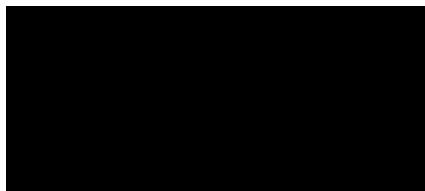


FILED

Feb 04, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09493

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 December 18, 2015, at 11:30 a.m.

APPEARANCES

For the Petitioner:  Petitioner's daughter

For the Respondent: Marielisa Amador, Data Analyst, AHCA

STATEMENT OF ISSUE

At issue is the Agency action of October 27, 2015 partially denying the Petitioner's request for additional home health care service hours under the Long Term Care Program. The Petitioner bears the burden of proving her case by a preponderance of the evidence.


PRELIMINARY STATEMENT

Appearing as witnesses for the Respondent were Dr. Sloan Karver, Medical Director for United Healthcare, and Christian Laos, Senior Compliance Manager for United Healthcare, which is Petitioner's managed care plan.

The Petitioner submitted medical records as evidence for the hearing, which were marked Petitioner Exhibit 1.

The Respondent submitted documents as evidence for the hearing consisting of the following which were marked as Respondent Exhibits: Exhibit 1 – Statement of Matters and Denial Notice; Exhibit 2 – Grievance System Screenshots; Exhibit 3 – Member Notes Reports; Exhibit 4 – Medical Assessment Form.

FINDINGS OF FACT

1. The Petitioner is seventy-five (75) years old and lives with her one of her daughters and two grandchildren (aged 3 and 8). The daughter is not currently working but is attempting to find employment. The Petitioner is non-ambulatory. She previously used a cane or walker to ambulate, but has fallen while doing so. She needs assistance with activities of daily living such as dressing and grooming. Her medical conditions include 

2. The Petitioner currently receives the following home health services – personal care 14 hours weekly, homemaker service 7 hours weekly, and companion

care 7 hours weekly – for a total of 28 hours weekly. She receives this assistance from 1:30 p.m. to 5:30 p.m. daily.

3. The Petitioner is a Medicaid recipient who was enrolled in the Statewide Medicaid Managed Care (SMMC) – Long Term Care (LTC) plan in July, 2014. She receives services under the plan from United Healthcare.

4. 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 United Healthcare provide services to Medicaid recipients pursuant to a contract with AHCA.

5. On or about October 19, 2015, Petitioner requested an additional 21 hours of companion care services weekly and an additional 7 hours of personal care services weekly, for a total of 28 additional hours weekly of home care services.

6. On October 27, 2015, United Healthcare sent a letter to Petitioner informing her that her request for additional services had been partially denied. A total of 31 hours weekly was approved. The letter stated the following as the reason for the denial:

The health plan reviewed your needs for personal care. Personal care includes help for activities of daily living. This includes help for dressing and bathing. Based on our review you need personal care for 14 hours in a week.

The health plan reviewed your needs for a homemaker. Homemaker care includes help for preparing meals and housekeeping. Only homemaker care that is for you, not the whole home, is covered. Based on our review you need homemaker care for 7 hours a week.

The health plan reviewed your needs for companion care. Companion care is non-medical. Companion care is to help you perform activities. Companion care is also to help you socialize. Companion care is not

covered only because you are alone. Based on our review you need companion care for 10 hours in a week. The health plan will not cover the other hours you asked for. The other hours are in excess of your needs. Hours in excess of your needs are not medically necessary.

7. The Petitioner's daughter testified her mother needs additional assistance in the home because her condition has been deteriorating and she has lost a substantial amount of weight because she is constantly in the restroom. She also stated her mother has become severely depressed and cannot do anything on her own.

8. The Respondent's witness, Dr. Karver, testified that the partial denial of the requested services was appropriate because the hours (31 hours weekly) approved were sufficient to provide assistance to the Petitioner with home care. Dr. Karver also stated that the health plan may be able to offer nursing home placement if she requires more assistance than can be provided in the home. Another medical assessment can be performed by United Healthcare to determine the Petitioner's current health status.

CONCLUSIONS OF LAW

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat § 409.285.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the Petitioner since the issue involved a request for an increase in service hours.

12. 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).

13. As stated in the Findings of Fact, the Petitioner was determined to be eligible and enrolled in the Long Term Care Program effective July, 2014.

14. The Petitioner requested a fair hearing because she believes her services under the Program should be increased.

15. Covered services under the AHCA contract for LTC plans include Companion Care Services, Homemaker Services, and Personal Care Services, among other services.

16. Companion Care services are defined in the contract as follows:

Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services

does not entail hands-on nursing care. This service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

17. Homemaker services are defined in the contract as:

General Household activities such as meal preparation and routine household care provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. Chore services, including heavy chore services and pest control are included in this service.

18. Personal Care services are defined in the contract 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.

19. The AHCA contract also provides that a Plan "may place appropriate limits on a service on the basis of such criteria as medical necessity, as defined by the Agency, or for utilization control, consistent with the terms of this Contract, provided the services furnished can be reasonably expected to achieve their purpose."

20. The Florida Medicaid Provider General Handbook ("Medicaid Handbook"), effective July 2012, and Fla. Admin. Code R. 59G-1.010(166) define 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;
 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.

21. After considering the evidence and testimony presented, the hearing officer concludes that the Petitioner has not met the burden of proof in demonstrating that the services under the LTC Program should be increased by 28 hours weekly. The Petitioner undoubtedly has serious medical issues and needs assistance at home. The evidence presented establishes that the Petitioner's needs can be met with the 31 hours weekly of assistance which has been approved by United Healthcare, particularly since the Petitioner does not live alone. The Petitioner's family and caregivers are encouraged to request another medical assessment by United Healthcare if her condition has changed, and to explore other services available under the LTC Program which may more appropriately address her needs.

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.

DONE and ORDERED this 04 day of February, 2016,

in Tallahassee, Florida.



Rafael Centurion
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

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