



FILED

Apr 12, 2021, 8:34 am
OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]
Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant matter on February 16, 2021, at [REDACTED]

APPEARANCES

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

For the Respondent: Maria Mojica
Compliance Specialist
Sunshine State Health Plan, 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 service was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and mother, [REDACTED] appeared on behalf of Petitioner. Petitioner did not appear at the hearing.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”) appeared on behalf of Respondent. John Carter, M.D. (“Dr. Carter”) Long Term Care Medical Director for Sunshine appeared as a witness for Respondent. Leanne Murphy, Long Term Healthcare Coordinator for Sunshine, Christian Pacheco, Senior Director of Quality Improvement for Sunshine, and Catherine Calonjee, Long Term Healthcare Supervisor for Sunshine appeared at the hearing, but did not provide any testimony. Shelia Gonzalez, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“AHCA” or “Agency”) appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a fifteen (15)-page evidence packet and a twenty-five (25)-page evidence packet. The fifteen (15)-page evidence packet included: a copy of the Order To Show Cause dated February 09, 2021, a Designation of Authorized Representative For Medicaid Fair Hearing Participation (Sample) dated January 24, 2021; an Appeal for Denial Letter addressed to AHCA; a letter dated December 22, 2020 and signed [REDACTED] a [REDACTED] school letter dated November 6, 2015; a [REDACTED] After Visit Summary; a [REDACTED] Procedure Visit dated [REDACTED] 2015; [REDACTED] [REDACTED] discharge letter dated [REDACTED] 2018; and [REDACTED] Discharge Records dated [REDACTED] 2018. The twenty-five (25) page evidence packet included: [REDACTED] Admission Records dated [REDACTED] 2019; [REDACTED] After Visit Summary dated [REDACTED] 2019; [REDACTED] Exceptional Student Learning Support Transition Individual Education Plan (TIEP) Present Levels of Performance Goals and Objectives dated [REDACTED] 2017; [REDACTED]

[REDACTED] Summary of Services dated March 9, 2016; a Letter from [REDACTED] dated May 15, 2017; a letter from [REDACTED] dated July 7, 2014; [REDACTED] hospitalization record dated [REDACTED] 2018; and, [REDACTED] Hospitalization Record dated [REDACTED] 2019. Absent an objection from Respondent, the undersigned admitted Petitioner's fifteen (15)-page and twenty (25)- page evidence packets into evidence as Petitioner's Composite Exhibit 1 and Composite Exhibit 2 respectively.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred thirteen (113) – page evidence packet. The evidence packet included: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”) dated September 30, 2020; a Long Term Care Person-Centered Care Personal Care Plan dated September 29, 2020; a Long Term Care Person-Centered Care Plan dated December 17, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) dated [REDACTED] 2020; a 701B dated [REDACTED] 2020; an appeal letter; an e-mail dated October 7, 2020, subject: [Petitioner] Appeal letter; a Standard Appeal Acknowledgment Letter dated October 14, 2020; a Notice of Plan Appeal Resolution (“NPAR”) dated November 6, 2020; Sunshine Health Policy and Procedure, LTC(Long Term Care) Ancillary Service Criteria, Reference Number LT.UM.09 (“LT.UM.09”); and a copy of Rule 59G-1.010(166), Florida Administrative Code. Absent an objection from Petitioner, the undersigned admitted Respondents' One hundred thirteen (113)-page evidence packet into evidence as Respondent's Composite Exhibit 1.

CONCLUSIONS OF LAW

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. In an NABD dated September 30, 2020, Respondent informed Petitioner that it was denying her request for an additional eighteen (18) hours of personal care services per week.

The NABD stated, in pertinent part, as follows:

Sunshine Health has reviewed your request for an extra 18 hours/week of Personal Care Services (the person who helps bathe and dress you), which we received on 09/24/2020. After our review, this service has been:
DENIED as of 10/01/2020.

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 the reason(s) 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: The request for an extra 18 hours/week of Personal Care Services is denied. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 12 hours/week of Personal Care Services and 5 hours/week of Homemaker Services.

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

You, or someone legally authorized to do so, can ask us for a complete copy of your file, including medical records, a copy of plan review criteria and guidelines, contract provisions, other documents, records, and other information relevant to the adverse benefit determination. These will be provided free of charge.

Respondent's Composite Exhibit Number 1 at 4.

3. Petitioner timely appealed the NABD and received an NPAR dated November 6, 2020 upholding the NABD. *Id.* at 75.

4. Petitioner requested a Fair Hearing on January 11, 2021 and pursuant to scheduling order dated January 26, 2021, the Fair Hearing was held and completed on February 16, 2021.

5. At the time Petitioner's request for additional personal care services was denied Petitioner was twenty-two (22) years old. *Id.* at 49.

6. The 701Bs dated [REDACTED] 2020, and [REDACTED] 2020, assessed the level of assistance Petitioner needs with Activities of Daily Living ("ADLs"). Both 701Bs indicate that Petitioner needs assistance (but not total help) with bathing, dressing, eating, and using the bathroom. Both 701Bs also indicate that Petitioner needs no assistance with transferring and walking/mobility. The 701Bs state that, where needed, Petitioner always has assistance with her ADLs. *Id.* at 35 and 53.

7. The 701Bs also assessed the level of assistance Petitioner needs with Instrumental Activities of Daily Living ("IADLs"). Both 701Bs indicate that Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. The 701Bs also indicate that Petitioner needs assistance (but not total help) with using the telephone and managing medication. The 701Bs state that Petitioner always has assistance with her IADLs. *Id.* at 36 and 54. The 701Bs further indicate that

██████████ is Petitioner's fulltime caregiver providing one hundred five (105) hours of care per week for Petitioner and that providing such care is stressful and does not allow ██████████ to work as much as she would like. *Id.* at 63 and 64.

8. Petitioner's medical conditions include acid reflux/GERD, occasional bladder incontinence, past seizures due to medications, past hyperthyroidism, and schizophrenia. *Id.* at 55 through 57.

9. Petitioner was hospitalized on the following dates: ██████████ through ██████████ 2015, treated for schizophrenia; ██████████ through ██████████ 2018 for schizophrenia; ██████████ 2018, for paranoid schizophrenia; ██████████ through ██████████ 2019, Baker Acted with a diagnosis of schizophrenia; ██████████ through ██████████ 2019, voluntary hospitalization for paranoid schizophrenia; ██████████ 2019 for seizure activity. *Id.* at 53; Respondent's Composite Exhibit 1 at 9 and 13 and Respondent's Composite Exhibit 2 at 13.

10. Petitioner is currently authorized to receive twelve hours (12) of personal care services and five (5) hours of homemaker services per week. Petitioner is also authorized to receive one (1) case per month of pull-up diapers. *Id.* at 29.

11. Based on ██████████ testimony at the hearing it is established Petitioner has been diagnosed with schizophrenia. ██████████ is Petitioner's caregiver. Petitioner does not sleep much and is very hyperactive during the day. Petitioner follows ██████████ around all day long. Petitioner is unable to use the bathroom on her own. Petitioner requires constant supervision because she is unaware of her surroundings, for example ██████████ needs to make certain that Petitioner does not touch a hot stove. Petitioner currently requires diapers. ██████████ has cameras throughout her house in order to monitor Petitioner.

12. The following is based on the testimony of Dr. John Carter. Petitioner suffers from schizophrenia and unpredictable behavior. Respondent denied Petitioner's request for an additional 18 hours of personal care services per week because it concluded that it was not medically necessary. Currently, Petitioner's approved services include 12 hours of personal care and 5 hours of homemaker services per week. Respondent denied the request because Petitioner lives with her mother and requires partial, but not total assistance, for some ADLs and because the Petitioner's mother works from home. Personal care services are not meant to be for a primary supervision care, but are intended to primarily assist with ADLs.

Conclusions of Law

13. 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).

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

15. 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.)

16. 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, in pertinent part:

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

...

4.2.2.6 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.

17. 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.

18. 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.

19. LT.UM.09 provides as follows, pertinent part regarding adult personal care services:

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders
The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific time
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...
Covered Personal Care Services May Include:

- a) Bathing
- ...
- b) Dressing and Grooming
- ...
- c) Eating and Feeding Considerations
- ...
- d) Toileting Considerations
- ...
- e) Transferring Considerations
- ...

f) Mobility Considerations

...
Id. at 99 to 102

20. LT.UM.09 provides a detailed methodology for determining the level of personal care service that is required based upon the level of assistance a recipient requires for each ADL. *See Id.* at 102 to 104.

21. Petitioner requested an additional eighteen (18) hours of personal care services per week. In order to be covered by Medicaid, the requested personal care services must be medically necessary. The services are required to 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. *Supra* ¶¶ 17 and 18. Petitioner has failed to meet these criteria. ██████████ testified that the additional personal care hours are necessary because Petitioner needs constant supervision because she is unaware of her surroundings. Additionally, ██████████ indicates that she needs additional help supervising Petitioner because Petitioner does not sleep much a night and follows ██████████ around all of the time. *Supra* ¶ 11. However, ██████████ currently provides one hundred five (105) hours of care per week for Petitioner. *Supra* ¶ 7. In addition, personal care services are intended to provide assistance with ADLs and IADLs and not general supervision. *Supra* ¶ 16. Petitioner has not established that Petitioner's current authorized services and natural supports are inadequate to meet Petitioner's ADL and IADL care needs and that the requested amount of personal care services is consistent with the level of care she requires and are not in excess of her needs. LT.UM.09 provides a detailed methodology for doing so. Petitioner has not demonstrated that the application of the methodology to her situation justifies her request. Although ██████████ caring for Petitioner prevents her from pursuing fulltime work, the services

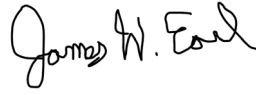
must not be furnished in a manner primarily intended for the convenience of the recipient's caretaker. *Supra* ¶¶ 17 and 18.

22. 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 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 12th day of April, 2021, in Tallahassee, Leon County, Florida.

 James W. Earl
21-FH [REDACTED]
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JAMES W. 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:

[REDACTED]



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AHCA Medicaid Hearing Unit
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