



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

FILED

Apr 18, 2023, 9:12 am
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0219

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 23, 2023, at 2:30 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 personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED]

[REDACTED] appeared on behalf of the Petitioner.

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

The following attended as observers: Dr. Wayne Sherman, for Humana; Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"); and Joseph Mabry, Hearing Officer for the Agency.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and ninety-six (296)-page evidence packet. The two hundred and ninety-six (296)-page packet appears in the Office of Fair Hearings' document management system as file titles "Evidence Packet 23-FH0219_Part1.pdf"; "Evidence Packet 23-FH0219_Part2.pdf"; "Evidence Packet 23-FH0219_Part3.pdf", and "Evidence Packet 23-FH0219_Part4.pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and ninety-six (296)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

At the Fair Hearing, the Petitioner requested that the record be held open to allow Petitioner to submit documents. On February 24, 2023, Petitioner timely submitted twelve (12) pages of documents. The documents appear in the Office of Fair Hearings' document management system as file title "23-FH0219 Evidence.pdf". Absent an objection from the Respondent, the undersigned hereby admits the twelve (12)-page document as Petitioner's Composite Exhibit 1 ("PCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See page 1 of RCE 1. Humana 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.* at 65. Petitioner is diagnosed with [REDACTED]. *Id.* at 66. Further, Petitioner is diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 70. Petitioner is [REDACTED]
[REDACTED]. *Id.* at 73. Petitioner needs supervision. *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); for [REDACTED]
[REDACTED], Petitioner needs assistance (but not total help); [REDACTED]
[REDACTED], Petitioner uses an assistive device. *Id.* at 68. In regards to his instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) for all IADLs. *Id.* at 69.

4. [REDACTED] and is the Petitioner’s [REDACTED]. *Id.* at 78. [REDACTED]
[REDACTED] does not currently have anyone to assist with providing care to Petitioner. *Id.* [REDACTED]
[REDACTED] has been providing care for Petitioner for two (2) years or more. *Id.* at 79. [REDACTED]
[REDACTED] is diagnosed as [REDACTED]. *Id.* at 80.

5. Petitioner is currently approved to receive five (5) days of adult day care, weekly; and thirty (30) hours of personal care services, weekly. *Id.* at 8.

6. Petitioner requested additional personal care services. At the Fair Hearing, [REDACTED] clarified that [REDACTED] had only requested fifteen (15) hours of personal care services on behalf of Petitioner, and not twenty-six (26) hours. Respondent issued a Notice of Adverse Benefit Determination, dated October 20, 2022, denying twenty-six (26) hours of personal care services. The NABD explained the basis of the denial 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 have 30 hours of personal care service each week; and 5 days of adult day care services each week. You have requested an additional 26 hours of personal care service each week.

You have [REDACTED]
[REDACTED]
[REDACTED] You have trouble [REDACTED]. You
[REDACTED]

Your [REDACTED]. You need [REDACTED].
You live with [REDACTED]. Your [REDACTED]. Your [REDACTED] does not work
outside of the home. You use a [REDACTED]). You do not need
help [REDACTED] You need some help
[REDACTED]. You need help with [REDACTED]
[REDACTED] You have [REDACTED]).

You go 5 days a week to adult day care. You have supervision during that time.
Your request for 26 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.

...
Id. at 7 – 8.

7. Petitioner requested a plan appeal and received an NPAR dated December 8, 2022,
upholding the denial of an additional 26 hours of personal care services. The NPAR explained as
follows:

...
The reason for the decision was based on the information received. You are
appealing a decision made in authorization # 163701493 in which a request was
made for the addition of 26 hours weekly of Personal Care Services and this
request was denied. [Petitioner] currently has 30 hours of personal care service
each week, and 5 days of adult day care services each week. He has [REDACTED]
[REDACTED]
[REDACTED] He does not have [REDACTED].
[Petitioner] has trouble [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED].

[Petitioner] lives with you, [REDACTED]. You can help care for [REDACTED] You do not
work outside of the home. [Petitioner] uses a [REDACTED]
does not need [REDACTED]
needs some help [REDACTED]. Help with [REDACTED]

[redacted] is needed. [redacted]
[redacted].

[Petitioner] goes to adult day care 5 days a week. [redacted] has supervision during that time. Your request for 26 hours of Personal Care each week is being denied and the decision is upheld.

...

Id. at 16 – 17.

8. On January 31, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On February 9, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 24, 2023, at 2:30 p.m. Eastern Standard Time.

9. [redacted] is Petitioner’s [redacted] and caregiver. [redacted] testified to the following:

- a. The request for the 26 additional hours of personal care services was incorrectly submitted by a previous case manager. [redacted] requested additional hours in the best interest of Petitioner remaining at home. Petitioner has severe [redacted] Petitioner cannot [redacted] [redacted] without help. [redacted] is mobile only [redacted]. [redacted] cannot take Petitioner for a walk due to their height-size differential. [redacted] is a [redacted] who cannot be left alone and has had [redacted] Petitioner [redacted]. Having different aides coming and going only creates more anxiety for Petitioner who [redacted] has to cut up food into small pieces to ensure Petitioner eats. Petitioner is [redacted]. Petitioner could [redacted]. Petitioner is [redacted].

b. [redacted] attends adult day center five (5) days per week from 10 a.m. to 3 p.m. There is no bus transportation for the center until 8:30 a.m. and the route typically does not make it to Petitioner's home until around 9:30 a.m. Petitioner cannot take the bus home as [redacted] becomes extremely anxious, so [redacted] picks him up. [redacted] schedule with Petitioner revolves around when transportation arrives in the morning. The 30 hours a week is used in the morning to get Petitioner [redacted]. A former aide assisted with the morning routine and in the afternoon helped Petitioner get settled and go for walks. Petitioner has not found an agency to provide an aide who will do a split shift for less than 4 hours.

c. Petitioner underwent a [redacted] which indicated [redacted]. See page 7-12 of PCE 1. Petitioner was re-evaluated on [redacted], by his primary physician, and [redacted], by his neurologist, with a follow-up visit yesterday ([redacted] [redacted]). His Alzheimer's is progressing. See page 61 of RCE1.

10. Dr. Gaddam is a Medical Director for Humana. Dr. Gaddam testified to the following:

a. According to the 701B assessment for Activities of Daily Living Section, Petitioner needs total assistance with [redacted] [redacted] *Id.* at 68. Petitioner has 40 hours of adult day care and 30 hours of personal care for a total of 70 hours a week. The personal care hours are in addition to the 8 hours a day for adult day care Monday through Friday.

Based on the 701B assessment from February 2023, member needs about 3-4 hours a day for personal care. The Plan has been suggesting splitting the hours from Monday to Sunday which would give Petitioner about 4 hours a day. The 4 hours a day should be sufficient to take care of the member's needs.

11. Mr. Moens testified that regardless of the amount of hours requested, the medical reviewers can approve any hours they deem appropriate up to the requested amount. If the Plan deemed 15 hours appropriate, it would have been considered and approved.

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 additional services, 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 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 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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

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.

...

4.2.2.6 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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized 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.

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.

18. The Florida Medicaid Personal Care Services Coverage Policy (November 2016)

("Personal Care Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs personal care services available under Florida Medicaid. The Personal Care Policy provides the following with respect to personal care services:

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work

...

19. Petitioner requested fifteen (15) additional hours of personal care services. *See* ¶ 5. In the NABD, dated October 26, 2022, Respondent denied Petitioner's request. *See* ¶ 6. Respondent cited to the medical necessity as the basis for their decision. However, Respondent did not specify which prong of medical necessity it used to make its decision. Further, in the NABD, Respondent stated that twenty-six (26) hours of personal care services was requested, however, it was clarified at the Fair Hearing that Petitioner only requested fifteen (15) additional hours.

20. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. Petitioner currently has thirty (30) hours of personal care services and attends adult day care five (5) days, weekly. According to the LTC Policy, personal care services are used to provide medically necessary assistance with ADLs and IADLs, including assistance with [REDACTED] [REDACTED] See *supra* § 4.2.2.6. Here, Petitioner established that the additional 15 hours of personal care services were not in excess of the patient's needs and enables the enrollee to maintain or regain functional capacity. The testimony and documents in the record show evidence of Petitioner's [REDACTED] [REDACTED] since the time the request for additional hours were made in October of 2022. The neurology evaluation done by Dr. Frederick Boltz in [REDACTED] stated that Petitioner "is now more dependent on his wife, has additional falls and now manifests extreme problems with transferring and toileting." *See* RCE 1 at page 4. Petitioner's needs are further demonstrated in the 701B dated February 10, 2023, which indicated for ADLs Petitioner requires full assistance [REDACTED] and needs assistance

(but not total help) [REDACTED]. See RCE 1 at page 68. Moreover, Petitioner requires assistance for all his IADLs. *Id.* at 69. Petitioner is [REDACTED]. *Id.* at 66. [REDACTED] testified that [REDACTED] morning schedule with Petitioner revolves around the arrival of transportation services for adult day care. The constant changing of aides creates more anxiety in Petitioner who is already [REDACTED] and causes hi [REDACTED] to wander outside if [REDACTED] does not see people [REDACTED] recognizes. Petitioner is a [REDACTED] is unable to catch [REDACTED] due to their height difference. [REDACTED] is [REDACTED] which makes it harder to assist Petitioner as [REDACTED]. Thus, it appears Petitioner's decline due to [REDACTED] medical condition is consistent with a medically necessary increased level of care needed to maintain Petitioner's functional capacity. The increased level of care appears to be individualized, specific, consistent with a confirmed diagnosis, and not in excess of the Petitioner's needs since [REDACTED] is unable to assist with Petitioner's [REDACTED]. Moreover, the increased hours are not primarily intended for the convenience of the caregiver since [REDACTED] has [REDACTED] and not in a position to provide adequate care for Petitioner. As such, Petitioner met [REDACTED] burden.

21. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did prove by a preponderance of the evidence that Respondent's denial of Petitioner's true request of 15 additional personal care hours was incorrect. In light of all the evidence relevant to the particular needs of Petitioner, Petitioner has shown that the requested services are not in excess of the Petitioner's needs. Accordingly,

the undersigned finds that Petitioner has proved by a preponderance of the evidence that Respondent's denial of 15 hours of personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 18th day of April, 2023, in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH0219
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KIMBERLY ROCHE, 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]
[REDACTED]

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