

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



FILED

May 09, 2023, 2:15 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA CASE NO.: 23-FH0243

[REDACTED]

VS.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 16, 2023, at 1:00 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

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

Markeshi Lee, Registered Nurse and Fair Hearing Liaison for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Avra Carpousis Bowers (“Dr. Bowers”), Long Term Medical Director for Humana, attended as a witness for Respondent.

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 seven hundred and forty-eight (748)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “23-FH0243 Evidence.pdf” and “23-FH0243 Evidence(2).pdf”. Absent an objection from the Respondent, the undersigned admitted the seven hundred and forty-eight (748)-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 two hundred and sixty-four (264)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH0243_Part1.pdf”, “Evidence Packet 23-FH0243_Part2.pdf”, “Evidence Packet 23-FH0243_Part3.pdf”, “Evidence Packet 23-FH0243_Part4.pdf”, and “Evidence Packet 23-FH0243_Part5.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and sixty-four (264)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 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]
[REDACTED] *Id.* at 4.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 34 - 35.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated August 22, 2022, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.*
at 31. Petitioner always has assistance with her ADLs. *Id.*

5. As provided in the 701B, Petitioner's needs [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Petitioner always has assistance with her IADLs. *Id.*

6. Petitioner requested an additional fifty (50) hours of personal care services. Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD"), dated August 29, 2022. 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.

...

- 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 have requested additional 50 hours of personal care (PC) service weekly. You currently receive 40 hours of PC and 10 hours of homemaker services weekly. Your medical problems include [REDACTED]

[REDACTED]. You need [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] We are denying your request for additional 50 hours of HHA care weekly as you currently receive 50 hours of HHA care weekly or approximately 7 hours daily which should be sufficient to meet your needs. You may distribute these hours for when you need them the most.

See Pages 10 – 11 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated September 27, 2022, upholding the denial. *Id.* at 19 – 21. The NPAR explained as follows:

The reason for the decision was based on the information received. You have requested that the additional 50 hours of personal care service each week that was denied in your initial request be reconsidered (appeal) for [Petitioner].

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The denial of 50 additional hours of personal care service each week is being upheld. The hours she is receiving should be enough to meet her needs and can be divided into shifts to better meet her 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.

Id.

8. On February 6, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services. On March 2, 2023, the undersigned issued an Order Consolidating and

Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for March 16, 2023, at 1:00 p.m. EST.

9. Petitioner's [REDACTED], testified to the following:

- a. [REDACTED] provides care for Petitioner.
- b. [REDACTED] and Petitioner.
- c. [REDACTED] is employed outside the home, and her job sometimes requires her to work out-of-town (overnight) on the weekends.
- d. Petitioner [REDACTED]
- e. [REDACTED]
[REDACTED]
- f. [REDACTED] has, on occasion, taken Petitioner with her on out-of-town work trips.
- g. Petitioner uses the current weekly forty (40) hours of personal care services and ten (10) hours of homemaker services for ten (10) hours each weekday. Petitioner does not use the services on the weekend, but [REDACTED] ys the additional service hours are needed for the weekend, particularly when she is required to work out-of-town.

10. Dr. Bowers is a Medical Director for Humana. Dr. Bower's testimony established the following facts:

- a. Respondent's decision was based on the 701B assessment. Based on the assessment there were not any significant changes to Petitioner's ability to perform ADLs and IADLs.

- b. Petitioner ADL needs are calculated as using 2.5 hours per day, including up to 30 minutes for the activities for which she needs total assistance (cannot do at all) [REDACTED] and up to 20 minutes for the activities for which she needs assistance (but not total help), [REDACTED]
[REDACTED] The allocated forty (40) hours weekly of personal care services meets and exceeds Petitioner's medical needs for her ADLs.
- c. Petitioner does not have nighttime medical needs that would require overnight personal care services, and there is nothing in Petitioner's medical records that Petitioner is prone to wandering, that could jeopardize her safety.
- d. All of Petitioner's IADLs are being provided for her, including having ten (10) hours of homemaker services in addition to the forty (40) hours of personal care services, and [REDACTED]
- e. The personal care service hours Petitioner is receiving should be enough to meet her needs.
- f. Petitioner has other available services for which she could apply for the times when [REDACTED] is out-of-town for work, including adult companion care and respite care.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.)

14. 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 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

...

4.2.2.6 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.

4.2.1.9 Homemaker Services

The purpose 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.

15. 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.

16. 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.

17. Petitioner requested fifty (50) additional hours of personal care services, weekly. See supra ¶ 6. In the NPAR, dated September 27, 2022, Respondent denied Petitioner’s request. See supra ¶ 7. Respondent explained that Petitioner’s request was not medically necessary because it did not 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. *Id.*

18. 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.” As provided in the 701B on the record, for bathing, Petitioner [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner always has assistance with her ADLs. *See supra* ¶ 4. Regarding her IADLs, Petitioner’s needs total assistance for all of her instrumental activities of daily living (“IADLs”), [REDACTED]

[REDACTED]

[REDACTED] Petitioner always has assistance for her IADLs.

See supra ¶ 5.

19. 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 times allotted for tasks applicable for Petitioner are as follows: bathing, up to 30 minutes; dressing, up to 15 minutes; grooming, 15 to 30 minutes; transferring 15 minutes every 2 hours; toileting, between 15 and 45 minutes; and eating, up to 30 minutes. Dr. Bowers provided her own estimates as follows: up to 30 minutes for the activities for which she needs total assistance, bathing and eating, and up to 20 minutes for the activities for which she needs assistance, but not total help, dressing, using the bathroom, transferring and walking. *See supra* ¶ 10. Here, Dr. Bowers’ estimates are credible. The allotted time for Petitioner’s tasks would be 2.5 hours per day utilizing personal care services. Petitioner

receives forty (40) hours of personal care services per week, that is utilized for eight (8) hours daily during the week. This meets and exceeds Petitioner's medical needs for assistance with her ADLs. Petitioner is also currently approved for ten (10) hours of homemaker services, weekly, for a total of fifty (50) hours of combined services each to assist with ADLs and IADLs.

20. As Petitioner bears the burden of proof, Petitioner must show that Respondent's denial of personal care services was incorrect. Here, [REDACTED] testimony and evidence did not prove that there is a medical necessity for Petitioner to receive an additional fifty (50) hours of weekly personal care services, as there were not any significant changes to Petitioner's ability to perform ADLs. See supra ¶ 20. Moreover, Dr. Bowers provided credible testimony as to how long it should take to assist Petitioner with her ADLs and IADLs. In addition, based on the testimony of [REDACTED], it seems [REDACTED] are only occasionally out-of-town for work, and not always at the same time. See supra ¶ 9.

21. Based on the foregoing, the record does not show that the additional personal care services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner's] needs; [b]e 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; [b]e furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See supra ¶ 15. Accordingly, the record does not show that the additional personal care services at issue are medically necessary.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a

preponderance of the evidence that Respondent's denial of Petitioner's request for personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of personal care services is **DENIED**.

DONE and **ORDERED** this 9th day of May, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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DEBBIE K. 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:



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GAMedicaidRightFax@humana.com

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**