

FILED

Nov 09 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-02618

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 matter on May 19, 2015 and September 10, 2015.

APPEARANCES

For the Petitioner:  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 adult diapers and Petitioner's request for a bathroom modification. The Petitioner has the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

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; Karel Fernandez, Case Manager; and Rolande Francois, Case Manager Supervisor. Also present as representatives for Sunshine were Catherine Dorvil, Esq. and Mamie Joeveer, Esq.

The Agency's evidence packet was entered into evidence as Respondent's composite Exhibit 1. After the hearing was concluded, the record was left open for Sunshine to submit additional evidence concerning the denial of the bathroom modification. This document was subsequently received and marked as Respondent Exhibit 2. The hearing was re-convened on September 10, 2015 to address the additional documents. On or about August 25, 2015, Petitioner received another denial notice regarding diapers. This document was marked Petitioner Exhibit 1 and this denial notice was also addressed at the September 10, 2015 hearing.

Also present for each hearing was a Spanish language interpreter from Propio Language Services – [REDACTED] Interpreter number [REDACTED] and [REDACTED] Interpreter number [REDACTED]

Petitioner also had pending issues concerning the nutritional supplement Glucerna and personal care assistance hours, which were addressed in Appeal Hearing Case Number 14F-10949.

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.

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 March 2, 2015, Sunshine sent a notice to Petitioner stating her February 26, 2015 request for a bathroom modification had been denied. The notice stated the reason for the denial, which was the following:

The request to approve a 02/23/2015 Construction Proposal (for bathroom modification, with total \$9200) is denied. This request exceeds the maximum benefit as per Florida Medicaid guidelines for home modifications (since the present proposal for home modification is over the limit of \$1000 per job, for a maximum of 5 jobs per year). Florida Medicaid guidelines for Home Modifications were used in making this decision.

5. On March 16, 2015, Sunshine sent a notice to Petitioner stating her request for disposable diapers would be denied as of March 26, 2015 and the service terminated. However, the notice also stated “[b]ased on my clinical judgment, approved as medically necessary.”

6. The apparent inconsistency in the notice regarding the disposable diapers was explained at the hearing by one of the Sunshine witnesses, Ms. Infantone. She stated a different type of diaper was approved for the Petitioner in March, 2015, which caused the supply of the other diapers to be terminated effective March 26, 2015. She stated the new diapers are considered a premium diaper due to their size and Petitioner has been approved to receive 128 diapers monthly (2 cases of 64 diapers each).

7. Petitioner’s son stated the correct diapers for his mother are overnight diapers and she started receiving that type of diaper in mid-2014. He stated his mother began receiving a new type of diaper in March, 2015 which were not overnight diapers. She received the correct diapers on April 23, 2015 and two cases were delivered.

8. During the pendency of this hearing, Petitioner received another denial notice dated August 24, 2015 regarding diapers. This notice stated that overnight adult pull-ups would be terminated on September 3, 2015 since it was no longer a covered item per the Florida Medicaid Fee Schedule. Both parties had an opportunity to address this denial notice at the hearing held on September 10, 2015.

9. Ms. Francois from Sunshine explained that there was a change in providers and this is what caused the August 24, 2015 notice to be sent to the Petitioner. The

diapers are to be supplied by a different provider, but the Petitioner will continue receiving diapers.

10. Petitioner's son confirmed his mother received a supply of diapers recently and his chief complaint seems to be that the Sunshine providers have been sending different types of diapers at different times. He claims his mother went without diapers for a four month period due to no diapers or the wrong diapers being provided to her.

11. Regarding the bathroom modification, Petitioner's son stated the first proposed modification was for grab bars only, which were insufficient to meet his mother's needs due to her condition. He also stated that due to the age of the home, additional remodeling of the bathroom is required to meet current building codes. He also said he submitted other remodeling estimates for \$4,900 and \$6,200, which were lower than the \$9,200 estimate that was denied. He claims the \$9,200 estimate was inflated so that it would not be approved by Sunshine.

12. Sunshine's witness, Ms. Smith, stated a bathroom remodeling estimate of \$3,395 had been previously approved by Sunshine, but rejected by Petitioner's son. This estimate was for installation of a ramp, shower, and bath rails. She stated the \$9,200 estimate was denied based on a limitation of \$1,000 per remodeling project contained in the AHCA Aged and Disabled Adult Services Waiver Handbook. She also stated the \$3,395 estimate had been previously approved because Sunshine was not aware of the \$1,000 limitation at the time of that approval.

13. Respondent's representative stated the Aged and Disabled Adult Services Waiver was terminated in 2014 and that Waiver Handbook was repealed.

14. Following the conclusion of the hearing, Sunshine submitted information acknowledging the \$1,000 limit was no longer applicable (Respondent Exhibit 2) and asserting that medically necessary home modifications would be approved. The hearing was thereafter reconvened to address the issue of medical necessity for the bathroom modifications.

15. Dr. Carter from Sunshine testified that medically necessary bathroom modifications have been approved for the Petitioner. This estimate (\$3,395) includes removal of the bathtub and installation of a shower and grab-bars.

16. Petitioner's position is that one of the higher estimates should be approved because additional remodeling is required to make the bathroom handicap accessible.

PRINCIPLES OF LAW AND ANALYSIS

17. 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.

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

19. 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.).

20. 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).

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

22. Covered services under the AHCA contract for LTC plans include medical supplies and home adaptation services, among other services.

23. The AHCA contract describes Home Accessibility Adaptation Services as follows:

Physical adaptations to the home required by the enrollee's plan of care which are necessary to ensure the health, welfare and safety of the enrollee or which enable the enrollee to function with greater independence in the home and without which the enrollee would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies, which are necessary for the welfare of the enrollee. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the enrollee, such as carpeting, roof repair or central air conditioning.

24. Sunshine initially approved a bathroom modification estimate of \$3,395 for the Petitioner, which included replacement of a bathtub with a shower and installation of grab-bars. Petitioner's son submitted other estimates which were higher in cost. Sunshine's denial letter referenced an Aged and Disabled Adult Services Waiver provision which placed a \$1,000 limit on modification services. This provision is no longer applicable since that Waiver was eliminated in 2014. Sunshine acknowledged its error in its supplemental filing and asserted the approval standard for modification services is medical necessity.

25. Fla. Admin. Code R. 59G-1.010 defines medical necessity:

(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 do not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

26. The hearing officer concludes that the \$3,395 estimate provides medically necessary bathroom modifications for the Petitioner since it includes

replacement of the bathtub with a shower as well as grab-bars. Petitioner has not demonstrated medical necessity for the higher estimates.

27. Regarding the issue of the diapers, that issue is now moot since Petitioner began receiving the correct diapers on April 23, 2015 and also continued receiving diapers after the August 24, 2015 denial notice. Petitioner's son also complained that the diapers always arrive late and there have been constant changes in the types of diapers provided to his mother. However, this is not an issue that can be addressed by the hearing officer since it is in the nature of a customer service complaint. Petitioner's son should seek assistance from AHCA concerning customer service issues if he is unable to resolve them directly with Sunshine.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED.

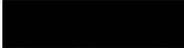
NOTICE OF RIGHT TO APPEAL

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 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.)
15F-02618
PAGE -10

DONE and ORDERED this 9th day of November, 2015,
in Tallahassee, Florida.


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