



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

FILED

Jun 14, 2023, 8:37 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0103

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on May 23, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Moens

Grievance and Appeals Fair Hearing Specialist

Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional twelve (12) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

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

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Srujani Gaddam (“Dr. Gaddam”), Medical Director for Humana, attended as a witness for Respondent.

Chrissie Simmons, Medical Healthcare Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”) and Joseph Mabry, Hearing Officer for the Agency, appeared as observers.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a three (3)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “23-FH0103 Petitioner correspondence.pdf.” Absent an objection from the Respondent, the undersigned admitted the three (3)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE1”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and seventeen (317)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “Evidence Packet 23-FH0103_Part1.pdf”, “Evidence Packet 23-FH0103_Part2.pdf”, “Evidence Packet 23-FH0103_Part3.pdf”, and “Evidence Packet 23-FH0103_Part4.pdf”. Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

FINDINGS OF FACT

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

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.

...

- Other Authority

...

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 have 8 hours of homemaker service each week; 37 hours of personal care service each week. You have an additional 12 hours of personal care service each week. You have [REDACTED]. You do not have trouble [REDACTED]. You sometimes have trouble [REDACTED]. You do not [REDACTED]. You have problems [REDACTED]. You need more help [REDACTED]. Your [REDACTED]. [REDACTED] is not able to help care for you. Your [REDACTED] does not work outside of the home. You use [REDACTED]. You need [REDACTED]. You need total help [REDACTED]. You need help with [REDACTED]. You have [REDACTED]. You receive hospice care services. You have 9 hours of home health aide services daily from Monday to Sunday to meet your needs. Your request for an additional 12 hours of Personal Care each week is being denied as not medically necessary. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 10, 2023, upholding the denial of additional personal care services. *Id.* at 31 and 34. The NPAR states, in pertinent part:

On December 14, 2022, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan’s Notice of Adverse Benefit Determination dated November 9, 2022, 164340825, denying the request for 12 additional hours weekly of Personal Care services provided to [Petitioner].

On January 6, 2022, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is an MD and board certified in Internal Medicine.

The reason for the decision was based on the information received. You have requested that the additional 12 hours of Personal Care services each week that were denied in the initial request be reconsidered (appeal) on behalf of [Petitioner].

[Petitioner] has several (multiple) medical problems. [redacted] sometimes has trouble [redacted]. [redacted] has trouble [redacted]. [redacted] is receiving hospice care services.

[Petitioner] lives with [redacted]. [redacted] uses a [redacted] [redacted] needs some help [redacted] [redacted] needs help [redacted] [redacted] needs help with [redacted] [redacted]

The denial of 12 additional hours of personal care service each week is being upheld. The hours [redacted] is currently receiving should be enough to meet [redacted] medical needs and can be divided into shifts to better meet [redacted] needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan’s approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

7. On January 19, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On May 9, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 23, 2023, at 1:00 p.m. EST.

8. Apart from the services at issue, Petitioner has approximately eight (8) hours per week of homemaker services and thirty-seven (37) hours per week of personal care services. *Id.* at 4.

9. Petitioner's authorized representative, [REDACTED], testified:

a. [REDACTED] is [REDACTED]. Petitioner [REDACTED] and they do not have any friends or family who visit to help. Petitioner suffers [REDACTED] and [REDACTED]. Petitioner does not [REDACTED]. [REDACTED] Petitioner has [REDACTED]. [REDACTED] Petitioner needs [REDACTED]. Petitioner has [REDACTED]. [REDACTED] Petitioner is [REDACTED] and [REDACTED]. [REDACTED]. Petitioner walks very little and is homebound. Petitioner needs help in everything. Petitioner [REDACTED]. [REDACTED] Petitioner spends most of [REDACTED].

b. [REDACTED] is requesting additional hours on behalf of Petitioner because [REDACTED] and cannot help [REDACTED] does not have help. [REDACTED] does not have the strength to lift Petitioner. [REDACTED] has [REDACTED]. [REDACTED] bends too much. Two weeks ago [REDACTED] was changing Petitioner's [REDACTED]. [REDACTED] stated that it is impossible to feed Petitioner when they are alone because [REDACTED] hands shake so much and [REDACTED] spills the food. [REDACTED] stated that [REDACTED] health is being jeopardized as well and that caring for Petitioner is impacting [REDACTED] emotional and physical health because [REDACTED] has limitations.

- c. [REDACTED] stated that Petitioner is under hospice care and that hospice provides pampers and a nurse who checks Petitioner's vitals once a week.
 - d. [REDACTED] is also a member of Humana and does not receive any service hours.
10. Dr. Gaddam is a Medical Director for Humana. Dr. Gaddam testified:
- a. It is Dr. Gaddam's opinion that the approved hours meet Petitioner's needs as medically necessary. Petitioner currently receives forty-five (45) hours of home health aide services. Petitioner is totally dependent regarding his ADLs. Respondent suggests that Petitioner divides the hours equally throughout the week. Dr. Gaddam stated that Humana is a supplemental plan, that Petitioner's hours received are sufficient to meet Petitioner's medical needs, and that the current hours can be divided into two shifts to cover Petitioner's needs throughout the day. Petitioner was offered to consider a Long Term Care facility but this offer was denied in the past.
 - b. Petitioner is under hospice care services. Typically, hospice provides five (5) hours of hospice care per week but this member, Petitioner, is not receiving it.
 - c. Dr. Gaddam reiterated that the services requested by Petitioner were not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and are in excess of Petitioner's needs.
11. [REDACTED] rebutted Respondent's testimony stating Petitioner's sickness is progressive and every single day it gets worse. [REDACTED] stated that splitting the hours in the morning and afternoon will not work because there is still a pocket of time in between that no one will be there to help Petitioner.

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 Petitioner is requesting a new 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.)

15. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemakers:

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.

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. [emphasis supplied]

RCE 1, LTC Policy at pages 129 – 137.

16. The LTC Policy also provides the following regarding 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.

Id. at 130.

17. The Florida Medicaid Definitions Policy (August 2017) ("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.

Id. at 130 – 131.

18. Petitioner requested an additional twelve (12) hours per week of personal care services.

See supra ¶ 5. The additional personal care services were denied based on medical necessity. *See supra* ¶ 5, 6. Specifically, Respondent determined that the services were not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are “in excess of the Petitioner’s needs.” *See supra* ¶ 10.

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that:

(a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

See supra ¶ 15.

20. The evidence presented reflects that Respondent’s denial of an additional twelve (12) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is 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.” See supra ¶ 15. The record reflects that Petitioner lives [REDACTED], who did not testify regarding working outside of the home, and that they do not have any friends or family who visit to help. See supra ¶ 9. With regard to ADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] and needs assistance (but not total help) with [REDACTED]. See supra ¶ 3. The 701B Assessment states that Petitioner currently “always has assistance” with [REDACTED] and “has assistance most of the time” with [REDACTED]. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]. See supra ¶ 4. The 701B Assessment states that Petitioner currently “always has assistance” with IADLs. See supra ¶ 4. Petitioner currently has approximately eight (8) hours of homemaker services and thirty-seven (37) hours of personal care services each week. See supra ¶ 5.

21. 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 general guidance concerning the time allotted for personal care tasks. As Dr. Gaddam testified, Petitioner needs total assistance with his ADLs. Neither Petitioner nor [REDACTED] provided a schedule of ADLs and/or any estimate of the time it takes to complete each ADL task. Allotting thirty (30) minutes of time for each of Petitioner’s ADLs (bathing, dressing, eating, using the bathroom, transferring, and walking/mobility) and taking into account Petitioner’s medical conditions, the current thirty-seven (37) hours of personal care services appear to be reasonable. Petitioner also has eight (8) hours of homemaker services per week, which closely align with the

documented IADL tasks that Petitioner needs assistance with. Dr. Gaddam provided credible and persuasive testimony that the approved services are adequate to meet Petitioner's needs.

22. [REDACTED] testified that [REDACTED] requested additional hours on behalf of Petitioner because [REDACTED] and cannot help [REDACTED] does not have help. [REDACTED] raised the concern that caring for Petitioner is impacting [REDACTED] emotional and physical health because [REDACTED] has limitations. In response to Dr. Gaddam's testimony that the current hours can be divided into two shifts to cover Petitioner's needs throughout the day, [REDACTED] stated splitting the hours in the morning and afternoon will not work because there is still a pocket of time in between that no one will be there to help [REDACTED]. This request for additional hours corresponds more with adult companion care services, which are defined as 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."

23. Therefore, upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional twelve (12) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of an additional twelve (12) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE and ORDERED this 14th day of June 2023, in Tallahassee, Leon County, Florida.



Kameisha Presley
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KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
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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.

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