

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. 14F-10949

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matters on January 27, 2015, March 10, 2015, May 19, 2015, and September 10, 2015.

APPEARANCES

For the Petitioner: [REDACTED] Petitioner's son.

For the Respondent: Dianna Chirino, Senior Program Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the denial of the Petitioner's request for the nutritional supplement Glucerna and Petitioner's request for an increase in personal care hours. The Petitioner has the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The Petitioner submitted numerous e-mails for the hearing which were marked Petitioner's Composite Exhibit 1 for identification only.

Appearing as witnesses for the Respondent were the following individuals from Sunshine Health, which is Petitioner's managed health care organization: India Smith, Grievance and Appeals Coordinator; Mayra Infantone, Case Management Director; Rosa Brugal, Case Manager; Mike Thomas, PDO Supervisor; Dr. John Carter, Medical Director; Rolande Francois, Case Manager Supervisor; and Karel Fernandez, Case Manager. Also present as representatives for Sunshine were Catherine Dorvil, Esq. and Mamie Joeveer, Esq. Also present as an observer for the Respondent was David Nam, Esq.

The Agency's evidence packet was entered into evidence as Respondent's composite Exhibit 1. After the March 10, 2015 hearing concluded, the record was left open for Sunshine to submit a copy of Petitioner's February 2014 health assessment. This document was subsequently received and marked as Respondent Exhibit 2.

The hearing was reconvened on September 10, 2015 for consideration of additional evidence submitted by the Respondent concerning Petitioner's coverage with her prior health plan, Coventry Health Plans, pursuant to the hearing officer's Order Reconvening Hearing and Requesting Additional Information. These documents were marked Respondent Exhibit 3.

Also present for the hearings were Spanish language interpreters from Propio Language Services – [REDACTED] Interpreter number [REDACTED] [REDACTED] Interpreter number [REDACTED] and [REDACTED] Interpreter number [REDACTED]

Petitioner raised other issues at the initial hearing such as the denial of a cervical collar, denial of adult diapers, and a denial of bathroom remodeling. However, since these services had apparently been approved by Sunshine, the undersigned did not consider those issues in this hearing. Petitioner subsequently filed separate hearing requests on those other issues, which were assigned different appeal case numbers.

FINDINGS OF FACT

1. The Petitioner is ninety years of age and lives with her son. Her medical conditions include [REDACTED]

[REDACTED] She is wheelchair-bound and utilizes adult diapers for incontinence.

2. The Petitioner is a Medicaid recipient who was enrolled in the Statewide Medicaid Managed Care (SMMC) – Long Term Care (LTC) plan. She began receiving services under the plan from Sunshine on February 1, 2014. She was previously covered by Coventry Health Plans.

3. The Agency For Health Care Administration (AHCA) is responsible for management of the managed long-term care plan contracts, statewide policy decisions and interpretation of all federal and state laws, and rules and regulations governing the contract. Managed Care Organizations such as Sunshine provide services to Medicaid recipients pursuant to a contract with AHCA, a partial copy of which is included in Respondent Exhibit 1.

4. On September 29, 2014, Sunshine sent a notice to Petitioner stating her September 19, 2014 request for the nutritional supplement Glucerna had been denied.

The notice stated the reason for the denial, which was "member does not meet Florida State Criteria for Enteral Formula."

5. On September 11, 2014, Sunshine sent a notice to Petitioner stating her request for an increase in personal care hours through the PDO program was denied. The notice stated the request was denied because "member's needs as of last assessment completed on 8/21/2014 does not show need for increase in hours." The PDO program refers to "Participant Directed Option" under which the participant may choose the provider of services. In the Petitioner's case, her son was serving as the caregiver providing her personal care assistance.

6. At the time of the denial of the request for an increase in personal care hours, Petitioner was receiving thirty four (34) hours weekly of personal care assistance and her son was the provider of those services. Petitioner requested an increase of three hours weekly in those hours. Respondent's witness, Mr. Thomas, stated that the request for an increase in hours was denied based on Petitioner's August 2014 health assessment and a determination that there was no need for an increase in hours.

7. Mr. Thomas also stated that effective October 31, 2014, the PDO hours were terminated because Petitioner's son became her designated power of attorney and, therefore, she was no longer eligible to participate in the PDO program. At that time, a home health agency began providing the personal care assistance to the Petitioner. Petitioner's son continued to provide the care to his mother as an employee of that home health agency.

8. With regard to the personal care hours, Petitioner's son stated he believed the hours should have been increased from thirty four to thirty seven hours weekly because

Sunshine had offered to provide three hours weekly of respite care. He rejected the respite care and felt that Sunshine should have added those three hours to the personal care hours so that those hours would total thirty seven hours weekly.

9. Regarding the Glucerna, Respondent's witness, Dr. Carter from Sunshine, stated this request was denied because Petitioner's BMI (body mass index), which is a measure of nutritional status, was normal. He also stated Petitioner had no medical diagnosis showing that she cannot eat or swallow normal food.

10. Petitioner's son stated his mother had been consuming Glucerna for five years and it helped her control her [REDACTED] by elimination blood sugar spikes. He stated that after his mother stopped consuming Glucerna, her blood sugar levels increased, her Alzheimer's condition worsened, and she became totally homebound. Petitioner was receiving Glucerna from Coventry Health Plans prior to her enrollment with Sunshine on February 1, 2014 and she has never received Glucerna through Sunshine. Her supply of Glucerna was exhausted in January 2014.

11. Respondent's representative stated that continuity of care requirements require a Medicaid recipient to continue receiving the same services for a period of sixty (60) days when changing from one plan provider to another. The new LTC plan provider should then conduct an assessment of the patient and make a determination as to which services are needed by the patient. Petitioner enrolled with Coventry Health Plans on December 1, 2013 and then enrolled with Sunshine on February 1, 2014. Sunshine performed an assessment on February 13, 2014 and determined Petitioner had a need for home-delivered meals, but not for Glucerna.

PRINCIPLES OF LAW AND ANALYSIS

12. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R 65-2.056.

14. The standard of proof in an administrative hearing is a preponderance of the evidence, in accordance with Rule 65-2.060 (1), Fla. Admin. Code. The preponderance of the evidence standard requires proof by “the greater weight of the evidence,” (Black’s Law Dictionary at 1201, 7th Ed.).

15. Fla. Stat. § 409.979 sets forth eligibility requirements for the Long-Term Care Program and states:

(1) Medicaid recipients who meet all of the following criteria are eligible to receive long-term care services and must receive long-term care services by participating in the long-term care managed care program. The recipient must be:

(a) Sixty-five years of age or older, or age 18 or older and eligible for Medicaid by reason of a disability.

(b) Determined by the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to require nursing facility care as defined in s. 409.985(3).

16. As stated in the Findings of Fact, the Petitioner was determined to be eligible and enrolled in the Long Term Care Program.

17. Covered services under the AHCA contract for LTC plans include Personal Care Services, Nutritional Assessments, Home Delivered Meals, and Medical

Equipment and Supplies, among other services. The contract also provides for a Participant Direction Option (PDO).

18. The following is one of the PDO provisions in the AHCA Contract:

Enrollees who receive PDO services shall be called "participants" in any PDO specific published materials. The enrollee shall have employer authority. An enrollee may delegate their employer authority to a representative. **The representative can neither be paid for services as a representative, nor be a direct service worker** [emphasis added].

19. Based on this provision, Sunshine properly terminated Petitioner's PDO personal care hours effective October 31, 2014 when her son became her representative/agent pursuant to a power of attorney document. Petitioner continued receiving the same amount of personal care services after that date through a home health agency and her son continued to be her provider of services as an employee of that home health agency. Accordingly, any request for an increase in PDO personal care hours is now moot since the Petitioner is no longer entitled to participate in the PDO program. In any event, the undersigned concludes Petitioner has not demonstrated that an increase in hours was necessary since insufficient evidence was presented to justify an increase in those service hours or to establish that thirty four hours weekly was insufficient to meet Petitioner's needs.

20. The AHCA contract also imposes continuity of care requirements on LTC plans, including the following provision:

The Managed Care Plan shall be responsible for coordination of care for new enrollees transitioning into the Managed Care Plan. In the event a new enrollee is receiving prior authorized ongoing course of treatment with any provider, the Managed Care Plan shall be responsible for the costs of continuation of such course of treatment, without any form of authorization and without regard to whether such services are being provided by participating or non-participating providers.

LTC Managed Care Plans shall provide continuation of LTC services until the enrollee receives an assessment, a plan of care is developed and services are arranged and authorized as required to address the long-term care needs of the enrollee, which shall be no more than sixty (60) days after the effective date of the enrollment.

21. In the Petitioner's case, she was receiving Glucerna from her previous managed care plan, Coventry, until her coverage under that plan ended on January 31, 2014. Her coverage with Sunshine began on February 1, 2014 but Sunshine never provided Petitioner with Glucerna. Sunshine performed its initial assessment of the Petitioner on February 13, 2014 and determined she needed home-delivered meals but not Glucerna.

22. According to the continuity of care requirements, Sunshine should have at least provided Petitioner with Glucerna until the medical assessment was performed on February 13, 2014. However, since that time period has passed, there is no remedy which can be ordered by the hearing officer and that issue is now moot. Medical necessity for the Glucerna at the present time has not been established since Petitioner's medical records do not indicate any malnutrition or inability to consume regular food. Therefore, the hearing officer cannot make a determination that Sunshine should begin supplying Glucerna to the Petitioner now.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 Health Care Administration, 2727 Mahan Drive, Tallahassee, FL

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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 Petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 10th day of November, 2015,

in Tallahassee, Florida.


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