



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

FILED

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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 case on March 15, 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 first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's adult companion care services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home delivered meals was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and granddaughter, [REDACTED] appeared on behalf of the Petitioner.

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; Alshanetha Williams, Care Coordinator for Sunshine; and Louise Jeanty, Quality Improvement Supervisor for Sunshine.

Linda Latson, Registered Nurse Specialist 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 fifteen (115)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary, dated February 23, 2021; a Notice of Adverse Benefit Determination ("NABD"), dated June 24, 2020; a Long Term Care Person-Centered Care Plan ("POC"), dated June 19, 2020; a POC, dated February 5, 2021; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated [REDACTED] 2020; a 701B, dated [REDACTED] 2021; an e-mail from [REDACTED], dated May 12, 2020; a letter from [REDACTED] dated April 24, 2020; a Standard Appeal Acknowledgement, dated September 12, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated September 30, 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 page packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 2 of Respondent's Composite Exhibit 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 111.

2. Petitioner is [REDACTED] years old. *Id.* at 14. [REDACTED] is Petitioner's caregiver. *Id.* 64. Petitioner resides with [REDACTED] and [REDACTED] husband. *Id.* As provided by testimony, three (3) of [REDACTED] adult children also reside in the home with Petitioner. As provided by testimony, [REDACTED] does not work outside of the home, but does occasionally babysit her granddaughter.

3. Petitioner is diagnosed with the following: high blood pressure; occasional dizziness; asthma; dementia; and depression. *Id.* at 52, 56, and 58. Petitioner is receiving memory care. *Id.* at 51. Petitioner is forgetful or easily confused nearly every day. *Id.* at 59.

4. Petitioner's needs for her 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; and for transferring and walking/mobility, Petitioner needs no assistance. *Id.* at 54. Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: for heavy chores, light housekeeping, managing money, and preparing meals, Petitioner needs total assistance (cannot do at all); for using the telephone, shopping, managing medication, and using transportation, Petitioner needs assistance (but not total help). *Id.* at 55. Petitioner always has assistance with her ADLs and IADLs. *Id.* at 54 – 55. Petitioner needs supervision due to confusion, however, her family can assist with her supervision. *Id.* at 54.

5. Petitioner talks to friends, relatives, or others (by phone, computer, or other means) two to six times per week. *Id.* at 64. Petitioner spends time with someone who does not live with her

at least two to six times per week. *Id.* Petitioner participates in activities outside the home that interest her several times per month. *Id.*

6. Petitioner's plan of care, for the period of September 1, 2019, through August 31, 2020, included the following: five (5) days of adult day care, weekly; seven (7) home delivered meals, weekly; eight (8) hours of adult companion care, weekly; and seven (7) hours of personal care, weekly. *Id.* at 17. Petitioner's plan of care, for the period of September 1, 2020, through August 31, 2021, includes the following: five (5) days of adult day care, weekly; and seven (7) hours of personal care services, weekly. *Id.* at 26. As provided by testimony, Petitioner attends adult day care from approximately 10:00 a.m. until 4:00 p.m.

7. In the NABD, dated June 24, 2020, Respondent terminated Petitioner's adult companion care services (eight hours per week) and Petitioner's home delivered meals (seven meals per week). *Id.* at 4 – 12. The NABD explained the basis of the termination as follows:

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*)

...

- 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.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 8 hours per week of Companion Care Services. Companion Care is provided to prevent social isolation. The member does not live alone and there is a low risk of social isolation. Sunshine Health will terminate the 7 meals per week of Home Delivered Meals. The member lives with family who can assist with meal preparation.

The updated care plan approved by Sunshine Health will include 5 days per week of Adult Day Care and 7 hours per week of Personal Care 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.

8. Petitioner requested a plan appeal and received an NPAR, dated September 30, 2020, upholding the termination. *Id.* at 77 – 79. The NPAR explained as follows:

The reason for our decision was appeal for the termination (end) of 8 hours per week companion care (the person who helps and watches over you) and 7 meals per week of home delivered meals (meals sent to your home) is denied. Companion services do not provide hands on assistance (help). Companion Care services (the person who helps and watches over you) provide socialization to prevent isolation. You are not at risk for social isolation as you live with family and attend Adult Day Care. Your family is able to assist with your meal preparation. Your care plan includes 5 days per week of Adult Day Care and 7 hours per week of Personal Care Services. Sunshine Health looked at your care needs and household and determined that your current Services and hours are adequate (enough) to meet your health care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 77 of Respondent's Composite Exhibit 1.

9. On January 15, 2021, Petitioner requested a Fair Hearing to challenge the termination adult companion care and home delivered meals. On February 23, 2021, the undersigned issued

an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for March 15, 2021, at [REDACTED]

10. At the Fair Hearing, [REDACTED] withdrew the request for a Fair Hearing regarding the termination of Home Delivered Meals.

11. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified that it was his opinion that adult companion care was a convenience item and not medically necessary, as Petitioner attends adult day care and lives with adult family members.

12. LT.UM.09 provides as follows in regards to adult companion care services:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental illness requiring supervision
- Parkinson's disease
- Multiple sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End State Renal Disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c for more details
- Informal supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member’s residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

Pages 90 – 91 of Respondent’s Composite Exhibit 1.

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 Respondent is terminating a previously approved service, Fla. Admin Code R. 59-1.100(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.)

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 with respect to adult companion 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)

...

1.3.16 Natural Supports

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

...

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.

Pages 1-4 of LTC Policy.

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.

Pages 2-3 of LTC Policy.

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.

ADULT COMPANION CARE SERVICES

19. In the NABD, dated June 24, 2020, Respondent terminated Petitioner's adult companion care services (8 hours per week). See ¶ 7. In the NABD, Respondent explained that adult companion care services were not medically necessary, and that the termination was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* The NABD further explained "member does not live alone and there is low risk of social isolation." *Id.*

20. Section 4.2.1.1 of the LTC Policy reflects that adult companion services are "[t]he 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." See ¶ 16. Moreover, as provided in Respondent's policy, LT.UM.09, adult companion care services are to "provide non-medical care, supervision, and socialization to a functionally impaired adult." See ¶ 12. As discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient's need for supervision; the recipient's informal supports; the recipient's living situation; and the services in place for the recipient. See ¶ 12.

21. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive the terminated services. As provided in the record, Petitioner lives with [REDACTED] husband, and [REDACTED] three (3) adult grandchildren. See ¶ 2. [REDACTED] attends adult day care five (5) days per week, for approximately six (6) hours each day. See ¶ 6. Further, Petitioner talks with friends, relatives, or other two (2) to six (6) times per

week. See ¶ 5. Therefore, it appears that Petitioner has natural supports in her home to provide non-medical care and social enrichment, as well multiple opportunities to socialize with others through her adult day care services. Further, Petitioner always has assistance with her IADLs. See ¶ 4. No evidence was introduced at the hearing indicating that Petitioner has an unmet need for supervision and, if so, the amount of assistance needed for incidental non-medical tasks such as meal preparation, laundry, and light housekeeping. Considering the LTC Policy's definition of adult companion services, *supra* ¶ 16, Respondent demonstrated that the previously authorized amount of adult companion services are "in excess of [Petitioner's] needs." See *supra* ¶ 17. Thus, the record shows that Petitioner's adult companion care services are not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment" and are "in excess of [her] needs." Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent showed by a preponderance of the evidence that its termination of eight (8) hours, weekly, of Petitioner's adult companion care was correct.

HOME DELIVERED MEALS

22. A Hearing Officer may deny or dismiss a Fair Hearing request if the Recipient files a written withdrawal of the request. A Hearing Officer may also deny or dismiss a Fair Hearing request if the Recipient testifies on the record that he or she wishes to withdraw the request. See Rule 59G-1.100(9)(b)(5)(a), Florida Administrative Code. At the Fair Hearing, [REDACTED] withdrew Petitioner's request for a Fair Hearing regarding the termination of home delivered meals.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of adult companion care services is **DENIED**.

Petitioner's Fair Hearing request regarding Respondent's termination of home delivered meals is hereby deemed withdrawn, and this matter is now closed.

DONE and **ORDERED** this 5th day of April, 2021, in Tallahassee, Leon County, Florida.



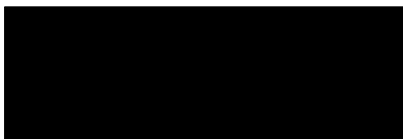
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

Copies Furnished To:



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