

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

FILED

Dec 11, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07812

PETITIONER,
VS.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 06 PASCO
UNIT: AHCA

RESPONDENT.

FINAL ORDER

The undersigned convened a telephonic administrative hearing on October 14, 2015 at 3:15 p.m. All parties appeared from separate locations.

STATEMENT OF ISSUE

At issue is whether Respondent's denial of Petitioner's request for home modification by a particular contractor was proper. Petitioner holds the burden of proof on this issue by a preponderance of the evidence.

PRELIMINARY STATEMENT

Respondent's Exhibits 1 through 6 were marked and entered into evidence. Petitioner did not submit any documentary evidence. Dr. Marc Kaprow (Medical Director of the Long Term Care Program) and Christian Laos (Senior Compliance Analyst) with United Health Care were present as Respondent's witnesses.

FINDINGS OF FACT

Based upon 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 an adult male over the age of 21 enrolled in United Health Care's long term care managed care plan. He is bed bound and unable to perform any activities of daily living (ADLs) independently. He requires total assistance for hygiene, and has a hooyer lift to assist with transferring.

2. Petitioner has a makeshift ramp that has been used since Petitioner returned home from a hospital visit. He requested a more permanent ramp to allow him access in and out of the home. United does not dispute that Petitioner requires a ramp to access his home.

3. As part of the request, United asked two contractors to evaluate Petitioner's home and submit a quote for building an appropriate ramp.

4. The lower bid contractor took pictures of the home and evaluated the need based on the pictures. His suggestion is to modify the existing ramp, add a turnaround, and add railings. The railings would block the access to the outside yard and outdoor shower, which Petitioner's caregiver uses to bathe him.

5. The higher bid contractor went to Petitioner's home to evaluate the need. His suggestion is to move the door to a new position, add a 5x5 pad outside the door, make a new ramp, and leave the outside yard access.

6. United's position is that both contractors will provide in and out access that Petitioner needs. The service must comply with applicable building and fire codes. The

services are provided for the member's needs only. United asserts the member does not need access to an outdoor shower as he should be receiving bed baths.

7. Petitioner argues that he does require access to the outside yard and shower because that is where he receives showers. Additionally, he argues the current ramp is unstable, too steep, and is cracked, and a new ramp must be built for safety.

CONCLUSIONS OF LAW

8. 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 Chapter 120.80, Florida Statutes.

9. This is a final order pursuant to Sections 120.569 and 120.57, Florida Statutes.

10. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

11. Florida Administrative Code Rule 59G-1.010(166), defines medical necessity, 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.

12. Petitioner's main concern is safety and the access to the backyard. Respondent asserted that the contractors must be in compliance with all building and fire codes, therefore any ramp built or modified will be safe. The contractors were not present to discuss their qualifications or opinions on the best ramp. None of the parties at the hearing were construction experts. Therefore, the undersigned assumes that any work completed by a licensed contractor will be safe and effective for its intended use.

13. The service must meet the definition of medical necessity as set forth above. The parts of the definition at issue are subsections 4 and 5. First, the service provided must be an equally effective least cost alternative. There are two ramps, and assuming both are safe and provide access in and out of the home, these are considered equal. They would provide the exact same service. Therefore, the lower bid is the least cost alternative.

14. The next subsection relates to convenience for the caregiver. The caregiver does not want a ramp which blocks Petitioner's outside yard access because that is where he has showers. Petitioner is unable to stand or shower. He is bed bound and can receive bed baths. Respondent's medical director testified that a bed bath is safer because it does not require a hoist lift transfer, and as effective as a shower. Therefore, an outside shower would be for the caregiver's convenience and not

medically necessary for Petitioner's care as he could have bed baths. Petitioner does not require access to the outside yard for showers.

15. After reviewing the totality of the evidence and legal authority, the undersigned finds that the Petitioner did not meet his burden of proof, and Agency's action was correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby denied and the Agency's action is 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 11 day of December, 2015,

in Tallahassee, Florida.



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