



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

FILED

Jun 23, 2021, 11:27 am

OFFICE OF FAIR HEARINGS

██████████

PETITIONER,

AHCA Case No.: 21-FH ██████████

Plan ID No.: ██████████

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 20, 2021, at ██████████.

APPEARANCES

For the Petitioner:

██████████
Petitioner

For the Respondent:

Kizzy Alleyne
Senior Manager - Compliance
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services from twenty-eight (28) hours per week to twenty-four (24) hours per week was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on his own behalf. [REDACTED] [REDACTED] Petitioner's friend, and [REDACTED], Petitioner's caregiver, appeared as witnesses for Petitioner.

Kizzy Alleyne, Senior Manager – Compliance for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. Melissa Layne, Senior Manager for Member Appeals for Sunshine; Tammy Swann, Senior Director for Sunshine; Alshonica Williams, Care Coordinator Supervisor for Sunshine; Donna Miller, Care Coordinator Supervisor for Sunshine; Cassandra Stack, Long Term Care Coordinator for Sunshine; and Dr. John Carter ("Dr. Carter"), Medical Director for Sunshine, attended as witnesses for Respondent.

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 eighteen (118)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary, dated May 3, 2021; a Notice of Adverse Benefit Determination ("NABD"), dated March 5, 2021; a Long Term Care Person-Centered Care Plan, signed February 18, 2021; a second Long Term Care Person-Centered Care Plan, signed April 5, 2021; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated February 18, 2021; a second 701B, dated April 5, 2021; an Expedited Appeal Decision, dated March 15, 2021; a Standard Appeal Acknowledgment, dated March 15, 2021; a Notice of Plan Appeal Resolution ("NPAR"), dated April 1, 2021; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019; and Florida Administrative Code Rule ("Fla. Admin. Code

R.”) 59G-1.010(166). Absent an objection from the Petitioner, the undersigned admitted the one hundred and eighteen (118)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine State Health Plan, Inc. (“Sunshine”). Respondent’s Composite Exhibit 1 at 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *See Id.*

2. Petitioner is sixty-one (61)-years old and diagnosed with rheumatoid arthritis, constant bowel and bladder incontinence, bladder spasms, memory loss, autonomic dysreflexia, and partial paralysis from the chest down. *Id.* at 49 and 55-56. Petitioner lives with his friend and roommate, ██████████. *Id.* at 15. As testified to by Petitioner, his relationship with ██████████ is limited to that of being a housemate and a friend. ██████████ is not Petitioner’s significant other nor does ██████████ act as a caregiver for Petitioner. As established by ██████████’ testimony and the Long Term Care Person Centered Care Plan, signed February 18, 2021, ██████████ ██████████ has physical limitations that prevent her from being able to assist with Petitioner’s care. *Id.* 14.

3. Petitioner currently receives forty-two (42) hours of personal care services per week. *Id.* at 5. Petitioner requires total assistance with heavy chores and light housekeeping and needs assistance (but not total help) with preparing meals. Petitioner has assistance with those tasks most of the time. *Id.* at 54. Petitioner can dictate what he wants to buy when he goes shopping but must have assistance obtaining items at a store. *Id.*

4. Respondent reduced Petitioner's homemaker services by four (4) hours per week, effective March 20, 2021. *Id.* at 4-5. The NABD dated March 5, 2021, explained the basis of the reduction 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: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes:

- 42 hours per week of Personal Care Services
- 28 hours per week of Homemaker Services
- 4 hours per week of Companion Care Services

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce Homemaker Services from 28 hours per week to 24 hours per week, a reduction of 4 hours per week of Homemaker Services. Based on the assessment, Sunshine Health will terminate the 4 hours per week of Companion Care Services. The updated care plan approved by Sunshine Health will include 42 hours per week of Personal Care Services and 24 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id.

5. The pertinent portion of Sunshine’s Long Term Care Ancillary Criteria (“LT.UM.09”) provides as follows:

B. Medical Necessity Determination

To assist in determining the medical necessity of any ancillary services, the clinical criteria established in this policy will be applied. Any decision to deny, reduce, suspend, or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Medical Necessity Review FL.UM.02.01 and Use of Clinical Criteria FL.UM.02 Sunshine Health will respond to requests within the timelines as outlined in the policy Timeliness of UM Decisions FL UM 05.

C. Criteria for Type of Service:

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria. The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

- a) Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)
 - Independent where member is able to provide the task without support, with or without assistive devices
 - Minimal functional impairment where the ADL’s require one of the following:
 - Supervision
 - At least minimal assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
 - Moderate functional impairment where two of the follow apply:
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance

- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist
 - Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

...

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

...

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework laundry, and meal preparation. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activity of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

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 times
- 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.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Id. at 91-93, 98, and 104-105.

6. Respondent issued an NPAR dated April 1, 2021, upholding the reduction of Petitioner's homemaker service. *Id.* at 80. The NPAR explained as follows:

On March 15, 2021, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated March 5, 2021, Notice of Adverse Benefit Determination Number [REDACTED], REDUCING the homemaker services (the person who helps you around the house) from 28 hours to 24 hours provided to [REDACTED]

On March 29, 2021, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby DENIES your plan appeal. As a result, [REDACTED] will not receive the 4 hours of homemaker services that have been reduced, effective March 29, 2021.

The reason for our decision was based on the assessment of the member's care needs and household and caregiver status, the reduction of Homemaker Services from 28 hours/week to 24 hours/week is upheld. The presently approved Homemaker Services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id.

7. Petitioner requested a Fair Hearing on April 2, 2021. On April 29, 2021, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 20, 2021, at [REDACTED].

8. Dr. Carter, Long Term Care Medical Director for Sunshine, opined at the hearing that Petitioner's homemaker services were excessive as previously approved. Dr. Carter explained that the Respondent considered that Petitioner does not live alone, and that

Petitioner has forty-two (42) hours of personal care services in addition to the homemaker services in place in arriving at the decision to reduce Petitioner's homemaker services.

CONCLUSIONS OF LAW

9. 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).

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

11. Because Petitioner is reducing services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence." Black's Law Dictionary at 1201, 7th Ed.

12. 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, 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)

...

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

...

...

4.2.1.9 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.

13. 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.

14. Respondent reduced Petitioner's homemaker services from twenty-eight (28) hours per week to twenty-four (24) hours per week. *Supra* ¶ 4. In 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.*

15. The 701B, dated April 5, 2021, shows that Petitioner is paralyzed from the chest down. *Supra* ¶ 2. As testified to by Petitioner, [REDACTED] lives with him but is not his significant other and does not act as his caregiver. *Id.* The 701B also shows that Petitioner requires total assistance with heavy chores and light housekeeping and has assistance with those tasks most of the time. *Supra* ¶ 3. As reflected in the NABD, Petitioner is receiving forty-two (42) hours of personal care services. *Id.* As testified to by [REDACTED] and shown in the Long Term Person-Centered Care

Plan, signed February 18, 2021, [REDACTED] has physical limitations that prevent her from being able to assist with Petitioner's care. *Supra* ¶ 2. The record reflects that Respondent reduced Petitioner's homemaker services after considering the fact that Petitioner does not live alone, and that Petitioner is currently receiving forty-two (42) hours per week of personal care services. *Supra* ¶ 8. Dr. Carter offered opinion that Petitioner's homemaker services as previously approved were in excess of Petitioner's needs after considering the approval criteria in LT.UM.09, specifically Petitioner's available supports and living situation. *Supra* ¶¶ 6 & 8.

16. 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* ¶ 12. The homemaker services 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* ¶ 13. Here, Respondent reduced Petitioner's homemaker services in part because Petitioner does not live alone and considered [REDACTED] to be available as a natural support. The testimony established that [REDACTED] relationship to Petitioner is that of a friend and housemate. The undersigned accepts Petitioner's argument that the fact that he lives with [REDACTED] does not obligate her to assist with his care. Furthermore, [REDACTED] is physically unable to assist with Petitioner's care even if she were willing to provide assistance. The 701B shows that even with the current services in place Petitioner's needs for assistance with heavy chores, meal preparation, and light housekeeping are met only "most of the time". The undersigned considered Dr. Carter's testimony that the homemaker services as previously approved are in excess of Petitioner's needs, but the testimony does not appear to be supported by Petitioner's living situation as

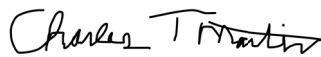

established on the record or the 701B showing that Petitioner does not always have assistance with tasks covered by homemaker services and personal care services. Furthermore, Dr. Carter's testimony does not establish whether Petitioner's personal care services could be utilized to meet Petitioner needs in lieu of the reduced homemaker services. As such, Respondent has not proved by a preponderance of the evidence that the twenty-eight (28) hours of homemaker services 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."

17. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has not proved by preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services from twenty-eight (28) hours per week to twenty-four (24) hours per week was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of four (4) hours of homemaker services per week is **REVERSED**. Petitioner's appeal based on the reduction of four (4) hours of homemaker services per week is **GRANTED**.

DONE and **ORDERED** this 23rd day of June, 2021, in Tallahassee, Leon County, Florida.

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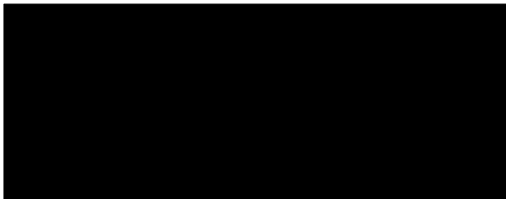
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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