



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

FILED

May 10, 2023, 11:43 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0261

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on March 21, 2023, at 1:00 p.m., Eastern Standard Time (EST).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Nicole Vega
Regulatory Research Coordinator
Children's Medical Services Health Plan/
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that the denial of home health aide services was incorrect.

PRELIMINARY STATEMENT

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

Nicole Vega, Regulatory Research Coordinator for Children’s Medical Services (“CMS”), appeared for the Fair Hearing as a representative for Respondent. The following persons appeared at the Fair Hearing as a witness for Respondent: Josephine Sanchez, a Case Manager for CMS; and Dr. Donald Fillipps (“Dr. Fillipps”), a Medical Director for CMS.

The following persons attended the Fair Hearing as observers: Anita Melton, a Case Manager for CMS; Julia Sallesmoya, a Supervisor of Case Management for CMS, and Dr. Monsour Samari, a Medical Director for CMS; and Chrissie Simmons, a Medical Health Care Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “ACHA”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent fifteen (15) pages of documentary evidence, including a seven (7)-page evidence packet and an eight (8)-page packet that appear in the Office of Fair Hearings’ document management system as file titles “[Petitioner Name] Case Evidence Part 1.pdf” and “[Petitioner Name] Case Evidence Part 2.pdf”, respectively. Absent an objection from the Respondent, the undersigned admitted the two evidence packets as Petitioner’s Composite Exhibit 1 (“PCE-1”). Additionally, Petitioner submitted a hospital patient visit summary, which was admitted by the undersigned as Petitioner’s Composite Exhibit 2 (“PCE-2”)¹.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and nineteen (219)-page evidence packet, that appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner Surname].pdf”. Absent an

¹ Appears on pages 5 and 6 of the document “23-FH0261 DAR & Evidence.pdf”. Petitioner requested to send a [REDACTED] school incident report as additional evidence, but Petitioner failed to send the document to the Office of Fair Hearings prior to or post hearing.

but approving Home Health services for six (6) hours per day on Mondays through Fridays. *Id.* at

6 – 8. Respondent explained the basis of its decision 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 59G-1.010).

Must be needed to protect your child’s life, prevent significant illness or disability to your child, or to alleviate your child’s severe pain.

Must 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;

Must meet accepted medical standards and not be experimental or investigational.

Must be able to be 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.

Must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)

....

The facts that we used to make our decision are:

Personal Care Services Policy & Procedure, FL.UM.25.00. Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for home health aide services (trained worker who provides personal care in the home) billing code S9122, six hours Monday through Friday, 12 hours Saturday has been carefully reviewed by the medical director (doctor) and is denied as not medically necessary (needed). The clinical (medical) notes submitted do not support the medical necessity (need) of these services. Your doctor is requesting an aide to assist your child in [redacted] activities of daily living such as [redacted]

[redacted]. There is no documentation (record) that your child is homebound (unable to leave one's home due to illness). Your child attends school. Your child is not bed bound [unable to leave one's bed). There is no record that you need special equipment to move around. There is no record of problems walking. There is no physical examination (a review of the body for signs of disease or injury) from your doctor. Your child is only [redacted] and would be expected to need adult supervision (watching and directing what someone does or how something is done) at home.

Your child does not have self-injurious (deliberately hurting one's own body) behavior (the way 3 person acts) documented (recorded). It is unclear if there has been a change in your child's medical condition (state of health) recently that makes these services medically necessary. Babysitting services are specifically noted to not be a covered benefit (not included in the health plan). Babysitting is defined as custodial care (non-medical care that helps individuals with their daily basic care), daycare, afterschool care, supervision, or similar childcare unrelated (not connected) to the services that are documented to be medically necessary for your child. A new request with information that addresses these issues can be submitted for review.

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6. Petitioner appealed the NABD, and on January 24, 2023, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”), upholding the determination to partially deny the home health aide services. *Id.* at 27 – 29. Respondent explained the partial denial, as follows:

The facts that we used to make our decision are: Following a review of the information provided with your appeal of the denial for home health aide services for member [REDACTED], the previous denial for these services is partially upheld/overturned. Your request for home health aide services is partially approved for the 6 hours M-F. However, the 12 hours requested for Saturdays is being denied as not medically necessary based on the parent/guardian work schedule provided. The Florida Medicaid Personal Care Services Coverage Policy states that Medicaid recipients may be provided personal care services when the parent or legal guardian is unable or unavailable to provide the care needed for their child due to work, school or a medical disability (section 4.2 of the Personal Care Services Policy).

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7. On January 30, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent’s partial denial of Home Health services. On March 3, 2023, the undersigned schedule the hearing for March 21, 2023, at 1:00 pm, EST, and all parties were duly notified.

8. [REDACTED]’s work schedule, as reported by [REDACTED] supervisor is 8:00 a.m. to 5:00 p.m., Monday through Friday. *Id.* at 18.

9. [REDACTED] testified that Petitioner has a multitude of medical problems, and that Petitioner is engaging in [REDACTED], such as [REDACTED]. [REDACTED] testified that, in [REDACTED] Petitioner's bad behavior in school caused the school police to get involved, and an incident report was written. [REDACTED] was told by the school officials that Petitioner may be better served by homebound school enrollment instead of a traditional school environment. [REDACTED] testified that [REDACTED] is considering homebound schooling for Petitioner. [REDACTED] further testified that [REDACTED] work schedule is more intensive than what was reported by [REDACTED] supervisor as being 8:00 am to 5:00 pm, Mondays through Fridays. [REDACTED] said that [REDACTED] sometimes goes to work at 6:00 a.m., that [REDACTED] sometimes works on Saturdays, and that, at times, [REDACTED] has had to work from home because of [REDACTED] needs. [REDACTED] explained that if Petitioner does not have the additional twelve (12) hours of home health care on Saturdays, [REDACTED] would not be able to work, as Petitioner needs constant supervision. [REDACTED] testified that [REDACTED] is unable to handle Petitioner at times because [REDACTED] is a very strong child, and [REDACTED], who is Petitioner's natural [REDACTED] but who adopted Petitioner, suffers from [REDACTED].

10. During the Fair Hearing, Dr. Fillips testified that he based his decision to uphold the approval of Home Health services for six (6) hours per day, Monday through Friday, but he agrees with Respondent's determination in this case and recommends that the denial of twelve (12) hours of home health aide services on Saturdays be upheld at this time. Dr. Fillips testified that, according to the Plan of Care, Petitioner attends school, [REDACTED] is not bed bound, [REDACTED] has no problems walking, needs no equipment to move around, [REDACTED] is not on a special diet, and [REDACTED] has not been diagnosed with having [REDACTED]. Dr. Fillips testified that he also relied

on Petitioner's school attendance schedule provided by the home health agency's report that Petitioner attends [REDACTED] during the week from 8:00 a.m. through 3:00 p.m., except Wednesday when [REDACTED] hours are 8:00 a.m. to 2:00 p.m. *Id.* at 41. Dr. Fillipps testified that six (6) hours per weekday for Home Health services should be adequate to assist Petitioner with [REDACTED] ADLs, such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. *Id.* at 21. Dr. Fillipps explained that Home Health services are not for purposes of babysitting or schoolwork activities. Dr. Fillipps further testified that he relied on the parent/guardian work schedule that was provided by [REDACTED] [REDACTED]'s place of employment supervisor on [REDACTED], wherein [REDACTED]'s work schedule is shown as being Monday through Friday, 8:00 a.m. to 5:00 p.m. *Id.* at 18. Therefore, Dr. Fillipps concluded, he upholds the denial of there was not enough clinical information and or any other documentary information submitted with the request to support the medical need for Home Health services for twelve (12) hours on Saturdays.

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). 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), which states "[e]ach fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

13. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan,

whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

14. In the instant case, Petitioner requested new services. As such, 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 Home Health Visit Services Coverage Policy (November 2016) ("Home Health Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.130, establishes the coverage and provision for Home Health services available under the Florida Medicaid program. The Florida Medicaid Home Health Policy states as follows:

1.1 Description

Florida Medicaid home health visits provide medically necessary skilled nursing and home health aide services to recipients whose medical conditions, illness or injury requires the care to be delivered in their home or in the community

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.1 Activities of Daily Living (ADL)

As defined in Rule 59G-1.010, F.A.C.

1.3.2 Babysitting

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

1.3.7 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled

nursing and home health aide services), private duty nursing, and Home Health services.

1.3.8 Instrumental Activities of Daily Living (IADL)

As defined in Rule 59G-1.010, F.A.C.

1.3.9 Intermittent Home Health Visits

Medically necessary skilled nursing and home health aide services that are provided at intervals for the length of time necessary to complete the service.

1.3.10 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

2.0 Eligible Recipient

2.1 General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy.

Provider(s) must verify each recipient’s eligibility each time a service is rendered.

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary home health visit services. Some services may be subject to additional coverage criteria as specified in section 4.0.

If a service is limited to recipients under the age of 21 years, it is specified in section 4.0. Otherwise, the service is covered for recipients of all ages Home Health services.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined to be medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid reimburses for:

- Up to four intermittent home health visits, per day, for recipients under the age of 21 years and pregnant recipients age 21 years and older
- Up to three intermittent home health visits, per day, for non-pregnant recipients age 21 years and older

Recipients who meet the following criteria may receive any combination of skilled nursing or home health aide visit services up to the coverage limits specified in this policy:

- Is under the care of a physician and have a physician's order for home health services
- Require services that can be safely provided in their home or in the community

See the Florida Medicaid personal care and private duty nursing services coverage policies if the recipient is under the age of 21 years and requires more care than can be furnished through a home health visit.

4.2.1 Short-term Nursing in an Intermediate Care Facility (ICF)

Florida Medicaid reimburses for short-term skilled nursing visits provided by an RN or LPN in an ICF when the services are medically necessary to avoid transferring the recipient to a nursing facility.

4.2.2 Home Health Aide Visits for Recipients Under the Age of 21 Years

Florida Medicaid reimburses for home health aide visits for recipients under the age of 21 years who have a medical condition or disability that substantially limits their ability to perform ADLs or IADLs.

1. Parental Responsibility

Florida Medicaid reimburses for home health aide visits rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

4.2.3 Services Provided by Independent RNs and LPNs

Florida Medicaid reimburses for skilled nursing rendered by an independent RN or LPN in accordance with 42 CFR 440.70 (b)(1), when there is no home health agency provider available in the area to furnish the care. A physician must direct and monitor the services provided by an independent RN or LPN, and must be available to consult on the recipient's medical condition.

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States

Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in § 1.0.
- The recipient does not meet the eligibility requirements listed in § 2.0.
- The service unnecessarily duplicates another provider's service.

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:
 - o Hospitals
 - o Intermediate care facility for individuals with intellectual disabilities
 - o Nursing facilities
 - o Prescribed pediatric extended care centers
 - o 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

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

(Emphasis added).

16. The Florida Medicaid Definitions Policy (“Definitions Policy”) (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, “contains definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule.” The Definitions Policy provides the following definitions relevant to this case:

2.2 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

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

2.83 Medically Necessary or Medical Necessity

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 severe 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.

Medically necessary or medical necessity for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

17. Based on the NABD and the NPAR, Respondent partially denied Petitioner's request for forty-two (42) hours per week (six 6 hours per day, Monday-Friday, and twelve (12) hours on Saturdays) of Home Health services. See supra ¶ 5, 6. Respondent determined that twelve (12) hours on Saturdays of Home Health services was not medically necessary because the hours were in excess of Petitioner's needs. See supra ¶ 5, 6, 9. Dr. Fillipps provided credible and persuasive testimony that there was not enough clinical information or any other documentary information, such as the parent/guardian work schedule and school enrollment records, submitted with the request to support the medical need for Home Health services for twelve (12) hours on Saturdays. See supra ¶9. Conversely, the [REDACTED]'s work schedule as completed by [REDACTED] employer indicates

that Petitioner has [REDACTED] to assist [REDACTED] with the ADLs of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] on Saturdays. *Id.*

18. The Florida Medicaid program provides coverage to its recipients for Home Health services. *See supra* ¶ 14. Home Health services provide “medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home in the community.” *Id.* Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. *Id.* These services cannot be authorized for Babysitting, Companion sitting or leisure activities, Escort services, Housekeeping, Respite Care. *Id.* Home Health services must meet the Medical Necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See supra* ¶ 15. To be Medically Necessary, the services requested (e.g., Home Health services) and the requested quantity of services (e.g., forty-two (42) hours per week, including six (6) hours each weekday, and twelve (12) hours on Saturday) must meet the five criteria set forth in section 2.83 of the Definitions Policy. *Id.* Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient’s needs.

19. Based on the foregoing, the record does not show that twelve (12) hours of Home Health Aide services on Saturdays 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; . . . meet accepted medical standards and not be experimental or investigational; . . . [and are] able to be 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.” *See supra* ¶ 5, 15.

Accordingly, the record does not show that the twelve (12) hours, on Saturdays, of Home Health services at issue are medically necessary.

20. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that twelve (12) additional hours of home health services was necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that twelve (12) additional hours of home health services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner has not proven by a preponderance of the evidence that Respondent's denial of Petitioner's request for Home Health services was incorrect.

Based on the foregoing,

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 10th day of May, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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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]
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