



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

FILED

Apr 30, 2021, 8:30 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

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

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 21- [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 31, 2021, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED] [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 Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

The second 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.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and wife, [REDACTED] [REDACTED] [REDACTED] appeared on behalf of the Petitioner. Petitioner appeared as a witness on his own behalf. Petitioner's caregiver, [REDACTED] appeared as a witness for 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; Suzanne Arzuaga, Care Coordinator for Sunshine; Alshenetha Williams, Care Coordinator Supervisor for Sunshine; Laticia Hughes, Care Coordinator Supervisor for Sunshine; and Louise Jeanty, Quality Improvement Supervisor for Sunshine.

Chrissie Simmons, 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 one hundred and eleven (111)-page evidence packet in AHCA Case number 21-FH [REDACTED]. The evidence packet included copies of the following: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated March 16,

2021; a Notice of Adverse Benefit Determination (“NABD”), dated January 4, 2021; a 90 Day Care Plan Review of the Long Term Care Person-Centered Care Plan (“POC”) for POC, signed November 16, 2020; a Care Plan Review, signed March 2, 2021; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated November 13, 2020; a 701B, dated March 2, 2021; a Standard Appeal Acknowledgement, dated January 12, 2021; a Notice of Plan Appeal Resolution (“NPAR”), dated February 6, 2021; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09 (“LT.UM.09”); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and eleven (111)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111)-page evidence packet in AHCA case number 21-FH [REDACTED]. The evidence packet included copies of the following: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated March 17, 2021; a NABD, dated September 25, 2020; a 90 Day Care Plan Review of the POC, signed August 31, 2020; a Care Plan Review, signed March 2, 2021; a Florida Department of Elder Affairs 701B, dated August 31, 2020; a 701B, dated March 2, 2021; a Standard Appeal Acknowledgement, dated November 11, 2020; an NPAR, dated November 18, 2020; Sunshine’s LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and eleven (111)-page evidence packet into evidence as Respondent’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. *See* page 2 of Respondent's Composite Exhibit 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *See* page 107 of Respondent's Composite Exhibit 2.

2. Petitioner is sixty-three (63)-years old. *See* page 49 of Respondent's Composite Exhibit 2. Petitioner lives with his two (2) sons. *Id.* at 50. Petitioner's sons work full time. *Id.* at 23. As testified to by [REDACTED], Petitioner's son, [REDACTED], works full-time from 7:00 a.m. to 6:00 p.m., and Petitioner's son, [REDACTED], works full time from 9:00 a.m. or 10:00 a.m. to 10:00 p.m. [REDACTED] testified that she works from 8:00 a.m. to 5:00 p.m. Monday through Thursday, but only works four (4) hours on Friday.

3. Petitioner is diagnosed with the following: active bed sores on the buttocks and leg; constant incontinence of bladder and bowel, multiple sclerosis, partial paralysis, and episodes of temporary paralysis in legs, arms and hands. *See* page 55-56 of Respondent's Composite Exhibit 2. Petitioner has a history of urinary tract infections. *Id.* Petitioner's overall health is rated as fair. *Id.* at 52.

4. In regard to his activities of daily living ("ADLs"), Petitioner needs assistance (but not total help) with eating. *Id.* at 53. Petitioner needs total assistance (cannot do at all) with bathing, dressing, and using the bathroom, transferring. *Id.* In regard to his instrumental activities of daily living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, and shopping. *Id.* at 54. Petitioner needs assistance (but not total help) with managing money, managing medication, and using transportation. *Id.* Petitioner needs no assistance with using the telephone. *Id.* Petitioner always has assistance with his IADLs. *Id.*

5. Petitioner's POC for the service period effective March 1, 2021, included, among other things, thirty-six (36) hours weekly of personal care services, four (4) hours weekly of Homemaker services, and fourteen (14) Home Delivered Meals weekly. *Id.* at 29.

6. The NABD in case number 21-FH [REDACTED] explained the basis of the denial of personal care services 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: The request for an extra 10 hours per week of Personal Care Services is denied for lack of medical necessity. 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 36 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

See page 4 - 5 of Respondent's Composite Exhibit 1.

7. The NABD in case number 21-FH0476 explained the basis for the termination of Adult Companion Care Services 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:
 4. 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;
 5. 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
 6. 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. 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: Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 10 hours per week of Companion Care Services. Companion Care is provided to prevent social isolation. Companion Care is not hands on care. The member lives with his son. There is a low risk of social isolation. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

See page 4 - 5 of Respondent's Composite Exhibit 2.

8. The NPAR in AHCA case 21-FH[REDACTED], dated February 6, 2021, denied Petitioner's plan appeal and upheld the denial of ten additional hours weekly of personal care services. See pages 73-74 of Respondent's Composite Exhibit 1.

9. The NPAR in AHCA case 21-FH [REDACTED], dated November 18, 2021, denied Petitioner's plan appeal and upheld the termination of ten hours weekly of Adult Companion Care Services. See pages 73-74 of Respondent's Composite Exhibit 2.

10. Dr. Carter is a Medical Director at Sunshine. In light of the testimony and evidence, Dr. Carter offered on the record to issue a Medical Director override approving Petitioner's request for ten (10) additional hours weekly of personal care services. [REDACTED] accepted Dr. Carter's offer and agreed on the record that it resolved Petitioner's Fair Hearing request with regard to personal care services. Accordingly, [REDACTED] withdrew Petitioner's Fair Hearing Request in AHCA case number 21-FH [REDACTED] concerning personal care services.

11. LT.UM.09 provides as follows in regard to 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 Stage 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 others 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 for 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 care tasks.
6. The member has memory deficits, which prevent him or her from managing 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 and comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

Id. at 86-87.

CONCLUSIONS OF LAW

12. 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).

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

14. Because Respondent is terminating a previously approved service, Respondent bears the burden of proof. 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.)

15. The Florida Medicaid Statewide 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 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)

...

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.

...

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.

Pages 1 -4 of LTC Policy.

16. 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.

17. 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.

Page 7 of Definitions Policy.

PERSONAL CARE SERVICES

18. A hearing officer may deny or dismiss a Fair Hearing request if the Recipient files a written withdrawal of the request. A Hearing Office may also deny or dismiss a Fair hearing request if the Recipient testified on the record that he or she wishes to withdraw the request. See Fla. Admin. Code Rule 59G-1.100(9)(b)(5)(a). At the Fair Hearing, ██████████ withdrew Petitioner's request for a Fair Hearing regarding the denial of additional personal care services.

ADULT COMPANION CARE SERVICES

19. In the NABD, Respondent terminated Petitioner's Adult Companion Care services (10 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 needs and household and caregiver status" *Id.* The NABD further explained "[t]he member lives with his son. There is low risk of social isolation." *Id.*

20. Section 4.2.1.1 of the LTC Policy reflects that Adult Companion Care 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 ¶ 15. 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 ¶ 11. 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 to the recipient. *Id.*

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 his two (2) sons and has a forty-six (46) hours of personal care and four (4) hours of homemaker services. See ¶¶ 2, 5, and 10. Therefore it appears that Petitioner has natural supports in the home to provide non-medical care and social enrichment, as well as multiple opportunities to socialize with his caregiver, [REDACTED]. Further, Petitioner always has assistance with his 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, see ¶ 11, Respondent demonstrated that the previously authorized amount of adult companion services are "in excess of [Petitioner's] needs." See ¶ 16. 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 [his] needs."


22. 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 ten (10) hours weekly of Petitioner's Adult Companion Care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Petitioner's Fair hearing request in AHCA case number 21-FH [REDACTED] regarding Respondent's denial of additional personal care services is hereby deemed withdrawn, and this matter is now closed.

Respondent's termination of Adult Companion Care services in AHCA case number 21-FH [REDACTED] is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of Adult Companion Care services is **DENIED**.

DONE AND ORDERED this 30th day of April 2021, in Tallahassee, Leon County, Florida.

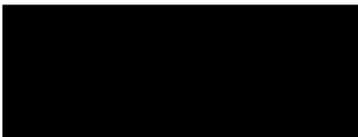

Joseph Mabry
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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