



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

FILED

Feb 25, 2021, 10:37 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]
Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 28, 2021, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner's Authorized Representative

For the Respondent: Deborah Havey-Levey
Program Integrity Manager
UnitedHealthcare of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for fourteen (14) hours of additional personal care services, weekly, was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and son, [REDACTED]
[REDACTED] (" [REDACTED] ") appeared on behalf of the Petitioner.

Deborah Havey-Levy, Program Integrity Manager for UnitedHealthcare of Florida, Inc. (“United”), appeared on behalf of Respondent. Dr. Sloan Karver (“Dr. Karver”), Long Term Care Medical Director for United, attended as a witness for Respondent.

Doris Rivera, 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 two hundred and thirty-six (236)-page evidence packet. The evidence packet included: a summary of the instant case; a Notice of Adverse Benefit Determination (“NABD”), dated August 21, 2020; CSP – General Request Form, dated September 3, 2020; a letter from Respondent, dated September 3, 2020; a fax cover sheet, dated September 14, 2020, and five (5) pages of documents; a letter from Respondent, dated September 15, 2020; Print HSC History; a Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated July 6, 2020; an Appeal Review; a Notice of Plan Appeal Resolution (“NPAR”), dated September 23, 2020; a fax cover sheet, dated October 14, 2020, and four (4) pages of documents; Exhibit 2 (References) Cover Page –Long Term Care; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1 in its entirety; the Florida Medicaid Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule (January 1, 2017); the Private Duty Nursing Services fee Schedule (January 1, 2017); the Participant Direction Option Manual; 42 C.F.R. § 441.480; the

Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); section 400.6105 of the Florida Statutes (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner, the undersigned admitted the two hundred and thirty-six (236)-page packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of United. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is 84-years old. *See* page 37 of Respondent's Composite Exhibit 1. Petitioner lives with [REDACTED]. *Id.* at 38. [REDACTED] works full time, Monday through Friday. *Id.* at 42.
3. Petitioner is diagnosed with the following: high blood pressure, diabetes, heart problems, osteoporosis. *Id.* at 43. Petitioner has a history of two (2) major surgeries, heart stents, and has forty (40) percent lung capacity. *Id.* at 44. Petitioner has frequent falls. *Id.* at 46.
4. Petitioner's needs for activities of daily living ("ADLs") are as follows: for bathing and dressing, Petitioner needs assistance (but not total help); for eating and using the bathroom, Petitioner needs supervision or prompting; for using the bathroom, transferring and walking/mobility, Petitioner uses an assistive device. *Id.* at 41. Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: for heavy chores, light housekeeping, using the telephone, managing money, and shopping, Petitioner needs total assistance (cannot do at all); for preparing meals, managing medication, and using transportation, Petitioner needs assistance (but not total help). *Id.* at 42.

5. Petitioner requested an additional fourteen (14) hours of personal care services, weekly.

Petitioner's request was denied in the NABD dated August 21, 2020. *Id.* at 5 – 12. The NABD explained the basis of the denial 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:

Your assessment tells us you need some help to bathe and dress.

You get 4 hours a week of personal care to help you.

You get 3 hours a week of homemaker services to help you.

You live with your son who helps you after work.

You have not had a change.

Page 6 of Respondent's Composite Exhibit 1.

6. At the time of the request, Petitioner received four (4) hours of personal care services, weekly, and three (3) hours of homemaker care services, weekly. *Id.* at 57. Dr. Karver testified at hearing that Respondent approved an additional (3) hours of personal care services, weekly, on

September 3, 2020. Thus, Petitioner currently receives seven (7) hours of personal care services, weekly, and three (3) hours of homemaker care services, weekly.

7. Petitioner requested a plan appeal and received an NPAR dated September 23, 2020, upholding the denial. *Id.* at 63 – 68. The NPAR explained as follows:

You asked for personal care. You would like 14 more hours a week. You need help with some daily activities. Based on my professional judgment, we are not approving these extra hours because they are in excess of your needs. You have 4 hours a week of personal care approved by the health plan. You have family who can help some. These should meet your personal care needs. You have another paid service to help some too. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Page 63 of Respondent's Composite Exhibit 1.

8. On December 15, 2020, Petitioner requested a Fair Hearing to challenge the denial of fourteen (14) hours of personal care services, weekly. On January 5, 2021, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for January 28, 2021, at [REDACTED]

9. Based on [REDACTED]'s unrebutted testimony at hearing, Petitioner's home health aide provides care from 8:00 a.m. until 10:00 a.m., Monday through Friday. [REDACTED] leaves for work at 5:00 a.m. each morning, Monday through Friday, and returns between 5:00 p.m. and 6:00 p.m. [REDACTED] has observed, after returning home from work, that at times Petitioner has not eaten or has had an incontinent episode. [REDACTED] has purchased diapers due to Petitioner's incontinence. [REDACTED] works one (1) Saturday each month, from 6:45 a.m. until 5:00 p.m. [REDACTED] pays a friend to provide care for Petitioner on the Saturdays that he works.

10. Dr. Karver is the Long Term Care Medical Director for United. Dr. Karver asserted that it is not medically necessary for Petitioner to receive the additional fourteen (14) hours, as other

options are available, such as having Petitioner’s care aide provide care an hour each morning and each afternoon, or by attending adult day care.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Petitioner is requesting a new service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner. 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.)

14. The 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.

15. 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.

16. 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.

17. In this case, Petitioner requested an additional fourteen (14) hours, weekly, of personal care services. Respondent denied Petitioner's request. 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.* In the NPAR, Respondent explained that the requested personal care hours were in excess of Petitioner's needs. *Id.* at 63.

18. As provided in the LTC policy, personal care services are 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. Here, Petitioner needs assistance, but not total help, with bathing and dressing; and needs supervision or prompting for using the bathroom and eating. In regards to her IADLs, Petitioner needs total assistance with heavy chores, light housekeeping, using the telephone, managing money, and shopping; and needs assistance (but not total help), with preparing meals, managing medication, and using transportation.

19. As shown by the record, Petitioner has seven (7) hours of personal care services, weekly, and three (3) hours of homemaker services, weekly, which is approximately two (2) hours each day, Monday through Friday. *Supra* ¶ 6. Appendix 9.1 of the PCS Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The times allotted for the tasks applicable to the Petitioner are as follows: a full body bath is allotted up to 30 minutes; dressing is allotted up to 15 minutes, eating is allotted up to 30 minutes per meal, and using the bathroom is allotted between 15 and 45 minutes. [REDACTED] works from 5:00 a.m. until 5:00 p.m. each day, Monday through Friday, and occasionally works on Saturday. *Supra* ¶ 9. [REDACTED] provided credible testimony that Petitioner is occasionally


incontinent and at times does not eat a meal. However, Petitioner did not establish how long it takes to assist with her ADLs and IADLs, or which ADLs or IADLs were not completed with the approved services. Moreover, Dr. Karver testified, *supra* ¶ 10, that fourteen (14) additional hours of personal care services, weekly, were not necessary, as the Petitioner's service hours could be split between the morning and afternoon. As Dr. Karver is a medical doctor, her opinion is credible as to what is medically necessary. Moreover, [REDACTED] is available to provide care when he is not working. As Petitioner's needs could be met by providing an hour of service each morning and afternoon, Petitioner did not show that her request for an additional fourteen (14) hours of personal care, weekly, was "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."

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of fourteen (14) additional personal care hours, weekly, was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of fourteen (14) additional hours of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE AND ORDERED this 25th day of February, 2021, in Tallahassee, Leon County, Florida.

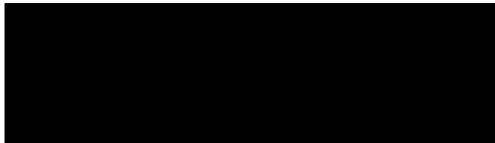
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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