



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

FILED

Feb 26, 2021, 10:34 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 20, 2021, at [REDACTED]. During the hearing, upon Respondent’s motion to continue the hearing, the parties stipulated to continue the hearing to January 27, 2021, commencing at [REDACTED]. Accordingly, pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant matter on January 27, 2021, at [REDACTED].

APPEARANCES

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

For the Respondent: Deborah Havey-Levy
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 personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically and were in attendance for all hearings, unless otherwise noted. Petitioner's Authorized Representative and wife, [REDACTED] (" [REDACTED]"), appeared on behalf of the Petitioner. Petitioner appeared but did not provide any testimony. Deborah Havey-Levy, Program Integrity Manager for UnitedHealthcare Plan, Inc. ("United") appeared on behalf of Respondent. Dr. Sloan Karver ("Dr. Karver"), Long Term Health Care Medical Director for United, attended as a witness for Respondent.

Marielisa Amador, Medical Healthcare Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA") and Stephanie Evans, Chief Fair Hearing Counsel appeared as observers, for the January 20, 2021, hearing only. Dillon Nicole, Hearing Officer for the Office of Fair Hearings, and Suzanne Chillari, Medical Healthcare Program Analyst for AHCA, appeared as observers, for the January 27, 2021 hearing, only.

Prior to the hearing, Petitioner sent to the Office of Fair hearings and Respondent the following documents: [REDACTED] Report Dated (one page), Outpatient Rehabilitation Services Attendance Agreement dated January 21, 2021, and Medical Records for [REDACTED] 2020, appointment with [REDACTED]. Absent an objection from the Respondent, the undersigned admitted the documents into evidence as Petitioner's Composite Exhibit 1.¹

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and twenty (220) – page evidence packet. The evidence packet included: a summary of the instant case; Notice of Adverse Benefit Determination ("NABD") dated August 26, 2020;

¹ Respondents Composite Exhibit 1 consists of documents in the following order: [REDACTED] Report, Outpatient Rehabilitation Services Attendance Agreement, and Medical Records. Any reference to a page number is based on this sequential order.

“expedited Plan appeal” dated October 9, 2020; letter dated October 10, 2020, denying Petitioner’s request for an expedited appeal; request for medical records addressed to [REDACTED] and dated October 10, 2020; Print HSC History; a Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated March 13, 2020; an appeal review; Notice of Plan Appeal Resolution (“NPAR”) dated November 6, 2020; 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) (“PCS Policy”); 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); sections 400.6105 400.609; 409.910, and § 400.462 of the Florida Statutes(2018). Absent an objection from the Petitioner, the undersigned admitted the 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 56 years old whose medical history includes osteoarthritis, high blood pressure, occasional dizziness, local right sided paralysis, neuropathy, low back pain, dyspnea on exertion, abnormal electrocardiogram, cerebrovascular accident stenosis of celiac artery,

weakness, falls and vertigo. Respondent's Composite Exhibit 1, pages 33 and 34 and Petitioner's Composite Exhibit 1, page 4.

3. Petitioner is ambulatory and walks with a cane. As of [REDACTED] 2020, he is healthy-appearing, well-nourished, and well developed. Petitioner's Composite Exhibit 1, page 6.

4. The 701B completed on March 13, 2020, indicates that at the time, Petitioner considered his health to be fair and that he limits his activities all of the time out of fear of falling, but that the Petitioner had not fallen during the prior six months. Respondent's Composite Exhibit 1 at page 29.

5. The 701B states that the Petitioner needs the following levels of assistance with Activities of Daily Living ("ADLs"):

Bathing	Needs assistance (but not total help)
Dressing	Needs assistance (but not total help)
Eating	No assistance needed
Using the bathroom	Needs assistance (but not total help)
Transferring	Uses assistive device Needs supervision or prompt
Walking/Mobility	Uses assistive device

Id. at 31

6. The 701B states that that the Petitioner needs the following levels of assistance with Instrumental Activities of Daily Living ("IADLs"):

Heavy chores	Needs total assistance (cannot do at all)
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Light housekeeping	Needs total assistance (cannot do at all)
Using the telephone	No assistance needed
Managing money	Needs total assistance (cannot do at all)
Preparing meals	Needs total assistance (cannot do at all)
Shopping	Needs total assistance (cannot do at all)
Managing medication	Needs total assistance (cannot do at all)
Using transportation	Needs total assistance (cannot do at all)

Id at 31.

7. Where necessary, Petitioner always has assistance with ADLs and IADLs. *Id.* at 31 and 32.
8. ██████████, Petitioner’s caregiver, does not work outside the home. *Id.* at 42.
9. Petitioner currently receives seven (7) hours personal care services and two (2) hours of homemaker services per week. *Id.* at 6.
10. Petitioner requested an additional ten (10) hours of personal care services. *Id.* at 5.
11. Petitioner received an NABD dated August 26, 2020, denying the request. The NABD stated, pertinent part, as follows:

UnitedHealthcare Community Plan has reviewed your request for Personal Care 10 more hours a week, which we received on August 20, 2020. After our review, this service has been:

DENIED as of August 25, 2020

We made our decision because:

(Check all boxes that apply)

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

...

X 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 that you need some help with bathing and dressing.

You are getting 7 hours a week of personal care to help you.

You are getting 2 hours a week of homemaker services to help you. The homemaker service can be used to clean your bedroom and bathroom so this does not need to be done during your personal care.

You live with family who helps you. You live with your direct service worker.

In my clinical opinion, your personal care needs can be met by the approved services and supports. These hours can be split to meet your needs during the day.

Id.

12. Petitioner requested a plan appeal and received an NPAR dated November 6, 2020, stating, in pertinent part, as follows:

On October 09, 2020 we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated August 26, 2020, [REDACTED], denying the personal care 10 more hours a week provided to [Petitioner].

On November 6, 2020, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal. As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

Lisa Herbert, MD, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Medicaid rule used: Rule 59G-1.010(166)(a)3., Florida Administrative Code (F.A.C.).

We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for personal care 17 hours a week. You need help your activities of daily living. Based on your assessment seven hours can meet your needs. We cannot approve 17 hours because it is not medically necessary. Based on my professional judgment, these hours are in excess of your need. Seven hours is approved by the health plan. You also have 2 hours of homemaker care and help at home. This is why we cannot approve what you asked for. Please talk about this with your doctor.

I have reviewed this case as a Florida licensed physician and I agree with the decision to uphold the denial. I also agree with the rationale that has been utilized for this decision. Barry Stone, MD Appeals and Grievances Medical Director UnitedHealthcare Board Certified Gastroenterology and Internal Medicine Florida License: ME 42044, November 6, 2020.

Id. at 52.

13. The following findings are based on the testimony of [REDACTED]. Petitioner needs help getting up and sitting down. Petitioner also needs help anywhere he goes inside or outside of his home because he becomes dizzy due to vertigo and back problems. Petitioner cannot walk far and needs someone standing next to him because he will lose his balance. No one other than [REDACTED] [REDACTED] resides with the Petitioner and Petitioner has no one other than [REDACTED] to assist

him. If [REDACTED] needs to run an errand, she feels she must take the Petitioner along and leave him in the car.

14. The following findings are based on the testimony of Dr. Karver. The Plan's decision was based upon a review by a team of physicians based on discussion with case manager and consideration of the 701B. The current hours in place meet the needs of the Petitioner. The additional requested hours to monitor the Petitioner are provided by the natural support of [REDACTED]. If necessary, Petitioner could request additional services such as respite services if she needs relief. However, the services in question in this case involve a request for ten additional hours of personal care services. The additional requested personal care hours are being met by [REDACTED]. The current approved hours are adequate to meet the Petitioner's care needs and, therefore, the additional hours are not medically necessary.

CONCLUSIONS OF LAW

15. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2) of the Florida Statutes (2020). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

17. Because Petitioner is requesting a new service, Fla. Admin Code R. 59G-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.)

18. 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, homemaker, and respite 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

...

1.3.6 Natural Supports

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports

...

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

...

4.2.2.6 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.

19. 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.

20. 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.

21. The Petitioner requested ten (10) hours weekly of personal care services in addition to the seven (7) hours of weekly personal cares services and two (2) hours of weekly homemaker services he is currently receiving.

22. As provided in section 4.1 of the LTC Policy, personal care services must be medically necessary. A component of medical necessity is that services 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." See supra ¶ 20. Although Petitioner needs assistance at times while standing up, sitting down, and walking, as well as assistance with most ADLs and IADLs, Petitioner did not establish that his care is not being met by his current services and natural supports. Petitioner's caregiver and natural support, his wife, lives with him and does not work outside the home. See supra ¶ 8. As testified to by Dr. Karver, to the extent that Petitioner's natural support needs relief to run errands, the proper service is respite service. See supra ¶ 14. The current approved hours are adequate to meet the Petitioner's care needs and, therefore, the additional requested hours are not medically necessary. *Id.* Accordingly, the Petitioner did not

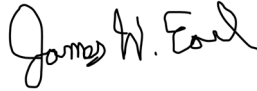
show that his request for an additional ten (10) hours per week of personal care services was not in excess of his needs.

23. 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 an additional ten (10) hours of personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial is AFFIRMED. Petitioner's appeal based on Respondent's denial is DENIED.

DONE AND ORDERED this 26th day of February, 2021, in Tallahassee, Leon County, Florida.

 James W. Earl
20-FH [REDACTED]
2021.02.26
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JAMES EARL, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308

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:



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