STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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August 4, 2014

Docket # 13-445
Date of Hearing: February 27, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

THE DHS POLICY MANUAL: Medical Assistance
Section: 0399.05 Eligibility Requirements, 0399. 10 Overview Level of Care, **0399.12.02 Criteria for High Need**

The facts in your case, the Agency policy, and the complete administrative decision in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant), Beth Bradley (POA) and Agency representatives Holly Peabody, Robert Palin and Ellen Breagy, RN, and the Policy Unit.

Present at the hearing were: Your POA, and agency representative Ellen Breagy, RN. This hearing was conducted via telephone per the appellant's request.

ISSUE: Does the appellant meet the High Level of Care criteria for the Core Waiver?

DHS POLICIES: Please see the attached **Appendix** for pertinent excerpts from the Department of Human Services Policy Manual.

APPEAL RIGHTS:
Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Agency representative testified that:

- The agency conducted a recertification of the appellant's eligibility for the Core Waiver during July 2012. The appellant was on the Medicaid Core Waiver and was residing in the community. The Medicaid Core waiver requires that an individual meet the High Level of Care (LOC) criteria.
- The agency denied the appellant's request for Prior Authorization for a High LOC by notice dated March 1, 2013. (Copy of notice submitted).
- The notice states that the appellant did not meet the High LOC.
- The DHS policy manual section 0399.12.02 identifies what requirements are needed to meet the High LOC for Home and Community Based Services. (copy of policy submitted).
- Beneficiaries shall be deemed to have the High LOC when they require at least limited assistance on a daily basis with at least 2 of the following Activities of Daily Living (ADL's): bathing, personal hygiene, dressing, eating, toilet use, walking or transferring, or require skilled teaching or rehabilitation on a daily basis to regain functional ability in at least one of the following: gait training, speech, range of motion, bowel or bladder control, or have impaired decision making skills requiring constant or frequent direction to perform at least one of the following: bathing, dressing, eating, toilet use, transferring or personal hygiene, or exhibit a need for structured therapeutic environment, supportive interventions, and or medical management to maintain health and safety.
- The agency representative stated that the records that were reviewed (copies submitted) consisted of a Provider Medical Statement completed on December 19, 2012 by Dr. Sabo, and the Case Management Assessment was completed by an agency caseworker on July 25, 2012.
- The primary diagnoses listed are Fatigue, Anxiety, Dyslipidemia, and Adjustment Disorder, Asthma and Hypertension. Medication list attached. No rehab. activity was listed.
- The medical statement indicated under functional activities that the appellant is independent with transfers, ambulation, bed mobility, dressing, bathing, toileting, eating, personal hygiene and meal preparation.
- The appellant requires limited to extensive assistance with housekeeping, shopping, meal preparation, and laundry.
- The medical statement under pain scale indicated that there was no pain issue known.
- The medical statement under mental status indicates that the appellant has some cognitive skill difficulty in new situations only. The statement indicates that the appellant is anxious. No recent cognitive testing was indicated.
- The case management assessment indicates that the appellant lives alone in subsidized housing. The appellant is dependent with cleaning, laundry, and shopping. She requires extensive assistance with meal preparation.
- The assessment recommends continued Preventive LOC.

- Based on the objective medical evidence obtained the appellant did not meet the High LOC required for home and community based services but she did meet the LOC requirement for Preventive services.

The appellant's POA testified:

- The appellant is presently receiving 10 hours of CNA care per week. The proposed change to a Preventive LOC of 6 hours of homemaker help per week will not be enough to care for the appellant's needs.
- The POA has known the appellant for 39 years and has visited her in Newport in 2009 and 2011. She is in frequent touch with her and can attest to the fact that her health continues to worsen and, if anything she needs more home care help, not less.
- It has been impossible for the appellant to get medical appointments due to a lack of available and appropriate transportation supported by Medicaid. Therefore she does not have the medical documentation that would show how much her health has deteriorated.
- The appellant's original disability award was because of her serious back problems and her colitis, she suffers from several other debilitating conditions which increase her need for 10 or more hours of CNA help each week. Her back condition and her colitis have worsened.
- The appellant has both Multiple Chemical Sensitivity and Electromagnetic Sensitivity. These two conditions make it dangerous for the appellant to be exposed to a wide range of environmental toxins and have severely compromised her immune system. She has also suffered from frequent dehydration requiring hospitalization and has a recurring skin condition that requires CNA or nursing help.
- The appellant also has Fibromyalgia, Chronic Fatigue Immune Deficiency, severe gall bladder problems, Diverticulosis, Pancreatitis and Hypertension.
- As the appellant's POA and friend, I appeal to you to review her case carefully, make sure you have a complete picture of her current health situation and understand what level of weekly care she actually requires, not just what is in the regulations.
- I appeal to you to raise her home care to as close to 20 hours per week as possible. I believe it is vital that the appellant be consulted and involved in the decision. In the past there has been a tendency for decisions to be made on the basis of second party information. To truly help the appellant she should be given the opportunity to speak on her own behalf.

Findings of Fact:

- The appellant has been living alone in the community and receiving in-home services through the Medicaid Core Waiver.
- The appellant's case was due for recertification during July 2012. At that time the agency determined that the appellant did not meet the High LOC criteria required for the Core Waiver.
- The agency notified the appellant by notice dated March 1, 2013 that she did not qualify for High LOC Waiver services.
- The appellant filed a timely appeal of the agency denial notice.
- This record of hearing was held open through August 1, 2014 at the request of the appellant's POA to allow additional medical records to be submitted and reviewed by the OMR on behalf of the appellant.
- The appellant and/or her POA did not submit any additional medical documents or provider records to this record as of the close of business August 1, 2014.
- This hearing was initially scheduled for June 25, 2013, rescheduled for August 28, 2013, rescheduled for October 8, 2013, and held February 27, 2014 at the request of the appellant.

CONCLUSION:

The issue to be decided is whether the appellant is eligible for Medicaid Core Waiver Services.

A review of Agency Policy regarding Core Waiver services determines that the authority to provide home and community-based services transitions from the authority found in 1915 (c) of the Social Security Act to that found in Section 1115 of the Act on July 1, 2009. The transition in authority allows the State to implement new needs-based levels of care, expand the number of individuals that can access long-term care services, and increase the availability of home and community based services to beneficiaries as an alternative to institutionalization. Home and community-based long-term care services and supports (HCB/LTC Services) are in addition to the services otherwise provided under the Medicaid program. To achieve the goal of rebalancing the long-term care system, the Global Consumer Choice Compact Waiver allows beneficiaries to obtain the Medicaid services they need in the most appropriate least restrictive setting. The types of long-term care available to beneficiaries are categorized as institutional and home and community-based. To qualify for Medicaid-funded long-term care services under the Global Waiver, a person must meet the general and financial eligibility requirements as well as meet certain clinical eligibility criteria. Clinical eligibility is determined by an assessment of a beneficiary's level of care needs.

The processes for determining clinical eligibility are based on a comprehensive assessment that includes an evaluation of the medical, social, physical, and behavioral health needs of each beneficiary. The assessment shall be tailored to the needs of the beneficiaries' services and, as such, may vary from one process to the next.

Based on agency policies within section 0399 Waiver services are available to qualified long-term care beneficiaries who have been determined to have a highest or high level of care need.

In this matter the agency representative has testified that there is no clinical evidence in the record that the appellant meets the High LOC. The agency representative submits that the appellant's case manager reviewed the appellant's functional abilities during a July 2012 home visit and she also reviewed a PM-1 report from the appellant's doctor. The agency representative submits that the appellant receives some assistance with homemaking, medication management and shopping.

The appellant's POA submits that due to the appellant's history of multiple medical diagnoses as well as her compromised immune system she needs more home care help. The appellant also lacks appropriate transportation which has made it impossible for her to get to medical appointments and provide the medical documentation required by Medicaid. The POA submits that the appellant needs home care assistance of 20 hours per week.

Review of agency policy 0399.12.03 determines that beneficiaries shall be deemed to have a high level of care need when they: a) Require at least limited assistance on a daily basis with at least two of the following ADL's: bathing/personal hygiene, dressing, eating, toilet use, walking or transferring; or b) Require skilled teaching or rehabilitation on a daily basis to regain functional ability in at least one of the following: gait training, speech, range of motion, bowel or bladder control; or c) Have impaired decision making skills requiring constant or frequent direction to perform at least one of the following: bathing, dressing, eating, toilet use, transferring or personal hygiene; or d) exhibit a need for a structured therapeutic environment, supportive interventions and/or medical management to maintain health and safety.

Review of the only Provider Medical Statement submitted to the record dated December 19, 2012 indicates that the appellant is independent with transfers, ambulation, bed mobility, dressing, bathing, toileting, eating, and personal hygiene.

Review of the caseworker assessment dated July 25, 2012 determines that the appellant ambulates, transfers, baths, dresses, and eats with limited assistance. The appellant requires extensive assistance with meal preparation, housekeeping and shopping.

Based on review of the medical records and assessments submitted from the appellant's physician, the agency and POA's testimony, this Appeals Officer finds that the appellant does not meet the High LOC criteria for Medicaid Core Waiver Services; therefore her request for relief is denied

Michael J. Gorman
Appeals Officer