



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

FILED

Apr 28, 2023, 12:52 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0131

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 14, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joanna Alvarez-Martinez
Appeals Manager
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 adult companion care ("AC") services was correct.

PRELIMINARY STATEMENT

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

Joanna Alvarez-Martinez, Appeals Manager for Respondent, appeared on behalf of Sunshine State Health Plan, Inc. (“Sunshine”). Dr. John Carter, (“Dr. Carter”), Long Term Care Medical Director for Sunshine, appeared as witness for Respondent. The following attended as observers: Markesha Smith, Care Coordinator for Sunshine; Andrea Hoffman, Long Term Care Coordinator for Sunshine; and Alshenetha Williams Jamerson, Care Coordinator Supervisor for Sunshine.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a five (5)-page evidence packet. The five (5)-page packet appears in the Office of Fair Hearings’ document management system as file title “23-FH0131 Email Correspondence.pdf”. Absent an objection from the Respondent, the undersigned admitted the five (5)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE-1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-two (142)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH Packet [Petitioner Surname].pdf”. Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-two (142)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE-1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 13 of RCE-1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* Petitioner lives with [REDACTED].
Id.

3. [REDACTED] is Petitioner's Direct Service Worker under the Participant Directed Option (PDO) plan. *Id.* at 14.

4. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 51 - 52. Petitioner is [REDACTED]
[REDACTED] *Id.* at 49. Petitioner "requires supervision due to her health conditions and [REDACTED] [Petitioner] is [REDACTED]." *Id.* at 72.

5. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessments ("701B"), which was taken on December 20, 2022, Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED] Petitioner needs assistance (but not total help); and for [REDACTED], Petitioner uses [REDACTED]. *Id.* at 67. Petitioner has assistance with her ADLs all of the time. *Id.*

6. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: for [REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], no assistance is needed. *Id.* at 68.

Petitioner always has assistance with [REDACTED]

[REDACTED]. *Id.*

7. In the Notice of Adverse Benefit Determination (“NABD”), dated November 30, 2022, Sunshine reduced Petitioner’s adult companion care services from six (6) hours weekly to two (2) hours, weekly. The NABD 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: We received your request to continue 6 hours of adult companion 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). Companion Care is provided for supervision and socialization. You do not live alone, and you receive 24 service hours per week which provides socialization for you. Adult companion care hours will be reduced to 2 hours per week (a reduction of 4 hours per week). This decision was based on Long Term Services and Supports (LTSS) Florida with support from Sunshine Health Policy and Procedure: LTC (Long Term Care) Ancillary Service Criteria (LT.UM.09).

...

Pages 4 - 5 of RCE-1.

8. On December 12, 2022, Petitioner requested a plan appeal. *Id.* at 85. Subsequently, Petitioner received a Notice of Plan Appeal Resolution (“NPAR”), dated December 19, 2023, upholding the denial. *Id.* at 91 – 94. The NPAR explained as follows:

The reason for our decision was based on the assessment of the member’s care needs and household and caregiver status, the reduction of Companion Care Services from 6 hours/week to 2 hours/week is upheld. The presently approved 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. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Id. at 91.

9. On January 19, 2023, Petitioner requested Fair Hearings to challenge the reduction of adult companion care services. On February 22, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for March 14, 2023, at 1:00 p.m. EST.

10. Petitioner’s [REDACTED], testified that [REDACTED] is the sole caretaker for Petitioner, who needs [REDACTED] assistance and supervision every day, all day. There is no one else living in the household. [REDACTED] argues that Petitioner is very [REDACTED]

[REDACTED]

[REDACTED] contends that Petitioner no longer [REDACTED]. [REDACTED]

[REDACTED] does not work outside the home, but should [REDACTED] have to leave Petitioner to

work an odd job outside of the home, the reduction of adult companion supervision hours would

cause [REDACTED] to have to pay someone out of [REDACTED] own pocket, \$50 to \$100, to supervise [REDACTED], or

to have to leave Petitioner unsupervised. [REDACTED] contends that the weekly total of twenty-

six (26) service hours for Petitioner, consisting of twelve (12) hours of personal care services,

twelve (12) hours of homemaker services, and two (2) hours of adult companion care services, are not enough for the amount of supervision [REDACTED] needs due to [REDACTED] increasingly [REDACTED]. [REDACTED] argues that Petitioner should continue to receive a total of six (6) hours of adult companion care services that Respondent is eliminating from Petitioner's long term care plan.

11. In support of [REDACTED] request, Petitioner's neurologist, Dr. Lance Kim, stated in a letter dated December 22, 2022, that "[REDACTED] has been under my neurological care. Please be advised that due to her neurological condition, [REDACTED] requires a caregiver at all times". See page Number 2 of PCE-1.

12. In the 701B Assessment, dated December 20, 2022, [REDACTED] commented in the Caregiver Section that "Over the past year Member has experienced increased forgetfulness and confusion, requiring more reminders." *Id.* at 79.

13. Dr. Carter is a Medical Director for Sunshine. Dr. Carter's testimony established that Respondent's decision was based on the 701B assessment, dated December 20, 2022. Based on the assessment, Petitioner's Direct Service Worker is [REDACTED], who does not work outside the home. *Id.* at 77. Dr. Carter contends that, based on the December 20, 2022, 701B assessment, Petitioner has adequate care service hours weekly with twelve (12) hours of personal care, twelve (12) hours of homemaker services, and two (2) hours of adult companion care.

CONCLUSIONS OF LAW

14. 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).

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

16. Because Respondent reduced Petitioner’s adult companion care 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.)

17. The 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 services:

4.1 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:

...

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.

...

18. 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.

19. 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.

20. Petitioner requested the continuation of six (6) hours of weekly adult companion care services, that Respondent had reduced to two (2) hours weekly. Respondent denied Petitioner's request in the NABD. *See supra* ¶ 7. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which prong of medical necessity was used to make its decision. *Id.* In the NPAR, Respondent asserted its reduction of six (6) adult companion care weekly hours to two (2) hours weekly is "was based on the assessment of the member's care needs and household and caregiver status. . . .The presently approved services are enough to meet the member's care needs." *See supra* ¶ 8.

21. As provided in the LTC policy, adult companion care services are intended to provide "supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee".

22. Respondent denied Petitioner's request for adult companion care services because Petitioner receives "24 service hours per week which provides socialization for you." See supra ¶ 7. Respondent's assertion is reasonable in regards to whether Petitioner's socialization needs are met, and because [REDACTED] who does not work outside the house. See supra ¶ 13. However, that does not address the supervisory function that adult companion care also provides. Respondent wrote in the NABD that "Companion care is provided for *supervision* and socialization." See supra ¶ 7 (emphasis added). Further, Respondent's position is that the decision to reduce the companion care services was based on the 701B assessment. In the 701B assessment, the Assessor wrote that "Member requires supervision due to [REDACTED] [REDACTED]." See supra ¶ 4. Furthermore, the opinion of Dr. Kim, Petitioner's neurologist, that "due to her [REDACTED] requires a caregiver at all times" bolsters the necessity of Petitioner's request to continue receiving six (6) weekly hours of adult companion care. See supra ¶ 11.

23. As adult companion care services are to provide, among other things, supervision to protect the safety of the enrollee, the reliance on the 701B assessment by the Respondent in reaching its decision to reduce Petitioner's adult companion care services, as well as the recommendation of Dr. Kim, shows that Petitioner's request for the continuation of six (6) hours of weekly adult companion care is "individualized specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment." See supra ¶ 7. As Petitioner needs supervision at all times, and Petitioner's [REDACTED] sole caretaker to meet that need, Petitioner has shown that [REDACTED] request is "not in excess of the patient's needs," is "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 is not “intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” See supra ¶ 7. Further, Petitioner’s request may enable [REDACTED] to “live . . . in the setting of her choice.” *Id.* As such, Petitioner has shown that [REDACTED] has an unmet need for supervision. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has not proved by a preponderance of the evidence that Respondent’s reduction from six (6) hours to two (2) hours of weekly adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 28th day of April, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0131
2023.04.28 10:21:23
-04'00'

DEBBIE WINICKI, 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]
[REDACTED]
[REDACTED]

Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com