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

[redacted]

APPEAL NO. 15F-08326

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 19 Martin
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing in the above referenced matter was convened in West Palm Beach, Florida on December 7, 2015 at 9:20 a.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's sister

For the Respondent: Linda Latson
Registered Nurse Specialist

ISSUE

Whether respondent's partial approval of outpatient Speech Therapy services was proper[1] and whether a $1500.00 cap on outpatient services should be lifted. The burden of proof was assigned to the petitioner.

[1] Petitioner requested the service twice per week for 8 weeks. Respondent approved the service twice per week for 6 weeks.

PRELIMINARY STATEMENT

Petitioner was present and represented by his sister. Also present was petitioner's mother, [redacted] Petitioner's exhibit "1" was accepted into evidence.

Ms. Latson appeared as both a witness and representative for the respondent. Present from Sunshine Health by telephone were Tiffany Smith, Registered Nurse/Grievance and Appeals Coordinator II and Dr. Ernest Burtha, Medical Director. Respondent's exhibit "1" was accepted into evidence.

Administrative notice was taken of the Florida Medicaid Therapy Services Coverage and Limitations Handbook.

The record was held open through December 14, 2015 for respondent to provide an authority capping outpatient services for individuals over the age of 21 at $1500.00 per year. Information was timely received and entered as respondent's exhibits "2" and "3".

The record was held open through December 21, 2015 to allow petitioner to submit a written response to respondent's post hearing submission. A response was not 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. The petitioner's date of birth is [redacted]

2. In 2013 petitioner experienced a [redacted] Following the injury, a coma was induced. For approximately six weeks, petitioner was on a respirator. It is believed he also suffered [redacted]

3. After hospitalization petitioner was transferred to a skilled nursing facility for approximately six months. In May 2014 he moved to his sister's residence. The sister is the primary caregiver.

4. Petitioner no longer requires a respirator.

5. Petitioner is primarily wheelchair bound.

6. Petitioner's medical services are provided through respondent's Statewide Medicaid Managed Care Program. Since July 1, 2014 these services have been provided by Sunshine Health.

7. Sunshine Health has also approved outpatient physical and occupational therapy.

8. Respondent's contract with Sunshine Health caps the combined amount of outpatient therapy each year to $1500.00. The year is based on the date of enrollment with the Plan.

9. Mammograms and obstetric ultrasounds are the only outpatient services which do not count toward the $1500.00 yearly cap.

10. Petitioner is also enrolled in respondent's Long Term Managed Care Program (LTMC Program). Those services are provided by United Healthcare. Petitioner was approved for in-home speech therapy through the Long Term Care Program.

11. On September 2, 2015 petitioner requested outpatient speech therapy services from Sunshine Health. The requested frequency was twice per week for eight weeks.

12. Outpatient therapies are provided at a location other than the recipient's place of residence.

13. The requested outpatient speech therapy does not pertain to the provision for an augmentative and alternative communication system.

14. On September 10, 2015 Sunshine Health issued a Notice of Action which partially denied the request. The notice stated, in part: "Request for Speech Therapy (a treatment to help a person talk better) for 2 times a week for 8 weeks is PARTIALLY DENIED. Approve for 2 times a week for 6 weeks. To approve more visits your therapist must send your reevaluation to the health plan." The Notice of Action also stated the requested frequency was not medically necessary.

15. On September 30, 2015 the Office of Appeal Hearings received from petitioner's representative a written request for a Fair Hearing. The correspondence stated, in part:

> I was able to get Outpatient PT, OT, and ST approved through Sunshine for 36 visits of PT, 36 visits of OT and 16 visits of ST (which was partially denied).
>
> The time allotted for these visits is unreasonable: PT & OT expire on 9/30/15. ST not eligible until 10/1/15, due to expire 11/15 ...
>
> Sunshine has placed a $1500.00 CAP on outpatient services, which my brother used in 2 weeks!
>
> Why approve these visits, and then end them, because he reached the cap.

16. Petitioner argues with the approval of outpatient physical and occupational therapy, the $1500.00 cap will be met. As such, not enough funding exists for speech therapy. Petitioner's representative requests the $1500.00 cap be lifted to address needed outpatient speech therapy.

17. Petitioner asserts outpatient speech therapy would, in part, address swallowing issues.

CONCLUSIONS OF LAW

18. 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.

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

20. The standard of proof in an administrative hearing is by 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.).

21. The Florida Medicaid Therapy Services Coverage and Limitations Handbook (Therapy Handbook) is incorporated by reference in the Medicaid Services Rules by Fla. Admin. Code R. 59G-4.320. The Therapy Handbook states, in relevant part:

> Page 1-4:
>
> Speech-language pathology services involve the evaluation and treatment of speech-language disorders.
> Services include the evaluation and treatment of disorders of verbal and written language, articulation, voice, fluency, phonology, mastication, deglutition, cognition, communication (including the pragmatics of verbal communication), auditory processing, visual processing, memory, comprehension and interactive communication as well as the use of instrumentation, techniques, and strategies to remediate, maintain communication functioning, acquire a skill set, restore a skill set, and enhance the recipient's communication needs, when appropriate. Services also include the evaluation and treatment of oral pharyngeal and laryngeal sensorimotor competencies.
>
> Examples are techniques and instrumentation to evaluate the recipient's condition, remedial procedures to maximize the recipient's oral motor

> functions and communication via augmentative and alternative communication (AAC) systems.
>
> Page 2-1:
>
> Medicaid reimburses for the physical therapy (PT), occupational therapy (OT), respiratory therapy (RT), and speech-language pathology (SLP) services described in this handbook. The Florida Medicaid Therapy Services Program reimburses only for the therapy services listed on the Procedure Codes and Maximum Fee Schedule in Chapter 3, Appendix A of this handbook.
>
> Medicaid reimburses for medically necessary therapy services that are provided to Medicaid recipients under the age of 21. Medicaid also reimburses limited services to recipients age 21 and older, specifically: SLP services pertaining to the provision of augmentative and alternative communication systems and PT and OT services pertaining to wheelchair evaluations and fittings. These are the only services in the therapy program that Medicaid reimburses for adults.

22. The Findings of Fact establish the requested outpatient speech therapy does not pertain to the provision of an augmentative and alternative communication system.

23. Page 2-2 of the Therapy Handbook also states services are to be provided only when medically necessary and do not duplicate another provider's service.

24. The definition of medically necessary is found in 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.

25. Sunshine Health's action did not deny the requested weekly frequency of outpatient speech therapy. The service was approved for two visits a week. The issue is that six weeks were approved as opposed to the requested eight weeks.

26. Issuing a partial denial establishes the outpatient speech therapy is medically necessary. Compelling evidence, however, was not presented to establish six weeks v. the requested eight weeks was medically necessary. It is noted that Sunshine Health's Notice of Action stated the request could be reevaluated.

27. The Findings of Fact establish petitioner has accessed in home speech therapy through the LTMC Program.

28. Petitioner has not met the required evidentiary standard to establish the respondent's action of approving outpatient speech therapy twice a week for six weeks as opposed to twice a week for eight weeks was improper.

29. Analysis is next directed to the $1500.00 cap associated with outpatient services.

30. Respondent's Hospital Services Coverage and Limitations Handbook (Hospital Handbook) is incorporated by reference in Fla. Admin. Code R. 59G-5.020.

31. The Hospital Handbook states on page 2-14: "Adult recipients, 21 years of age and older, are limited to $1,500 entitlement per fiscal year for outpatient hospital services.

32. Florida Statute §409.908 (1) also states:

> 3.(b): Reimbursement for hospital outpatient care is limited to $1,500 per state fiscal year per recipient, except for:
> 1. Such care provided to Medicaid recipients under age 21, in which case the only limitation is medical necessity.
> 2. Renal dialysis services.
> 3. Other exceptions made by the agency.

33. The Findings of Fact establish petitioner is not under the age of 21.

34. The Findings of Fact establish the only exceptions to the $1500.00 cap are services related to mammograms and obstetric ultrasounds.

35. No authority was presented or is known by the undersigned which allows an administrative hearing officer to lift the $1500.00 outpatient cap.

36. Petitioner has not established the $1500.00 cap can be lifted for any reason as enumerated by Florida Statute.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's 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 31 day of December, 2015,

in Tallahassee, Florida.

Frank Houston

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Copies Furnished To: [redacted] Petitioner
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