



FILED

Mar 16, 2021, 12:59 pm
OFFICE OF FAIR HEARINGS

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

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PETITIONER,

**AHCA Case No.: 20-FH████
Plan ID No.: ██████**

vs.

SIMPLY HEALTH CARE PLANS, INC.,

RESPONDENT.

_____ /

████

PETITIONER,

**AHCA Case No.: 20-FH████
Plan ID No.: ██████**

vs.

SIMPLY HEALTH CARE PLANS, INC.,

RESPONDENT.

_____ /

FINAL ORDER

By order dated December 29, 2020, case numbers 20-FH████ and 20-FH████ were consolidated. Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 21, 2021, at ██████████. Because Petitioner failed to appear at the hearing, the undersigned issued an Order To Show Cause dated January 21, 2021, requiring Petitioner to show cause why the Fair Hearing should not be dismissed because Petitioner failed to appear at the scheduled Fair Hearing. On January 28, 2021, Petitioner filed a response to the Order stating that he had not received the Order Scheduling the Hearing. Therefore, by order dated February 1, 2021, the Fair Hearing was rescheduled to February 22, 2021. Pursuant to

notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 22, 2021, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner

For the Respondent:

Angela Royster
Grievance and Appeals Coordinator
Simply Health Care Plans, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home delivered meals (case number FH20-FH[REDACTED]) and companion care (case number 20-FH[REDACTED]) was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically and were in attendance for all hearings, unless otherwise noted. Petitioner appeared on his own behalf.

Angela Royster, Grievance and Appeals Coordinator for Simply Health Care Plans, Inc. ("Simply") appeared on behalf of Respondent. Dr. Marni Nicholas ("Dr. Nicholas"), Medical Director for Simply, and Susie Poli, UM Manager for Simply, attended as a witness for Respondent. Roberta Frank, Nurse Appeals Associate for Simply, appeared as an observer.

Chrissie Simmons, Medical Health Care Program Analyst/Fair Hearings Liaison for the Agency for Health Care Administration ("AHCA" or "Agency") appeared as an observer at the first hearing only. Dillon Nicole, Hearing Officer for the Office of Fair Hearings, appeared as an observer at the first hearing only. Linda Latson, Fair Hearing Liaison for the AHCA, appeared as an observer at the second hearing only.

Albert, translator number 338281 for CyraCom, provided Spanish translation services for the first hearing. Angie, translator number 355771 for CyraCom, provided Spanish translation services for the second hearing.

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 seventy-nine (279) – page evidence packet. The evidence packet included: a Spanish Index; an English Index; a Sequence of Events (Spanish); a Sequence of Events (English); a Simply Healthcare SMMC-LTC Care Plan Review Form dated October 26, 2020; a Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated February 4, 2020; a Comprehensive Plan of Care effective date July 27, 2020; a Face to Face Visit dated October 25, 2020; a Medication Record; a Contingency Plan For HCBS Services effective October 25, 2020; a Member Centric Goals dated October 25, 2020; Natural Disaster Plan dated October 25, 2020; a Comprehensive Plan of Care (“POC”), effective date October 25, 2020; a Plan of Care Summary, effective date October 25, 2020; Prior Authorization Notes dated November 4, 2020, through November 21, 2020; a Monthly Contact Visit dated November 9, 2020; a Face to Face Visit dated November 16, 2020; a LTSS Fall Risk Assessment dated November 16, 2020; a Contingency Plan for HCBS Services effective November 16, 2020; a 701B dated November 16, 2020; a Comprehensive Plan of Care effective November 16, 2020; a Plan of Care Summary effective November 16, 2020; a Natural Disaster Plan dated November 18, 2020; Member Centric Goals dated November 18, 2020; a Notice of Adverse Benefit Determination Letter (“NABD”) (English), undated; an NABD (Spanish) dated November 21, 2020; an Updated NABD (Spanish) dated November 21, 2020; an Updated NABD (English) dated November 21, 2020; a Member Appeals Note for the dates November 30, 2020, through

December 3, 2020; Petitioner’s Written Appeal Request dated December 2, 2020; an Appeal Continuation of Benefits Response Letter (English) dated December 2, 2020; an Appeal Continuation of Benefits Approval Response Letter (Spanish) dated December 2, 2020; an NPAR (English) dated December 3, 2020; an NPAR (Spanish) dated December 7, 2020; an Appeal Continuation of Benefits Response Letter (English) dated December 17, 2020; an Appeal Continuation of Benefits Approval Response Letter (Spanish) dated December 17, 2020; an Updated NPAR (English) dated December 18, 2020; an Updated NPAR (Spanish) dated December 18, 2020; an Continuation of Benefits Denial Response Letter (English) dated December 22, 2020; an Continuation of Benefits Denial Response Letter (Spanish) dated December 22, 2020; Florida Medicaid Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy (March 2017) (“LTC Policy”). 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 Simply. Simply is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner received an NABD dated November 21, 2020, by which Respondent terminated authorization for thirty-one (31) home delivered meals per month and five (5) hours of adult companion care per week. The NABD stated in pertinent part as follows:

Simply Healthcare Plans, Inc. has reviewed your request for continuation of your Home Delivered Meals: 31 per month and Companion Care: 5 hours per week, which was received on 11/04/2020. After our review, this service has been:
Terminated as of 12/01/2020.

We made our decision because:

...

Other authority

The facts that we used to make our decision are: We reviewed your records. We did this to make sure you are still getting the right services. We did this to make sure none of your services copy each other. We will make changes to your services. We will stop some of the care (TERMINATE -S5135: Companion care, 5 hours weekly; S5170: Delivered meals, 31meals monthly). We will add some care for you (APPROVE - S5150: Respite care, 5 hours weekly). We know you live with a caregiver. We know your caregiver is out sometimes. Companion care is to keep you company when you live alone. Respite care is to help when your caregiver is out. Because you live with a caregiver companion is not needed. This is why we will stop this. Will approve respite care instead. Delivered meals are used when no one can cook for you. You have caregivers who can cook for you. You have paid help (Homemaker care, Respite care) that can cook for you. You do not need delivered meals. This was based on your records and the Florida Medicaid Statewide Managed Care Long Term Care Plan Policy, 6.2.

...

Respondent's Composite Exhibit 1 at 150 and 151.¹

3. Petitioner timely appealed the NABD and received and NPAR dated December 18, 2020, upholding the NABD. The NPAR stated, in pertinent part, as follows:

On 11/30/2020 we received your timely plan appeal request regarding Simply Healthcare Plans, Inc.'s Notice of Adverse Benefit Determination dated 11/21/2020, NABD Number [REDACTED], TERMINATING, the S5170-Delivered meals, 31 meals monthly provided to [Petitioner]. We reviewed you records. We did this to make sure you are still getting the right services. We did this to make sure none of your services copy each other. We will make changes to your services. We will stop some of the care (TERMINATE- S5135: Companion care, 5 hours weekly; S5170: Delivered meals, 31 meals monthly). We add some care for you (APPROVE – S5150: Respite care, 5 hours weekly). We know you live with a caregiver. We know your caregiver is out sometimes. Companion care is to keep you company when you live alone. Respite care is to help when your caregiver is out. Because you live with a caregiver companion is not needed. This why we will stop this. Will approve respite care instead. Delivered meals are used when no one can cook for you. You have caregivers who can cook for you. You have paid help (Homemaker care, Respite care) that can cook for you. You do not need delivered meals. This was based on your records and the Florida Medicaid Statewide Managed Care Long Term Care Plan Policy, 6.2.

On 12/03/2020, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your plan appeal. We cannot cover your home (delivered meals). These meals are meant for people who live alone or do not have help at home. You live with family. We are giving you 15 hours aa week of home care. Some of these hours can be used to prepare meals. This decision is based on the (Florida Medicaid Statewide

¹ Page numbers refer to the actual page number of Respondent's Composite Exhibit Number 1 and not to the numbered pages.

Manage Care Long Term Care Plan Policy, 6.2). Your case was looked at by an Internal Medicine Physician for Simply

Id. at 219 and 220.

4. Petitioner timely requested a Fair Hearing on December 16, 2020, for the matters at issue in the NPAR. By order dated December 29, 2020, a Fair Hearing was initially scheduled for January 21, 2021. However, by Order dated February 1, 2021, the Fair Hearing was rescheduled to February 22, 2021, and completed on the same date.

5. Petitioner is sixty (60) years old. *Id.* at 95. Petitioner does not have a caregiver. His family supports consists of emotional support. *Id.* at 49.

6. The 701B dated November 16, 2020, addresses the level assistance Petitioner requires with Activities of Daily Living (“ADLs”). Petitioner needs assistance (but not total help) with bathing and dressing. Petitioner requires an assistive device for using the bathroom, transferring and walking/mobility. Petitioner requires no assistance when eating. For the ADLs requiring assistance, Petitioner always has assistance. *Id.* 99.

7. The 701B also addresses the level of Assistance Petitioner requires for Instrumental Activities of Daily Living (“IADLs”). Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals and using transportation. Petitioner needs assistance (but not total help) with shopping. Petitioner requires no assistance for using the telephone, managing money and managing medication. For the IADLs requiring assistance, Petitioner always has assistance. *Id.* at 100.

8. During the year prior to the date of 701B, Petitioner visited the emergency room four (4) times and was admitted to the hospital three (3) times. *Id.* at 98.

9. Petitioner's current health conditions include acid reflux/GERD, high blood pressure high cholesterol, insulin dependent diabetes, asthma, COPD, Guillain-Barr Syndrome, diabetic neuropathy and tremors. *Id.* at 101 and 102.

10. The 701B states that Petitioner indicated that he feels his health is about the same as it was the at same time the prior year. *Id.* at 103.

11. The following findings are based on Dr. Nicholas's testimony at the hearing. Petitioner currently receives seven (7) hours of personal care, three (3) hours of homemaker care, and five (5) hours of respite care per week. *Id.* at 86. Respondent terminated the home delivered meals because, upon a routine review of the services being received by Petitioner, Respondent concluded that the meals are a duplication of services because Petitioner lives with family members and homemaker services have been authorized. The purpose of home delivered meals is to provide nutrition for members who live alone and who do not have any other care options. The homemaker services hours can used for the preparation of meals for consumption on a later date. Respondent's decision was not based on change in Petitioner's condition, rather a determination that Respondent's prior assessment and authorization was excessive.

12. Respondent replaced the five (5) hours of adult companion care with five (5) hours of respite care because Petitioner does not live alone. It is Respondent's position that adult companion care is intended for persons who live alone; and, therefore, respite care is the more appropriate service for Petitioner and the change does not impact Petitioner's level of care.

13. The following was established by the testimony of Petitioner at the hearing. Petitioner lives with his girlfriend and his two adult children. Petitioner cannot prepare his own meals.

Petitioner's hands shake a lot and things fall out of his hand. Petitioner needs to ask for help to reach items.

Conclusions of Law

14. 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).

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

16. Because Respondent is terminating previously authorized services, 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.)

17. The LTC Policy,, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid including homemaker services. The LTC Policy provides the following with respect to adult companion, respite, and home delivered meal 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

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

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.

...

4.2.1.15 Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

...

18. 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.

19. As provided in section 4.1 of the LTC Policy, care services must be medically necessary.

In order to be covered by Medicaid, a 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. Homemaker services may be used for the preparation of meals. *Supra* ¶ 18.

As suggested by Dr. Nicholas, homemaker services may be used to prepare meals in advance for

later consumption. *Supra* ¶ 11. The LTC Policy's definition of homemaker services supports Dr. Nicholas' testimony as homemaker services include "provision of general household activities (such as meal preparation)." *Supra* ¶ 17. However, although Petitioner lives with family members, they are not his caregivers and only provide emotional support. *Supra* ¶ 5. Additionally, considering that there has been no change in Petitioner's medical condition or living situation, and that he needs total assistance with heavy chores, light housekeeping, meal prep, and using transportation, Respondent failed to prove that upon termination of the home delivered meals that three (3) hours of homemaker services would provide adequate care. *Supra* ¶¶ 7 and 11. Therefore, Respondent has failed to prove that the provision of home-delivered meals is excessive and does not meet the LTC's Policy's definition of medical necessity.

20. When Respondent terminated Petitioner's five (5) hours of adult companion services it authorized five (5) hours of respite care. Adult companion services and respite services are similar except that respite care is intended to provide a break for the natural support caregiver. Adult companion services provides socialization and supervision, whereas respite services broadly covers services provided by natural supports which includes socialization and supervision. Furthermore, as noted by Dr. Nicholas, adult companion services are intended for persons who live alone. *Supra* ¶ 11. Replacement of adult companion services with respite services is adequate to meet Petitioner's care needs. Approval of both services would be excessive and, therefore, does not meet the LTC's Policy's definition of medical necessity.

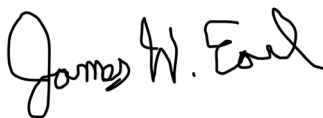
21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent failed to prove by a preponderance of the evidence that Respondent's termination home delivered meals was correct. However,

Respondent did prove by a preponderance of the evidence that its termination of adult companion services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of home delivered meals is **OVERTURNED**. Petitioner's appeal based on Respondent's termination of home delivered meals is **GRANTED**. Respondent's termination of adult companion services is **UPHELD**. Petitioner's appeal based on Respondent's termination of adult companion services is **DENIED**.

DONE AND ORDERED this 16th day of March , 2021, in Tallahassee, Leon County, Florida.



James W. Earl

20-FH [REDACTED] & 20-FH [REDACTED]

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JAMES W. EARL, 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:



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