

STATEMENT OF THE ISSUE

The issue in this case is whether the requested additional 1,888 quarter hours of personal care assistance for Petitioner are medically necessary.

PRELIMINARY STATEMENT

By letter dated November 19, 2008, Respondent, Agency for Persons with Disabilities ("Agency"), notified Petitioner, [REDACTED] that [REDACTED] request for 1,888 additional quarter hours of personal care assistance at a moderate level was denied. According to the letter, the denial was based on the Agency's determination that the requested services were not medically necessary. On December 9, 2008, Petitioner challenged the decision and requested a hearing.

The matter was referred to the Division of Administrative Hearings on December 22, 2008, for assignment of an Administrative Law Judge to conduct the hearing.

At hearing, Petitioner presented the testimony of Melinda [REDACTED], Petitioner's waiver support coordinator, and [REDACTED] Petitioner's non-relative caregiver. Petitioner's Composite Exhibit 1 was admitted into evidence. The Agency presented the testimony of Kim Watson, a reconsideration reviewer. The Agency's Composite Exhibit 1 and Exhibit 2 were admitted into evidence.

A hearing transcript was not filed. Both parties filed Proposed Recommended Orders which have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, [REDACTED], is [REDACTED] who is disabled. [REDACTED]'s primary diagnosis is cerebral palsy, but [REDACTED] other diagnoses include mental retardation, legally blind, and a finger amputation. [REDACTED] functional limitations include bowel and bladder incontinence, contracture of limbs, paralysis, endurance, ambulation, speech, and vision.

2. [REDACTED]'s mental state is assessed to be oriented, but forgetful, and, at times, [REDACTED] is confused and anxious.

3. [REDACTED] is eligible for and receiving services through the Medicaid Waiver Program.

4. [REDACTED] resides in a private home with [REDACTED] non-relative caregiver, [REDACTED] and has resided there for over 25 years. The home in which [REDACTED] resides is owned by [REDACTED]

5. [REDACTED]'s caregiver, [REDACTED] contributes [REDACTED] time to [REDACTED]'s care, while at the same time maintaining full-time employment as [REDACTED]

6. [REDACTED] acts on behalf of [REDACTED] pursuant to a Durable Power of Attorney and a Designation of Health Care Surrogate.

7. [REDACTED] acts as the waiver support coordinator for [REDACTED] and has acted in that capacity since 1996.

8. The Agency is charged with administering the Medicaid Waiver Program for developmentally-disabled persons in Florida.

9. In 2008, the Agency was mandated to place every person in the Medicaid Waiver Program into one of four tiers. Pursuant to Subsection 393.0661(3), Florida Statutes (2008),¹ the Agency assigns developmentally-disabled individuals to one of four tiers, with each tier representing a different dollar limit on the services to be provided.

10. In or about September 2008, the Agency placed ██████ into Tier 3, which has a monetary cap of \$35,000. Prior to ██████ being placed in Tier 3, ██████'s actual cost plan was \$42,922.14.

11. The effect of ██████ being assigned to Tier 3 was a forced reduction in the costs of ██████'s care plan. To adapt to the Tier 3 assignment, ██████'s waiver support coordinator and caregiver had to develop a new budget for ██████ care.

12. In developing a budget for ██████ that was consistent with the dollar limits of Tier 3, ██████ and ██████ assessed the various services available. They then prioritized those services deemed most necessary for ██████'s health and safety.

13. To ensure that ██████ did not spend over the Tier 3 cap, ██████ reduced several services for ██████. The services which were reduced and/or eliminated included occupational therapy, adult day training and transportation. These reductions left a

gap in the cost plan which Petitioner's waiver support coordinator and non-relative caregiver hoped to fill with personal care assistance.

14. [REDACTED], through [REDACTED] non-relative caregiver and [REDACTED] waiver support coordinator, requested the approval of 1,888 additional quarter hours of personal care assistance at the moderate level. The cost of the additional quarter hours of personal care assistance would amount to \$7,080.00.

15. [REDACTED] is non-ambulatory and, due to [REDACTED] physical and functional limitations, requires total care and constant supervision. [REDACTED] requires and is totally dependent on others for the following: (1) toileting about every three hours; (2) meal preparation and assistance feeding [REDACTED] (i.e., cutting up food, as necessary, and indicating to Petitioner where on the plate the various food items are)²; (3) repositioning; (4) physical assistance in transferring from wheelchair to bed and/or other locations; (5) assistance taking medication; and (6) maximum assistance with all aspects of personal hygiene and dressing.

16. [REDACTED] provides personal care assistance to [REDACTED] in the mornings before [REDACTED] goes to the adult day care program, in the evenings when [REDACTED] gets off from work, and on weekends. [REDACTED] receives no compensation for the services [REDACTED] provides to [REDACTED] and is not seeking any compensation.

17. On November 19, 2008, the Agency denied the additional personal care assistance based on its determination that the services were not medically necessary.

18. After the Agency denied Petitioner's request for the additional hours of personal care assistance, [REDACTED] provided one additional day of personal care assistance at [REDACTED] own expense. For the second day, [REDACTED] provided Petitioner with the transportation and adult day care at [REDACTED] ([REDACTED]) own expense, while the hearing was pending. However, [REDACTED] has exhausted [REDACTED] savings and has no money to pay for personal care assistance for [REDACTED]

19. As noted above, [REDACTED] has taken care of [REDACTED] for more than 25 years. [REDACTED] plans to continue to take care of [REDACTED] as long as [REDACTED] can. However, [REDACTED] cannot quit [REDACTED] [REDACTED] to do so.

20. The cost of [REDACTED] providing a personal care assistant for [REDACTED] could possibly be reduced or unnecessary, if [REDACTED] attended adult day care five days a week. Nonetheless, at this point in [REDACTED]'s life, that is not a viable option due to [REDACTED] current health issues.

21. A positive aspect of [REDACTED]'s attending the adult day care is that it provides [REDACTED] with the opportunity for socialization. On the other hand, [REDACTED] gets tired more easily now, [REDACTED] condition relative to the cerebral palsy is getting

progressively worse, and [REDACTED] is sick more frequently. In fact, [REDACTED] is more prone to get sick when [REDACTED] is at the adult day care. When [REDACTED] is sick, [REDACTED] must stay home and needs someone to care for [REDACTED]

22. Currently, the weekday schedule that works best for [REDACTED] is one that allows [REDACTED] to attend adult day care three days and stay at home two days. This schedule is effective for several reasons. First, Petitioner likes this schedule. Second, the schedule balances [REDACTED]'s need to socialize and concerns about [REDACTED] overall health and physical well-being. Third, the schedule takes into account the rigorous time demands on [REDACTED] on the days [REDACTED] attends adult day care. On the days [REDACTED] attends adult day care, [REDACTED] must get up at 5:00 a.m. A van or bus picks up [REDACTED] from [REDACTED] house at 6:00 a.m., and [REDACTED] arrives at the adult day care facility at 8:00 a.m. [REDACTED] returns home from the adult day care facility at 6:00 p.m.

23. About three weeks after the Agency denied Petitioner's request for additional hours of personal care assistance, [REDACTED] received a letter from the Agency. The letter dated December 12, 2008, confirmed that the Agency assessor administered a Questionnaire for Situational Information ("QSI") to [REDACTED] on December 11, 2008. Attached to the letter was the "Synopsis Report" of the QSI.³

24. The above-referenced Synopsis Report is consistent with the documentation Petitioner provided to the Agency when [REDACTED] requested additional quarter hours for personal care assistance. With regard to [REDACTED]'s functional status, the Synopsis Report of the QSI stated that [REDACTED] (1) requires constant physical assistance and mealtime intervention to eat safely; (2) has a disability which prevents [REDACTED] sitting in an upright position and has limited positioning options; (3) needs physical assistance of one person to transfer or change positions; (4) is totally dependent upon staff for personal hygiene and dressing; (5) requires maximum assistance with all aspects of personal hygiene and dressing; and (6) is totally dependent on assistance from others for emergency evacuation of a building.

25. As discussed above, given [REDACTED] physical and functional limitations, Petitioner requires maximum assistance for all of [REDACTED] activities of daily living. The additional quarter hours of personal care assistance requested are needed and required to ensure that [REDACTED]'s health and safety are maintained.

26. Without the requested additional quarter hours for personal care assistance, Petitioner will have to be institutionalized.

27. The evidence established that the additional quarter hours of personal care services requested by [REDACTED] are medically necessary.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action to conduct a de novo hearing in accordance with Section 120.569 and Subsections 120.57(1) and (1)(k), Florida Statutes.

29. Petitioner, as the party seeking additional services, has the burden of proof in this proceeding. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In order to prevail, Petitioner must prove [REDACTED] position by a preponderance of evidence.

30. The Agency has been designated as the Florida agency responsible for all services provided to persons with disabilities under Chapter 393, Florida Statutes (2007). See § 20.197(3), Fla. Stat.

31. The Agency has adopted rules for the Medicaid Waiver Program, as well as rules defining terms applicable to Medicaid programs in general. The term "medically necessary" is defined as follows:

(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.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

Fla. Admin. Code R. 59G-1.010 (166).

32. The Medicaid Handbook is incorporated by reference in Florida Administrative Code Rule 56G-13.080.

33. The Medicaid Handbook, pages 2 through 57, describes "[p]ersonal care assistance" services as follows:

[A] service that assists a recipient with eating and meal preparation, bathing, dressing, personal hygiene, and other self care activities of daily living. The service also includes activities such as assistance with meal preparation, bed making and vacuuming when these activities are essential to the health, safety and welfare of the recipient and when no one else is available to perform them. This service is to be provided on a one-to-one basis. Personal care assistance may not be used solely for supervision.

34. The preponderance of evidence established that the requested 1,888 additional hours of personal care assistance at the moderate level are "medically necessary." Therefore, the request for the additional hours of personal care assistance should be approved.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Respondent, Agency for Persons With Disabilities, that approves Petitioner, ██████'s, request for the additional 1,888 quarter hours of personal care assistance services.

DONE AND ENTERED this 30th day of April, 2009, in
Tallahassee, Leon County, Florida.

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CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of April, 2009.

ENDNOTES

^{1/} All statutory references are to Florida Statutes (2008),
unless otherwise noted.

^{2/} At times, ██████'s muscles become contracted; when this
happens, ██████ is unable to feed ██████ and must be fed.

^{3/} The last page of the Synopsis Report of the QSI, titled "QSI
Attendees," was signed by ██████ as an attendee, and by
██████████ as assessor.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.