiene;
- Range of motion and positioning; and
- Oral feedings and fluid intake.

29. [REDACTED] argued that a home health aide cannot administer g-tube feedings. Upon review of the Medicaid Handbook, "oral feedings" are identified as a reimbursable service; g-tube feedings are not. Additionally, page 2-15 of the handbook mentions g-tube feedings as a skilled nursing service, rather than a service provided by a home health aide. Therefore, respondent's argument concerning g-tube feedings is accepted and a home health aide cannot administer g-tube feedings.

30. Page 2-10 of the Medicaid Handbook provides a list of services excluded by Medicaid State Plan for the home health services program. Among the service exclusions is baby-sitting, which encompasses activities related to supervision.

31. Personal care services are limited by the exclusions and limitations specified in the Medicaid Handbook. A Plan of Care or Physician's Order does not supersede the exclusions and limitation provisions of the handbook.

32. Personal care services are to provide assistance with activities of daily living that support a recipient's medical care needs. Upon review of the evidence and testimony, petitioner requires assistance with his ADLs. [REDACTED] explanation of the PRO's determination and her recommendation to increase hours Monday through Friday when petitioner's mother works, accounts for petitioner's level of ADL service needs not capable of being provided for by his parents.

33. The Plan of Care and letter by [REDACTED] reference petitioner's constant need for supervision and safety monitoring (another form of supervision); these are needs falling under the program exclusion of baby-sitting. The PRO's modified authorization

strictly provides for ADL assistance and excludes time for supervision or services such as g-tube feeds which are not capable of being provided by a home health aide. An authorization for services in excess of the PRO's modified authorization would primarily provide "baby-sitting" and are properly excluded.

34. Furthermore, petitioner currently receives respite services through the Medicaid Waiver program. Testimony indicates petitioner has been using these respite hours to assist with his ADLs in a manner consistent with personal care services. Pursuant to page 2-2 of the Medicaid Handbook, Medicaid reimburses services that do not duplicate another provider's service. Therefore, should additional service needs arise that have not been deemed medically necessary by respondent's PRO, an alternative service provider is available to provide such care.

35. After considering the evidence and relevant laws set forth above, respondent has met its burden of proof in that a reduction of Petitioner's HHA hours is proper, as modified by [REDACTED].

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED IN PART and GRANTED IN PART. Therefore, petitioner shall be authorized to receive two (2) HHA hours daily, Monday through Friday; the remaining requested hours are 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 Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with

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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 _____ day of _____, 2011,

in Tallahassee, Florida.

Michael Sauve
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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