

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
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Date: June 20, 2014

Docket # 14-459
Hearing Date: June 5, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided in your favor. 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: 0399.10 Overview: Determinations of NF Level of Care
SECTION: 0399.12.03 Preventive Need

The facts of your case, the Agency policy, and the complete administrative decision made 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), and Agency representatives: Kathleen Baker, Mary Calner, and Tom Conlon.

Present at the hearing were: You, your daughter, the Spanish translator Tony Ramirez, and Agency representative Kathleen Baker.

ISSUE: Was the appellant correctly assessed for the Preventive Need Waiver?

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

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

DISCUSSION OF THE EVIDENCE:

The Agency testified:

- Department of Human Services Policy manual section 0399.12.03 identifies qualifications needed for individual preventive level of care. The Office of Medical Review(OMR) must determine that one or more preventive services will improve or maintain the ability of a beneficiary to perform ADL's(activities of daily living) or IADL's(or instrumental activities of daily living) ; and/or delay or mitigate the need for intensive home and community based or institutionally based care. Preventive services for beneficiaries include homemaker services, and minor environmental modifications.
- After review of all the evidence submitted, it was determined that the client did not meet a level of care.
- The information reviewed included the PM-1 (provider medical statement), dated January 30, 2014, and a case management assessment, dated October 18, 2013 signed by the social worker.
 - The PM-1 indicated a diagnosis of Diabetes Type II, Diabetic Neuropathy, Hypertension, Hyperlipidemia, and Anemia.
 - The provider indicated that the appellant is independent with ADL's including bathing, dressing, toileting, eating, and personal hygiene.
 - He needs assistance with instrumental activities which include homemaking, meal preparation, shopping, and laundry.
 - The case management assessment confirms that he is independent with ADL's and needs assistance with IADL's.
 - He attends adult day care.
 - He asked the social worker if he could hire his spouse.
 - His spouse works full time, and he lives with his spouse.
 - The family provides medication reminders, and transportation.

- After review of the evidence, an assessment was completed using the Community Supports Management tool. The client was found to have no level of care.
 - Request for assistance with his IADL's is being met by his spouse with the assistance of family.
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- The Office of Medical Review denied the request for preventive needs waiver services.
 - The Agency was not sure if the appellant could obtain equipment without obtaining a full waiver-she would check this immediately.
 - The Agency was unaware if the full waiver was needed as others seemed to have obtained needed equipment without the waiver.
 - This waiver does include the homemaking and the safety equipment as well.
 - The medical evidence submitted says he does not need hand on assistance.
 - The Agency did weigh the family's support when assessing the client's needs.
 - He does need extensive help with the homemaking according to the assessment.
 - He obviously does need some equipment, and Mike Sheridan did note he needs a new walker, and a shower chair.
 - The Agency agreed they would review this new evidence presented today, and would withdraw if they determined this changed their decision.

The appellant with the assistance of his daughter, and of a Spanish interpreter, testified:

- The mother (his spouse) does not work full time as reported. She works 3.5 hours at night.
- The daughter works every day and father goes to daycare three days per week.
- She lives on the same street as her father with her husband and children.
- They applied for the Waiver, as her father fell last summer and he got a laceration on his toe which needed stitches. He fell in the bathroom because he doesn't have the same mobility as others.

- When we went to the hospital, they recommended applying for medical equipment for the bathroom to help him.
 - She explained to Mike Sheridan that at this point, it isn't that necessary that he (her father) has assistance around the clock, but he does need equipment.
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- He was getting in the shower, and he slipped and his foot hit the door, and got laceration requiring 6 stitches.
 - He needs the equipment, not necessarily the person, as mom is there. He is by himself at night when she goes to work.
 - He does not have the mobility, and keeps bringing the walker in the bathroom, but it doesn't fit.
 - He has a hard time getting up off the toilet, because he has no safety equipment.
 - He does not want help to shower or to eat.
 - When Mike Sheridan did the home visit, she (the daughter) was working.
 - Mike called her and said your dad is asking if your mother can take care of him.
 - He asked Mike that because he heard something like that at the day care, and was repeating it.
 - My mother is home, and she helps him already, but what he really needs is the equipment.
 - He did represent to Mike Sheridan and he saw that there was no equipment, and that his walker doesn't work.
 - He might have possibly told Mike about the need for other bathroom equipment.
 - Mike looked at the bathroom and saw everything, and the walker that wasn't really working.
 - She explained to Mike what they needed, and he replied that they would have to apply for the whole service to get the equipment.
 - He explained that maybe if he needed help with the laundry or shopping he could get the service.

- She can help with all of that, but she told him that if it comes with the service that would be fine, because that would be more help for her, as she is having difficulty taking care of her own family, going to school, working full time, and helping with her mother.
 - If he does get found eligible, the family would request a man for services.
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- So, is the Agency saying that if she does not help with everything, then would he be found eligible for the assistance?
 - I do all the driving because my mom cannot drive.
 - He has fallen since last summer, but he didn't get hurt.
 - He has fallen about two or three times, because of the Neuropathy he falls right away if he's standing up.
 - He has no strength in his feet.

FINDINGS OF FACT:

- The appellant received a Prior Authorization Notice of Denial dated February 17, 2014. The request identified that the Preventive need waiver had been denied as the appellant did not meet the level of care.
- The request for hearing dated February 28, 2014, was filed in a timely manner.
- The Agency submitted a letter to the appellant and the hearing officer, dated June 18, 2014. The agency identified that the testimony had been reviewed, that the caseworker could assist the appellant with a new walker, and that the decision of the Medical Review Team remains unchanged.

CONCLUSION:

The issue to be decided is whether the appellant was correctly assessed for the Preventive Need Waiver.

A Review of the Preventive Need Policy indicates that recipients shall be eligible for a limited range of home and community-based services and supports in order to promote

health, safety, and independence through an array of inventions put in place to alleviate or minimize symptoms and functional limitations. To qualify, the Office of Medical Review (OMR) must determine that one or more preventive services will improve or maintain the ability of a beneficiary to perform ADL's or IADL's and delay or mitigate the need for intensive home and community –based or institutionally based care. There are numerous services offered, including Minor Environmental Modifications such as grab bars, toilet safety frames, handheld shower, raised toilet, shower chair, etc.

The initial case management assessment for the appellant was completed in October 2013. At that time, the LTC case worker indicated that the appellant needed extensive assistance in all homemaking areas due to his leg weakness and pain, and his need for assistance. He received scores indicating a need for supervision with regards to ambulation and transfer. Specifically, the appellant was cited for weakness in legs/and pain when using the walker, and some need for supervision when transferring from walker to cane. He was determined alert, with no impairments of hearing, speech, or vision. No environmental/safety concerns were noted. The report summarized that the appellant lived with his spouse who worked full time, and that he wanted help in the home from his spouse who lived in the home. The report further noted that the appellant needed a new walker and a shower chair. It noted a non-serious injury one year ago due to a faulty walker.

The appellant's daughter presented that her father had asked for homemaking assistance because he became aware of the possibility when attending day care. She had contact with the case worker almost immediately following the assessment and clarified that her family would benefit from a homemaker, but they themselves could currently still maintain a level of care for the appellant. They sought then, and now, some stabilizing bars, and bathroom equipment which would assist the appellant particularly when he is alone in the home (nightly while the mother works), and when he is showering. They noted that the appellant struggles getting up from the toilet and maneuvering the bathroom, and that he cannot use his walker in the bathroom because it does not fit. They identified that the appellant had a fall one year ago for which he needed six stitches. He identified that he has also lost his balance and fallen two to three more times in the past year-all related to his Neuropathy and his resulting poor balance. He did not need medical intervention. Neither the caseworker's assessment, nor his later referral to OMR on February 17th, noted the specific request from the daughter for minor home modifications. No documentation noted additional falls. The February cover sheet to OMR repeated the earlier premise that the father had requested the use of his spouse as the homemaker.

A Community Supports Management form completed by RN Mary Calner dated February 17, 2014 cited denials for CNA, and Homemaker services. There were no requests for equipment noted.

The PM-1 completed by Doctor Erick Soria-Galvarro on January 30, 2014 mimicked the case worker assessment noting extensive assistance needed for homemaking activities, and supervision needed for transfer and ambulation. He further identified a pain scale of

moderate, and cited that the appellant's pain interfered with the activities and movements, and that medication relieved this pain. The appellant was diagnosed with Diabetes Type II, Diabetic Neuropathy, Hypertension, Hyperlipidemia, and Anemia.

The appellant does not dispute that his need for homemaking services is mitigated by the family assistance he receives. However, the reasons given for the need for extensive assistance on both assessments are related to his weakness, pain, and instability in his legs. The testimony was clear that he chooses to bathe and dress himself. He notes that he can't stand very long and has difficulty in the bathroom when he tries to maneuver without assistance and without the assistance of his walker or aids. The appellant completes his own care, and is also alone for periods of time in the evening when his wife works. Thus he toilets independently during those times. The appellant's daughter indicated that his caseworker became aware of the request for environmental modifications in October, but the testimony and evidence submitted by the Agency does not reflect their awareness of this. The Agency noted that it appears the appellant does need some equipment. The October 2013 assessment noted a need for a walker and a shower chair, but he never received these. On June 18, following the hearing, the Agency submitted notification that the appellant could get assistance from his caseworker through Medicaid Durable Medical Equipment in obtaining a new walker as he "has an unsteady gait". However there is no mention of any further assistance, particular bars, rails, or any other devices used for transfer. The June 18th note further reads that no additional medical evidence was presented at hearing, and that their decision (OMR) remained unchanged. However, the family presented credible testimony at hearing that the appellant has had additional falls over the past year due to his instability which he attributes to his neuropathy. The daughter testified that her father appears to be increasingly more unstable over time. Additionally, the appellant was observed as he walked the long hallway to the hearing room. He displayed obvious difficulties moving his legs with his right leg slightly dragging as he moved with great slowness. Additionally, he shook noticeably as he pushed his walker. When the appellant entered the room and attempted to transfer from walker to chair, he had such difficulty in seating himself that the Agency Nurse came around the conference table to help settle him as his foot was askew and had caught on the rug. The June 18 notice to the appellant and the hearing officer noted that the appellant is requesting Preventive level of care to provide homemaking services. The appellant and his daughter testified that though he may have presented initially that this was a need, the family was clearly requesting home modifications to help prevent injury particularly in the bathroom.

In summary, the appellant was denied the Preventive care waiver. Policy indicates that to qualify OMR must determine that at least one of the services identified will improve or maintain the ability of the beneficiary to perform his ADL's or IADL's and/or delay the need for intensive home and community-based ... care. At hearing the appellant and his family clarified that they were specifically looking for home modifications-one of the services provided by the waiver. The Agency was also previously unaware of additional falls over the past year that the appellant had suffered as a result of his instability. The appellant's credible testimony was further supported by his presentation observed by the Agency and by this hearing officer. The testimony given supports that the appellant

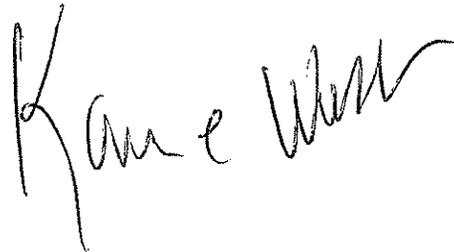
is in need of preventive home modifications targeted at preventing further injury and mitigating risk to himself. Thus, it is necessary that the appellant receives some minor environmental home modifications. The appellants request for relief is granted.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant was not correctly assessed for the Preventive need waiver.

ACTION FOR THE AGENCY

The Agency is to determine the appellant eligible for the Preventive needs waiver in order to obtain the needed home modifications. The Agency is to inform this Appeals Officer when this action has been completed.

Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, and completed by the Agency representative must be confirmed in writing to this Hearing Officer.



Karen E. Walsh
Appeals Officer