

Dec 29, 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08325

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 07 Volusia
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 21, 2015 at 1:10 p.m.

APPEARANCES

For the Petitioner:  mother

For the Respondents: Sheila Broderick, registered nurse specialist

ISSUE

Whether it is medically necessary for the petitioner to receive 12 hours of personal care services (PCS) daily. The burden of proof was assigned to the petitioner because this is an initial service request.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA or Agency or respondent) administers the Florida Medicaid program. The respondent contracts eQ Health

Solutions (eQ) to perform prior service authorizations for Medicaid home health services. eQ took the action currently under challenge.

By notice dated July 31, 2015, eQ informed the petitioner that his request for 16 hours of PCS was denied in-part. eQ approved 6 hours of PCS daily. The petitioner requested reconsideration. By notice dated August 10, 2015, eQ informed the petitioner that the initial decision was upheld.

The petitioner timely requested a hearing to challenge the decision. The petitioner's PCS certification period was set to expire in October 2015. However, services have been continued pending the outcome of the hearing.

Nilda Fres, waiver support coordinator with the Agency for Persons with Disabilities (APD), was present as a witness for the petitioner. The petitioner submitted documentary evidence which was admitted into the record at Petitioner's Composite Exhibit 1.

Dr. Rakesh Mittal, physician consultant with eQ, was present as a witness for the respondent. The respondent submitted documentary evidence which was admitted into the record as Respondent's Composite Exhibit 1.

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 (age 15) is a Florida Medicaid recipient.
2. The petitioner's suffers from [REDACTED] and

[REDACTED] The petitioner is 55 inches tall and

weighs 112 pounds. The petitioner non-verbal and wheelchair bound. He is incontinent of bowel and bladder. The petitioner is primarily fed by g-tube. He requires total assistance with the activities of daily living (ADLs). The petitioner attends school weekdays from 8:30 a.m. to 2:00 p.m. A school nurse cares for the petitioner while he is at school.

3. The petitioner's father was his primary caretaker. The father committed suicide recently. The mother is now the petitioner's primary caretaker. The petitioner and the mother live alone in the family home. The mother works at Walgreens as a team leader. She works one week on, one week off, 12 hour shifts, 7:30 p.m. to 7:30 a.m. The mother suffers from arthritis, fibromyalgia, and ruptured disk in her back. She is unable to lift the petitioner due to her back issues; however, she is able to assist with all other ADLs.

4. The petitioner's treating physician submitted a Medicaid prior service authorization request for 16 hours of PCS daily. The petitioner's mother is actually seeking 12 hours of PCS daily to care for the petitioner while she is working. She asserted that the physician's office erred when completing the request form.

5. The petitioner has multiple seizures daily (3 to 5 daily, lasting approximately 4 minutes each). The petitioner is at risk of choking during seizures, he requires supervision to ensure that his airway is not blocked. The petitioner loses control of his bowel and bladder during the seizure activity. He must be cleaned and redressed after each seizure. In addition, he requires supervision and monitoring.

6. APD provides support services to individuals with developmental disabilities through the Home and Community Based Developmental Disabilities Waiver (DD Waiver). The petitioner applied for emergency support services with APD after the death of his father. APD approved the petitioner for crisis services so the mother could continue to work. APD currently provides 12 hours of PCS on the days that the mother works. Nilda Fres, the petitioner's APD waiver support coordinator, testified that the current level of APD funded PCS is temporary, pending the outcome of the hearing. APD has not determined the level of ongoing support it will be able to provide to the petitioner.

7. All home health services must be medically necessary as determined through a prior service authorization process. AHCA contracts with eQ to perform prior service authorizations for home health services.

8. Dr. Rakesh Mittal, a physician consultant with eQ, appeared as a witness during the hearing. Dr. Mittal explained that PCS provides assistance with ADLs (bathing, dressing, grooming, feeding, toileting, etc.). The level of service provided by Medicaid is based on numerous factors, including recipient's medical condition, support needs and natural supports.

9. eQ determined that the petitioner's ADL needs can be met with six hours of PCA daily. A provider can come into the home three times daily in two hour increments to take care of the petitioner's ADLs. eQ concluded that additional PCS hours were in excess of the petitioner's needs. Medicaid rule prohibits the provision of goods and services in excess of the needs of the recipient.

10. Medicaid rule expands the definition of medical necessity for children under age 21 to include the provision all goods and services necessary to treat the child's medical condition. Dr. Mittal testified that this broader definition of medical necessity was taken into consideration in the instant case. Dr. Mittal maintained that the petitioner's need for assistance with ADLs can be met with six hours of PCS daily.

CONCLUSIONS OF LAW

11. By agreement between 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.

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

13. At issue is a request for additional Medicaid services. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

14. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 65-2.060(1)). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

15. The Florida Medicaid Program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid Program is administered by the respondent. 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...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

16. 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.

17. The petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. Section 409.905, Fla. Stat., *Mandatory Medicaid services*, defines Medicaid services for children to include:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.—The agency shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, ...

18. The Medicaid Home Health Services Coverage and Limitations Handbook (The Medicaid Handbook) is incorporated by reference in Rule Division 59G, F.A.C.

19. The Medicaid Handbook addresses PCS services on page 1-2:

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) that enable the recipients to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability. Medicaid reimburses for these services provided to eligible recipients under the age of 21 years.

ADLs include:

- Eating (oral feedings and fluid intake)
- Bathing
- Dressing
- Toileting
- Transferring

- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions)

IADLs (when necessary for the recipient to function independently) include:

- Personal hygiene
- Light housework
- Laundry
- Meal preparation
- Transportation
- Grocery shopping
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)
- Medication management
- Money management

Skilled interventions that may be performed only by a licensed health professional are not considered personal care services.

20. The discussion of PCS services is further addressed on pages 2-24 and 2-

25:

Medicaid reimburses personal care services for recipients under the age of 21 who meet all of the following criteria:

- Have a medical condition or disability that substantially limits their ability to perform their ADLs or IADLs
- Have a physician's order for personal care services
- Require more individual and continuous care than can be provided through a home health aide visit
- Do not have a parent or legal guardian able to provide ADL or IADL care.

Personal care services must be all of the following:

- 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

- Supervised by the recipient if the services are provided by a non-home health agency and the recipient is a legal adult between the ages of 18 and 21 with no legal guardian
- Provided by a home health aide or independent personal care provider
- Consistent with the physician approved plan of care
- Authorized prior to providing services

Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Where needed, the home health service provider must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.

21. The cited authorities explain that home health services must be medically necessary. The level of service provided by Medicaid is based on numerous factors, including recipient's medical condition, support needs and natural supports. The authorities also explain that Medicaid services cannot be in excess of a recipient's needs.

22. The petitioner requested 12 hours daily of PCS to assist with ADLS and to monitor for seizure activity. The respondent approved 6 hours daily. The respondent determined that this was sufficient time to address the petitioner's ADLs. Monitoring and supervision are not Medicaid covered services.

23. After careful review, the undersigned concludes that the respondent's decision in this matter was correct. Medicaid rules state the PCS provides assistance with ADLs and IADLs. The petitioner did not prove by a preponderance of the evidence that it is medically necessary for him to receive 12 hours of PCS daily. The evidence proves that the petitioner needs someone to be in the home to provide supervision and

monitoring. Medicaid rules do not include a provision for these services unrelated to the provision of ADLs and IADLs.

DECISION

The 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 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 29 day of December, 2015,

in Tallahassee, Florida.



Leslie Green
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myffamilies.com

Copies Furnished To: [REDACTED] Petitioner
Debbie Stokes, Area 4, AHCA Field Office Manager