

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



FILED

Apr 03, 2023, 9:41 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0102

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0176

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 10, 2023, at 1:01 p.m. Eastern Standard Time ("EST") and February 27, 2023, at 3:02 p.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Moens
Fair Hearing Specialist
Humana Medical 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 reduce Petitioner's personal care services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] appeared on behalf of the Petitioner. The following attended as witnesses for Petitioner: Dr. Ramses Rojas ("Dr. Rojas"), Petitioner provider; and [REDACTED]

[REDACTED]

Michael Moens, Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Avra Bowers ("Dr. Bowers"), Medical Director for Humana, attended as a witness for Respondent.

The following attended as observers: Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"); and Dr. Wayne Sherman, Medical Director for Humana.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a fifteen (15) page document, an eighteen (18) page document, one (1) video (Petitioner's Exhibit 2), and a six (6)-page document which included four (4) photographs. The fifteen (15)-page document appears in the Office of Fair Hearings' document management system as file title "[Petitioner Name] Fair Hearing request 2.pdf", the eighteen (18)-page document appears as "23-FH0102 Supporting Documents.pdf", the video appears as "IMG_5212.3gp", and the six (6)-page

document with photographs appears as “23-FH0102 & 23-FH0176 Additional Photo Evidence.pdf”. Absent an objection from the Respondent, the undersigned admitted the fifteen (15)-page document¹ and the eighteen (18)-page document² as Petitioner’s Composite Exhibit 1 (“PCE 1”); the video as Petitioner’s Exhibit 2 (“PE 2”); and the six (6)-page document as Petitioner’s Exhibit 3 (“PE 3”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and thirty (330)-page evidence packet. The three hundred and thirty (330)-page evidence packet appears in the Office of Fair Hearings’ document management system as file titles: “Evidence packet 23-FH0102_Part1.pdf”, “Evidence packet 23-FH0102_Part2.pdf”, “Evidence packet 23-FH0102_Part3.pdf”, “Evidence packet 23-FH0102_Part4.pdf”, “Evidence packet 23-FH0102_Part5.pdf”, “Evidence packet 23-FH0102_Part6.pdf”, “Evidence packet 23-FH0102_Part7.pdf”, “Evidence packet 23-FH0102_Part8.pdf”, and “Evidence packet 23-FH0102_Part9.pdf”. Absent an objection from the Petitioner undersigned admitted the three hundred (330)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

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

2. Petitioner is [REDACTED]. See page 95 of RCE 1. Petitioner lives with [REDACTED] *Id.* at 96. Petitioner is diagnosed with the following: [REDACTED];

¹ Pages 1 – 15 of PCE 1.

² Pages 16 – 33 of PCE 1.

[REDACTED]. *Id.* at 97, 101 – 102. Petitioner requires supervision. *Id.* at 104. Petitioner is able to [REDACTED] [REDACTED]. *Id.* at 99. Petitioner is [REDACTED]. *Id.*

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED] [REDACTED], Petitioner needs total assistance (cannot do at all); and [REDACTED] Petitioner needs assistance (but not total help). *Id.* at 99.

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED] [REDACTED] [REDACTED] Petitioner needs assistance (but not total help). *Id.* at 100.

5. Petitioner talks to friends, relatives, or others (by phone, computer, or other means) once a week. *Id.* at 109. Petitioner spends time with someone who does not live with [REDACTED] several times per month. *Id.* Petitioner participates in activities outside the home that interest [REDACTED] a few times per year. *Id.*

6. In two (2) Notices of Adverse Benefit Determination (“NABD”), dated January 11, 2023, Respondent terminated Petitioner’s forty-two (42) hours of adult companion care services, weekly, and reduced Petitioner’s personal care services from one hundred and six (106) to thirty-six (36) hours, weekly. *Id.* at 3 – 7; 11 - 15. The NABD explained the basis of the termination and 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:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You currently receive 42 hours of Adult Companion Care (non-medical care for supervision and socialization) each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You have several (multiple) medical problems. You do have a [REDACTED]. You do not [REDACTED]. You have not had any recent changes in your health. You have not recently [REDACTED]. You live with your caregiver. Your caregiver does not work outside of the home. You use a walker or wheelchair to move around. You need help [REDACTED].

[REDACTED]

[REDACTED] The service of 42 hours of Adult Companion Care each week is being terminated. You live with others who should be able to meet your companionship needs. The service of 106 hours of personal care service each week is being reduced to 36 hours each week. These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

...

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 12, 2023, upholding the termination of adult companion care and reduction of personal care services. *Id.* at 44 – 46.

8. On January 17, 2023, Petitioner requested a Fair Hearing to challenge the reduction of personal care services and termination of adult companion care services. On January 27, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 10, 2023, at 1:00 p.m. EST. The hearing subsequently continued, and a second hearing was scheduled for February 27, 2023, at 3:00 p.m.

9. Dr. Bowers is a Medical Director at Humana. Dr. Bowers testified to the following:

- a. Petitioner does not require skilled services.
- b. Petitioner does not wander – so there’s no concern for safety.
- c. Petitioner lives with [REDACTED], who is able to provide supervision and some care.
- d. The hours provided do meet the member’s needs.
- e. Adult companion care can be provided by the caregiver and her husband in the home. The caregiver can call for help if needed.

10. Dr. Rojas is Petitioner’s primary care physician. Dr. Rojas testified to the following:

- a. Dr. Rojas has been Petitioner’s physician since 2015.
- b. It is Dr. Rojas’ opinion that it is medically necessary for Petitioner to receive the services that were previously approved.
- c. It is Dr. Rojas’ opinion that Petitioner needs more services now that she is older.

11. [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner last had a [REDACTED] prior to the February 27, 2023, hearing date.
- b. Petitioner has [REDACTED] two (2) to three (3) times per month.
- c. [REDACTED] cannot lift Petitioner if [REDACTED] falls.
- d. Petitioner receives [REDACTED]. The [REDACTED] is administered by [REDACTED].
- e. Petitioner cannot [REDACTED]
- f. [REDACTED] can supervise, prepare meals, and prepare medications.
- g. Petitioner is awake during the night and sleeps through the day.
- h. Petitioner has no control of [REDACTED] and is [REDACTED] the day and night.
- i. [REDACTED] lives in the home with [REDACTED].

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 and reducing previously approved services, 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.)

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 adult companion care and 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)

...

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.

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.

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.

ADULT COMPANION CARE SERVICES

18. In the NABD, dated January 11, 2023, Respondent terminated Petitioner’s fourteen (14) hours of adult companion care services, weekly. See ¶ 6. Respondent explained that adult companion care services were not medically necessary for Petitioner but did not specify which prong of medical necessity was not met. *Id.* Respondent further explained that Petitioner lives with others that can provide companion care services.

19. 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 ¶ 15. As provided in the LTC Policy, adult companion care is to provide "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."

20. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive any adult companion care services. As shown by the record, Petitioner lives with [REDACTED]. See ¶¶ 2, 11. Petitioner talks to friends, relatives, or others (by phone, computer, or other means) once a week; spends time with someone who does not live with her several times per month; and participates in activities outside the home that interest her a few times per year. See ¶ 5. Further, Petitioner is approved for thirty-six (36) hours of personal care services, weekly. Based on those facts, it does not appear that Petitioner lacks opportunities to socialize. However, adult companion services are also intended to provide supervision. Here, it is well documented that Petitioner needs supervision. See ¶ 2. For example, Petitioner has [REDACTED] and is awake at night while her caregiver sleeps. See ¶ 11. Lastly, Dr. Rojas provided credible testimony that it is medically necessary for Petitioner to receive the services.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of adult companion care services was correct.

PERSONAL CARES SERVICES

22. In the NABD, dated January 11, 2023, Respondent reduced Petitioner’s personal care services from one hundred and six (106) hours to thirty-six (36) hours, weekly. See ¶ 6. Respondent explained that one hundred and six (106) hours of personal care services were not medically necessary for Petitioner but did not specify which prong of medical necessity was not met. *Id.* Respondent further explained that the approved services were enough to meet Petitioner’s needs and that thirty-six (36) hours could be divided into shifts. *Id.*

23. 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.” As provided in the record, Petitioner needs total assistance (cannot do at all) with [REDACTED]; Petitioner needs assistance with [REDACTED]. See ¶ 3. Regarding her IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]. See ¶ 4. Petitioner is currently approved to receive thirty-six (36) hours per week of personal care services, weekly, which is a little more than five (5) hours per day.

24. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The time allotted for tasks applicable for Petitioner are as follows: a full body bath is allotted up to 30 minutes; dressing is allotted up to 15 minutes; grooming and skin care is allotted between 30 minutes and an hour; transfers are allotted up to 15 minutes/every 2 hours; positioning is allotted up to 10 minutes/every 2 hours;

toileting and maintaining continence is allotted between 15 and 45 minutes; and eating is allotted up to 30 minutes per meal. Based on Petitioner's diagnoses, *see* ¶ 2, it appears that Petitioner needs the maximum amount outlined in the guidelines. As such, based on the guidelines, and her need for assistance with ADLs³, Petitioner requires approximately six (6) hours of personal care services, daily, to meet her needs.

25. As Respondent bears the burden of proof, Respondent must show that it is medically necessary for Petitioner to receive only thirty-six (36) hours of personal care services, weekly. Here, Dr. Bowers testified that it was her opinion that the approved hours are sufficient to meet Petitioner's needs. However, Dr. Bowers did not provide a calculation of how many hours are necessary to accomplish Petitioner's ADLs or IADLs, nor how she arrived at that figure. Here, based on the personal care guidelines, Petitioner needs approximately six (6) hours of personal care services, daily. *See* ¶ 24. Moreover, Petitioner's needs likely extend beyond those guidelines – for example, Petitioner is changed throughout the day, which likely requires more than the given forty-five (45) minutes. *See* ¶ 11. Lastly, Dr. Rojas provided credible testimony that it is medically necessary for Petitioner to have one hundred and six (106) hours of personal care services, weekly. *See* ¶ 10.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's reduction of personal care services was correct.


IT IS THEREFORE ORDERED AND ADJUDGED THAT:

³ This assumes an hour each for transfers and positioning.

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

Respondent's reduction of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction of personal care services is **GRANTED**.

DONE and **ORDERED** this 3rd day of April 2023, in Tallahassee, Leon County, Florida.


Joseph Mabry
23-FH0102 & 23-
FH0176
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JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[REDACTED]
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