



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Dec 15, 2020, 8:12 am

OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 20, 2020, at █.

APPEARANCES

For the Petitioner:

█

Petitioner

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's five (5) hours of personal care services, weekly, was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on his own behalf.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”) appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; Stephanie Gunning, for Case Management Supervisor Sunshine; Gina Houston, for Long Term Care Coordinator for Sunshine; and Leticia Houston, Care Coordinator Supervisor for Sunshine.

Lisa Sanchez, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and six (106)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”), dated August 20, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated August 13, 2020; a POC, dated October 21, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated August 13, 2020; a fax cover sheet with eleven (11) pages of documents; Petitioner medical record, dated [REDACTED] 2020; Standard Appeal Acknowledgment, dated September 18, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated October 5, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and six (106)-page packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is fifty-six (56)-years old. See page 31 of Respondent's Composite Exhibit 1. Petitioner lives with his wife, who is his caregiver through the PDO program. *Id.* at 31 – 32. Petitioner's wife provides one hundred and sixty-eight (168) hours of care for Petitioner each week. *Id.* at 46. Petitioner's wife does not work outside the home and is "very confident" that she will have the ability to provide care for Petitioner. *Id.* at 45 – 46. Caring for Petitioner provides little difficulty to his wife's physical health, but does provide some difficulty with finding time to do things she enjoys. *Id.* at 46.

3. Petitioner suffered a stroke "years ago", which rendered him paralyzed on his left side as a result. *Id.* at 32. Petitioner uses a wheelchair, which he can propel on his own. *Id.* at 15. Petitioner is diagnosed with the following: arthritis; high blood pressure; occasional dizziness; frequent bladder and bowel incontinence; and partial paralysis. *Id.* at 37 – 38. Petitioner does not require supervision. *Id.* at 40.

4. Petitioner's activities of daily living ("ADLs") are as follows: for bathing, dressing, using the bathroom, and transferring, Petitioner needs assistance (but not total help); and for walking/mobility, Petitioner uses an assistive device. *Id.* at 35. Petitioner's instrumental activities of daily living ("IADLs") are as follows: for heavy chores, light housekeeping, preparing meals, shopping, managing medication, and using transportation, Petitioner needs total assistance (cannot do at all); and for managing money, Petitioner needs assistance (but not total help). *Id.* at 36.

5. Petitioner formerly received twenty-five (25) hours of personal care services, weekly, and eight (8) hours of homemaker services, weekly. *Id.* at 25.

6. In the NABD, dated August 20, 2020, Respondent reduced Petitioner's personal care services from twenty-five (25) hours, weekly, to twenty (20) hours, weekly. *Id.* at 4 – 12. The NABD explained the basis of the reduction as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. 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;
 2. 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
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes 25 hours per week of Personal Care Services and 8 hours per week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 25 hours per week to 20 hours per week, a reduction of 5 hours per week of Personal Care Services. The updated care plan approved by Sunshine Health will include 20 hours per week of Personal Care and 8 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of Respondent's Composite Exhibit 1.

7. Petitioner visited his provider on [REDACTED] 2020. The notes from the visit to the provider state as follows:

He has permanent disability due to the affects [sic] of his pasted CVA. Also he needs to discuss his personal care at home. He has persistent LT side weakness, numbness, difficulty moving the LT arm & leg with muscular tightness, he needs extra personal care & help (transportation, bathroom, dressing, feeding & personal cleaning, etc).

His pain level during flare up 7-8 out of 10.

He has poor quality of life with the pain from his hips, knees & arms, he is unable to walk more than 50 - 100 feet & in need of the extra hours for personal care service. He needs a full time 40 hrs a [week] personal care.

The patient also gained some WT over the last 6 months which caused fatty liver & elevation in Lipid profile.

He has multiple joint pain in arms & legs. He has numbness on LT face, LT arms, & leg, he is taking meds with small help, He needs some body to give him his meds on time.

Page 58 of Respondent's Composite Exhibit 1.

8. Petitioner requested a plan appeal and received an NPAR dated October 5, 2020, upholding the reduction. *Id.* at 68 – 74. The NPAR explained as follows:

The reason for our decision was: Appeal for reduction of 5 hours/week of Personal Care is denied and the original denial is denied. Your current home service hours include: Personal Care 20 hours/week and Homemaker 8 hours/week. These hours are adequate to meet your health care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 68 of Respondent's Composite Exhibit 1.

9. On October 15, 2020, Petitioner requested a Fair Hearing to challenge the reduction of personal care services. On October 27, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 20, 2020, at [REDACTED]

10. As testified to by Petitioner, Petitioner showers between (2) and three (3) times each day due to incontinence. As testified to by Petitioner, it takes between twenty (20) and thirty (30) minutes to shower. As testified to by Petitioner, it takes his wife between twenty (20) and thirty (30) minutes to prepare meals.

11. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified that Petitioner's services were reduced because he lives with his spouse, who does not work outside of the home, and because Petitioner only needed partial assistance with his ADLs.

CONCLUSIONS OF LAW

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

14. Because Respondent is reducing a previously approved service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

15. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

4.1 General Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

16. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- 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
- 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
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

17. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- 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

- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- 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
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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.

18. In the NABD, dated August 20, 2020, Respondent reduced Petitioner's personal care services, from twenty-five (25) hours per week to twenty (20) hours per week. See pages 4 – 12 of Respondent's Composite Exhibit 1. In the NPAR, dated October 5, 2020, it was explained that Petitioner's twenty (20) hours, weekly, of personal care services and eight (8) hours, weekly, of homemaker services were "adequate to meet [his] health care needs." *Id.* at 68.

19. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is to provide "assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." As provided in the record, Petitioner requires assistance (but not total help) with bathing, dressing, using the bathroom, and transferring. *Id.* at 35. In regards

to his IADLs, Petitioner requires assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, managing medication, and using transportation. *Id.* at 36. Petitioner currently receives twenty-eight (20) hours of personal care services, weekly, and eight (8) hours of homemaker care services, weekly. *Id.* at 5.


20. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive more than the reduced amount of services. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* at 4. One aspect of medical necessity is that the requested service must 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.” Here, Petitioner’s primary caregiver is his spouse, who provides care through the PDO program. *Id.* at 31 - 32. Petitioner’s spouse does not work outside of the home and is “very confident” that she will have the ability to provide care for Petitioner. *Id.* at 45 – 46. Petitioner’s spouse provides one hundred and sixty-eight (168) hours of care each week, which is twenty-four (24) hours of care each day, seven (7) days each week. *Id.* at 46. As such, the record indicates that Petitioner has a care provider available at all time. Further, Petitioner’s provider indicated that Petitioner needs forty (40) hours of care each week, but it appears that Petitioner is already receiving full time care. Based on the foregoing, Respondent demonstrated that Petitioner’s previous amount of personal care was in excess of his needs, and thus not medically necessary.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that Respondent's reduction of five (5) hours of personal care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction is **DENIED**.

DONE AND ORDERED this 15th day of December, 2020, in Tallahassee, Leon County, Florida.

 Joseph Mabry
20-FH [REDACTED]
2020.12.15
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JOSEPH MABRY, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[REDACTED]



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