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

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-06732

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in this matter telephonically on September 24, 2015, at 3:10 p.m.

APPEARANCES

For the petitioner:



Petitioner's son

For the Respondent:

Linda Latson, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the respondent incorrectly denied her request for an additional five hours per week of Personal Care services?

PRELIMINARY STATEMENT

██████████ the petitioner's son, appeared on behalf of the petitioner, ██████████
██████████ ("petitioner"). ██████████ may sometimes hereinafter be referred to as the
petitioner's "representative".

Linda Latson, R.N., Registered Nurse Specialist and Fair Hearing Coordinator
with the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on
behalf of the Agency for Health Care Administration. The following individuals from
Amerigroup appeared as witnesses on behalf of the Agency: Mary Colburn, M.D., Long-
Term Care Medical Director; and Carlene Brock, L.P.N., Quality Operations Nurse.

The respondent introduced Exhibits "1" through "5", inclusive, at the hearing,
which were accepted into evidence and marked accordingly. The hearing record in this
matter was left open until the close of business on September 28, 2015 in order for the
respondent to submit the relevant portion of the contract between the Agency for Health
Care Administration and Amerigroup and the Amerigroup Member Handbook provisions
relating to personal care. Once received on September 25, 2015, this information was
accepted into evidence and marked as respondent's Exhibit "6". The hearing record
was then closed.

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. The petitioner is a 76-year-old female residing in ██████████ Florida.
2. Petitioner was eligible to receive Medicaid services at all times relevant to
this proceeding.

3. The petitioner is an enrolled member of Amerigroup. Amerigroup is a health maintenance organization ("HMO") contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. The petitioner's effective date of enrollment with Amerigroup was November 1, 2013.

5. The petitioner is diagnosed with [REDACTED]
[REDACTED]

6. The petitioner had a spinal cord tumor surgically removed in 2012 which has affected her ability to walk. The petitioner can ambulate short distances using a walker but needs the assistance of a wheelchair for longer distances.

7. The petitioner requires total assistance with all of her activities of daily living including bathing, dressing, hair care, oral care, and hygiene.

8. The petitioner is partially incontinent. She sometimes requires assistance with the changing of incontinence products.

9. The petitioner lives in the family home with her adult son and his partner.

10. The petitioner's son is employed full-time. Although his normal work hours are from 8:00 a.m. to 4:30 p.m., he sometimes has to work late. The petitioner's son also has a part-time job which requires him to work from either 8:00 a.m. to 4:30 p.m. or 9:00 a.m. to 5:30 p.m. on Saturday and Sunday.

11. The son's partner is also employed full time. He works from 4:00 p.m. to 12:30 a.m., five days per week. The days of the week on which he works fluctuate.

12. Neither the petitioner's son nor his partner have any physical limitations which limit their ability to assist the petitioner.

13. The petitioner currently receives 21 hours per week (three hours per day) of personal care services.

14. The petitioner receives adult day health care services five days per week, Monday through Friday. The petitioner is at adult day health care six to seven hours per day.

15. On or about July 20, 2015, the petitioner's representative requested an additional five hours per week of personal care services, to be used one hour per day.

16. In a Notice of Action dated July 23, 2015, Amerigroup notified petitioner that her request for an additional five hours per week of personal care services was denied.

17. The Notice of Action states, in part:

■ We determined that your requested services are not medically necessary because the services do not meet the reasons(s) checked below: (*See Rule 59G-1.010*)

■ Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider. ...

18. The petitioner's aide arrives at approximately 6:30 a.m. Monday through Friday and stays with the petitioner until she is picked up for adult day health care at or around 8:30 a.m.

19. During that time, the petitioner's aide assists petitioner with her activities of daily living, including bathing, dressing and toileting. She also prepares breakfast for the petitioner and assists her with eating.

20. During the day, the petitioner receives a hot meal at her adult day health care program.

21. Attendants at the adult day health care program assist the petitioner with any toileting requirements during the day as well as with the changing of incontinence products if that becomes necessary.

22. The petitioner's private aide returns in the afternoon at approximately 4:00 p.m. or 4:30 p.m. to meet the petitioner as she arrives home from adult day health care. The petitioner's aide spends one hour with her in the afternoon. During that time, the aide attends to any toileting and hygiene requirements and provides the petitioner with a snack and water.

23. It is the position of the petitioner's representative that one additional hour of personal care services in the afternoon Monday through Friday will allow the aide to provide additional assistance to the petitioner.

24. It is the respondent's position that the services it is providing are meeting the petitioner's basic needs and are adequate.

PRINCIPLES OF LAW AND ANALYSIS

25. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80, Fla. Stat.

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

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

28. In the present case, the petitioner is requesting additional services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

29. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

30. The Florida Medicaid program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid program is administered by respondent.

31. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

32. Under § 1915(c) of the Social Security Act (42 USC § 1396n(c)), a state may obtain a Medicaid waiver that allows the state to include in the state's Medicaid program the cost of home or community-based services (other than room and board) provided to individuals who otherwise would require care in a hospital, nursing facility, or intermediate care facility.

33. Home or community-based services include personal care services, habilitation services, and other services that are "cost effective and necessary to avoid institutionalization." See 42 CFR § 440.180.

34. Section 409.978, Florida Statutes, provides that the "Agency shall administer the long-term care managed care program," through the Department of Elder Affairs and through a managed care model. Fla. Stat. § 409.981(1), authorizes AHCA to bid for and utilize provider service networks to achieve this goal. In the instant case,

the provider network/HMO is Amerigroup.

35. The definition of medically necessary is found in the Fla. Admin Code. R. 59G-1.010 which states:

(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.

36. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Chapter 59G-4. In accordance with the above Statute, the Handbook states on page 1-27

Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.

Medicaid HMOs are also required to provide quality and benefit enhancements and can provide other expanded benefits as described in this section.

37. Page 1-28 of the Florida Medicaid Provider General Handbook provides a list of HMO covered services. Page 1-30 of the Handbook explains "Other services that plans may provide include dental services, transportation, nursing facility and home and community-based services."

38. Page 1-30 of the Florida Medicaid Provider General Handbook states: "An HMO's services cannot be more restrictive than those provided under Medicaid fee-for-service."

39. AHCA Contract No. FP021, Attachment II, Exhibit II-B, Effective 07/15/15, Page 15 of 91 (the Long-Term Care Program Contract between the Agency for Health Care Administration and Amerigroup) defines Personal Care as follows:

A service that provides assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service includes assistance with preparation of meals, but does not include the cost of the meals. This service may also include housekeeping chores such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the enrollee, rather than the enrollee's family.

40. The Amerigroup Member Handbook, on Page 10, lists the following as appropriate personal care activities:

- Help at home with bathing, dressing, eating, personal hygiene and other activities
- Help with light cleaning, bed making and meals

41. The personal care services Amerigroup offers to its Long-Term Care Program participants are consistent with those outlined in its contract with the Agency for Health Care Administration.

42. In the present case, the petitioner proffered no evidence to support a conclusion that the three hours per day of personal care services she is currently receiving are not enough to complete the activities contemplated in the above paragraphs, and that additional services are medically necessary. The presently approved three hours per day are sufficient to assist the petitioner with eating, bathing, dressing, personal hygiene, meal preparation, light housekeeping, and any other activities of daily living.

43. Pursuant to the above, the petitioner has not met her burden of proof to demonstrate the respondent incorrectly denied her request for additional personal care services.

DECISION

The petitioner's appeal is hereby DENIED.

NOTICE OF RIGHT TO APPEAL

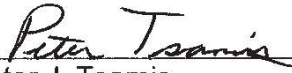
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with 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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 2 day of November, 2015,
in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager