



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

FILED

Jun 02, 2021, 10:32 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

WELLCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

WELLCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 3, 2021 at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Nicole Vega  
Regulatory Research Coordinator  
WellCare of Florida, Inc.

## STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate ten (10) hours per week of personal care services per week provided to Petitioner was correct.<sup>1</sup>

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate six and one half (6.5) hours per week of homemaker services per week provided to Petitioner was correct.

## PRELIMINARY STATEMENT

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

Nicole Vega, Regulator Research Coordinator for Wellcare of Florida, Inc. ("Staywell") appeared on behalf of Respondent. The following individuals appeared as witnesses for Respondent: Carrol Farrant, Operations Supervisor for Staywell; Teresa Bonfante, Case Manager Supervisor for Staywell; and Dr. Sherice Andrews ("Dr. Andrews"), Medical Director for Staywell

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and three (103)-page evidence packet. The evidence packet included: a summary; a list of table supporting documents; an undated Eligibility Verification screenshot; Prior Authorization # [REDACTED] (Home Personal Care), received December 7, 2020; a Notice of Adverse Benefit

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<sup>1</sup> The parties stipulated on the record that ten hours of personal care services were at issue rather than the six hours reflected on the NABD regarding personal care services.

Determination (“NABD”) regarding personal care services, dated February 10, 2021; an NABD regarding homemaker services, dated February 10, 2021; undated plan appeal review notes regarding personal care services; an Notice of Appeal Plan Resolution (“NPAR”) regarding personal care services, dated February 19, 2021; Petitioner’s plan appeal, dated February 18, 2021, sent by facsimile February 19, 2021; undated plan appeal review notes regarding homemaker services; an NPAR regarding homemaker services, dated February 19, 2021; Florida Administrative Code Rule (“Fla Admin Code R.”) 59G-1.010; Clinical Policy: Long Term Services and Supports (LTSS), last review date April 2020; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care program Coverage Policy (“LTC Policy”), dated March 2017; the Medicaid MMA Contract, reviewed May 17, 2017; the Staywell Member Handbook. Absent an objection from the Petitioner undersigned admitted the one hundred and three (103)-page packet into evidence as Respondent’s Composite Exhibit 1.

Petitioner submitted a four (4) page packet to the Office of Fair Hearings and Respondent prior to the hearing. The packet included a facsimile cover sheet, dated March 30, 2021; a [REDACTED] facsimile cover sheet, dated [REDACTED] 2021; a patient summary, dated [REDACTED] 2021; a letter of medical necessity from [REDACTED] dated February 22, 2021. Absent an objection from Respondent the undersigned admitted the packet as Petitioner’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Staywell. Staywell is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is eighty-nine (89)-years old and diagnosed with advanced Alzheimer's Disease. Petitioner's Composite Exhibit 1 at 4. Petitioner lives with her daughter and son-in-law and attends an Adult Day Care program six (6) days per week. Respondent's Composite Exhibit 1 at 32-33. As testified to by [REDACTED], she is the only member of the household who provides care in the home for Petitioner as her husband frequently travels for work. Also established by [REDACTED] testimony she shops for Petitioner and prepares her for attending the Adult Day Care each day which includes transferring Petitioner across stairs.

3. Petitioner needs assistance with bathing, eating, and dressing. Petitioner's Composite Exhibit 1 at 4. Petitioner is also incontinent and requires prompting to take her medications. *Id.* at 4.

4. Respondent terminated the ten hours of personal care services per week provided to Petitioner. The relevant NABD dated February 10, 2021, 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 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:

WellCare received your request to continue 6 hours of personal care services in the home each week. This request was denied because the information provided does not support that it is required to manage your medical condition(s). You do not live alone. You live with others who work up to 48 hours each week. You attend Adult Day Care (ADC) program 6 days/week. The staff at the ADC assist with personal care needs. This program is meant to supplement the care that your family is available to safely provide. The ADC hours cover the time that your caregiver is working outside of the home. The personal care hours will be discontinued (stopped). This program would expect that your family will assist with personal care needs, un-paid, when you are not at the ADC program. This is enough to meet your needs. Criteria: WellCare Clinical Coverage Guideline, Long Term Services and Supports (LTSS) – Florid [sic]

*Id.* at 9-10.

5. Respondent also terminated the six and one half (6.5) hours of homemaker services per week provided to Petitioner. The relevant NABD dated February 10, 2021, 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 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:

WellCare received your request to continue 6.5 hours of homemaking services in the home each week. This request was denied because the information provided does not support that it is required to manage your medical condition(s). You do not live alone. You live with others who work up to 48 hours each week. You attend Adult Day Care (ADC) program 6 days/week. Because you are away from the home 6 days a week, you do not have as many household chores needed for your care. This program is meant to supplement the care that your family is available to safely provide. The ADC hours cover the time that your caregiver is working outside of the home. The homemaking hours will be discontinued (stopped). This program would expect that your family will assist with household chores, un-paid, when you are not at the ADC program. This is enough to meet your needs. Criteria: WellCare Clinical Coverage Guideline, Long Term Services and Supports (LTSS) – Florida

*Id.* at 20-21.

6. Petitioner requested a plan appeal to the NABD terminating personal care services and received an NPAR dated February 19, 2021, upholding the termination. The NPAR explained as follows:

On 2/19/2021, after consideration of the information you provided to Staywell in support of your plan appeal, Staywell hereby Denies your plan appeal. As a result, you will not receive Home Personal Care, T1019 hours per week, effective 2/19/2021.

The facts that we used to make our decision are: You have family at home to help you. The reasons for this decision are based on a set of standards. This included Wellcare Clinical Coverage Guideline For Long Term Services And Supports (LTSS) – FLORIDA HS-500.

*Id.* at 36.

7. Petitioner requested a plan appeal to the NABD terminating homemaker services and received an NPAR dated February 19, 2021, upholding the termination. The NPAR explained as follows:

On 2/19/2021, after consideration of the information you provided to Staywell in support of your plan appeal, Staywell hereby Denies your plan appeal. As a result, you will not receive Home Maker Services, S5130 for 6.5 hours per week, effective 2/19/2021.

The facts that we used to make our decision are: You have family at home to help you. The reasons for this decision are based on a set of standards. This included Wellcare Clinical Coverage Guideline For Long Term Services And Supports (LTSS) – FLORIDA HS-500.

*Id.* at 53.

8. On February 22, 2021, [REDACTED] provided Petitioner with a letter of medical necessity advocating that Petitioner's home health services be maintained at the current levels. Petitioner's Composite Exhibit 1 at 4.

9. [REDACTED] requested a Fair Hearing on behalf of Petitioner on February 24, 2021. On April 14, 2021, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 3, 2021, at [REDACTED]

10. Dr. Andrews opined that given that Petitioner attends adult day care while [REDACTED] is working during the week Petitioner's needs are met with the services in places which are intended to supplement assistance Petitioner receives from family.

#### **CONCLUSIONS OF LAW**

11. 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). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

13. Because Respondent is terminating a previously approved 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.

14. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes and regulates Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following:

**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

...

#### **4.2.1.2 Adult Day Health Care**

The provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 420, Part III, F.S. Nutritional meals are included as part of this service when the enrollee is at the adult day health care center during meal times. This service includes medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational, and speech therapies indicated in the enrollee's plan of care are furnished as components of this service. Nursing services, which include periodic evaluation, medical supervision of self-care services directed toward activities of daily living, and personal hygiene are also a component of this service.

...

#### **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.

...

#### **4.2.2.6 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.

15. 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.

16. 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.

### **Termination of Personal Care Services**

17. Respondent terminated the ten (10) hours per week of personal care service provided to Petitioner. *Supra* ¶ 4. On the NABD, Respondent indicated that the personal care services were not medically necessary but did not identify which component of medical necessity the denial was based on. *Id.*

18. The clinical review summary shows that Petitioner lives with her daughter and son-in-law and attends an Adult Day Care program six (6) days per week. *Supra* ¶ 2. The Letter of medical Necessity, dated February 22, 2021, shows that Petitioner is diagnosed with advanced Alzheimer's disease. *Id.* In the same letter, ██████████ advocates that Petitioner's home health services be maintained at their current levels. *Supra* ¶ 8. The letter from ██████████ also explains that Petitioner needs assistance with bathing, eating, dressing, is incontinent, and requires prompting to take her medications. *Supra* ¶ 3. The record shows that ██████████ is the only family member in the home who cares for Petitioner as her husband frequently travels for work. *Supra* ¶ 2. The record shows that Dr. Andrews opined that Petitioner's needs are met with the services provided through the Adult Day Care. *Supra* ¶ 10.

19. As provided in the LTC Policy personal care services are intended 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." *Supra* ¶ 14. The personal care services terminated by Respondent 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." *Supra* ¶ 16. In this case,

Respondent relies on the Dr. Andrews' opinion that the services are not medically necessary, based on fact that Petitioner is in an Adult Day Care six (6) days per week and lives in the home with her daughter and son-in-law as the basis for terminating Petitioner's personal care services. The record is otherwise void as to whether Petitioner's need for assistance with ADLs and IADLs is met outside of the Adult Day Care setting by her natural supports. The testimony by [REDACTED] that she is Petitioner's only natural support does not appear to support the conclusion that Petitioner's need for assistance with ADLs and IADLs is met outside of the Adult Day Care. Accordingly, Respondent has not proved by a preponderance of the evidence that personal care services terminated by Respondent are not "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."

#### **Termination of Homemaker Services**

20. Respondent terminated the six and one half (6.5) hours per week of homemaker services provided to Petitioner. *Supra* ¶ 5. On the NABD, Respondent indicated that the homemaker services were not medically necessary but did not identify which component of medical necessity the denial was based on. *Id.*

21. As provided in the LTC Policy, homemaker services are intended to provide assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control). *Supra* ¶ 14. The homemaker services terminated by Respondent 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." *Supra* ¶ 15.

22. As discussed regarding personal care services Respondent's termination of homemaker services was based on the fact that Petitioner is attends Adult Day Care six (6) days per week. The record is void on whether Petitioner's needs relating to homemaker services are met by her natural supports. The evidence does not show where Petitioner's needs are met or not and the opinion from Dr. Andrews that the homemaker services are not medically necessary does not appear to be supported by the other testimony and evidence. As such, Respondent has not proved by a preponderance of the evidence that homemaker services terminated by Respondent are not "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."

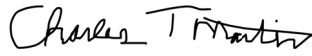
#### **Conclusion**

23. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes the following: Respondent has not proved by preponderance of the evidence that Respondent's decision to terminate ten (10) hours per week of personal care services was correct. Respondent has not proved by a preponderance of the evidence that Respondent's decision to terminate six and a half (6.5) hours of hours of homemaker services was correct.

#### **IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's termination ten (10) hours of personal care services per week is **REVERSED**. Petitioner's appeal based on the termination of ten (10) hours of personal care services per week is **GRANTED**. Respondent's termination of six and one half (6.5) hours of homemaker services per week is **REVERSED**. Petitioner's appeal based on the termination of six and one half (6.5) hours of homemaker services per week is **GRANTED**.

**DONE and ORDERED** this 2nd day of June, 2021, in Tallahassee, Leon County, Florida.



Charles Martin  
21-FH[REDACTED] & 21-FH[REDACTED]  
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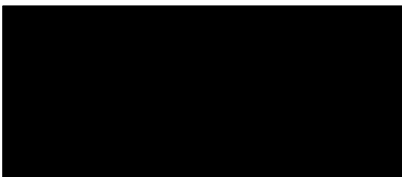
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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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**AHCA Medicaid Hearing Unit**  
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