

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



FILED

Apr 28, 2023, 12:56 pm
OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 23-FH0294
[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 17, 2022, at 1:00 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell
Grievance and Appeals Fair Hearing Specialist
Humana Medical 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 homemaker services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED] appeared on behalf of the Petitioner. Petitioner attended the hearing as a party-witness.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Wayne Sherman (“Dr. Sherman”), Medical Director for Humana, attended as a witness for Respondent.

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

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fifty-eight (258)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet _Part1.pdf”, “Evidence Packet _Part2.pdf”, “Evidence Packet _Part3.pdf”, and “Evidence Packet _Part4.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and fifty-eight (258)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a thirty (30)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “23-FH0294 Faxed Evidence.pdf”. Absent an objection from the Respondent, the undersigned admitted the thirty (30)-page packet into evidence 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 alone. *Id.* at 4.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 58; *see also* page 6 of PCE 1. Petitioner's [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated October 20, 2022, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

5. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

6. In the Notice of Adverse Benefit Determination ("NABD"), dated October 26, 2022, Respondent reduced Petitioner's homemaker services from fifty-six hours (56) hours per week to fourteen (14) hours per week. 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 currently receive 56 hours homemaker service weekly, 56 hours personal care service weekly, 7 home delivered meals weekly, and personal emergency response monthly. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. [REDACTED]

[REDACTED] You are able to make your needs known. You do not have trouble thinking clearly or remembering things. You do not leave your home without someone (wandering). You have not had any recent changes in your health. You have not recently been in the hospital. You live alone. You have no caregiver. You are bed bound. You need [REDACTED]

[REDACTED]
[REDACTED] We are reducing to 14 hours homemaker service weekly. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

Pages 8 – 9 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated December 6, 2022, upholding the denial. *Id.* at 17 – 19. The NPAR explained as follows:

The reason for the decision was based on the information received. You have requested termination of 42 hours of homemaker services be reconsidered (appeal) on behalf of [Petitioner].

[Petitioner] currently receives 14 hours of homemaker service weekly, 56 hours of personal care service weekly, 7 home-delivered meals weekly, and personal emergency response monthly. [Petitioner] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

After a thorough review of [Petitioner’s] chart, we have decided to uphold the termination of 42 hours of homemaker services. The hours [Petitioner] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

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

Id. at 17 - 18.

8. On December 1, 2022, Petitioner's provider, [REDACTED], wrote a letter that states as follows:

This letter is being written on behalf of [Petitioner] who has received [REDACTED] primary care needs from our practice since 12/16/2016.

[Petitioner] is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In addition to the forementioned disease processed, he also suffers from:
[REDACTED]
[REDACTED]

[Petitioner] is able to live in [REDACTED] home and maintain as much of [REDACTED] independence as possible due to the assistance of his Medicaid provided aide. [REDACTED] has informed my office that [REDACTED] aide hours were in danger of being reduced. It is my **very strong** professional opinion that reducing his aide hours/services would put [Petitioner] in great detriment and cause an inability to live independently. If anything [REDACTED] is in need of an increase in aide hours.

If there are any questions I can answer for [Petitioner], please feel free to contact me at my office 561-236-1345. I would be glad to provide further medical information and history on [Petitioner].

...

Page 6 of PCE 1.

9. On February 13, 2023, Petitioner requested Fair Hearings to challenge the reduction homemaker 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 17, 2023, at 1:00 p.m. EST.

10. Petitioner's [REDACTED] and authorized representative, [REDACTED], testified that Petitioner needs at least fifty-six (56) hours for weekly homemaker services. Petitioner has [REDACTED] [REDACTED] and [REDACTED] condition is deteriorating. [REDACTED] contends that the 701B assessment is not up-to-date, that there is a lack of information on Petitioner's current medical condition and needs. For example, the 701B does not have Petitioner's latest medication list, medical condition, his recent hospitalization on October 27, 2022, through October 31, 2022, and the worsening of his [REDACTED]. PCE 1 at 7, 10. Petitioner is taking more medication for his [REDACTED], that are causing other health problems, [REDACTED] [REDACTED] Petitioner needs [REDACTED] [REDACTED] [REDACTED] testified that Petitioner is at risk for [REDACTED] contends that Petitioner needs twenty-four (24) hour care. [REDACTED] pointed out that while the Risk Assessment in Petitioner's Plan of Care correctly states that "Member is at risk for fall", but the next statement that "Member has an aide there providing supervision at all times" is incorrect. RCE 1 at 58. [REDACTED] argues that Petitioner needs an aide with him twenty-four (24) hours a day.

11. Petitioner testified that [REDACTED] is at risk for falling in the middle of the night when [REDACTED] has to use the toilet, because [REDACTED] leg muscles freeze-up, and [REDACTED] needs assistance to get back to bed, even though [REDACTED] uses a walker. Often, [REDACTED] is unable to get up from the toilet at night to return to bed, and it is unreasonable to have him call Emergency services each time that happens. Sometimes, [REDACTED] will begin to shake uncontrollably, but [REDACTED] cannot inject [REDACTED] with the medications to relieve it.

12. Dr. Sherman is a Medical Director for Humana. Dr. Sherman's testimony established the facts that Petitioner's homemaker services were being reduced from fifty-six (56) hours per week to fourteen (14) hours per week because they were not medically necessary. Referring to the 701B assessment, Dr. Sherman pointed out that Petitioner's IADLs, such as heavy chores, light housekeeping, shopping, managing money and medications, using transportation and the telephone, would take a minimum of nine (9) hours per week, up to the maximum of fourteen (14) hours that Petitioner would receive under the Plan of Care. Dr. Sherman testified that the delivery of seven (7) meals each week would account for 30 minutes to an hour daily, which slot of time would otherwise be used by the homemaker service hours in meal preparation. Dr. Sherman testified, that it was his opinion that fourteen (14) hours are more than adequate and meet the medical necessity criteria for homemaker services. Petitioner would still receive fifty-six (56) hours of weekly personal care services.

CONCLUSIONS OF LAW

13. 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).

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

15. Because Respondent is reducing services, Fla. Admin Code R. 59G-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.)

16. 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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

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 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

...

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

4.2.1.9 Homemaker Services

The provision 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.

...

4.2.2 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

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.

17. 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.

18. 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.

19. Respondent reduced Petitioner’s homemaker care services from fifty-six (56) hours weekly to fourteen (14) hours weekly. See ¶ 6.

20. As provided in the LTC policy, homemaker services are the “provision 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.” In regards to ■ IADLs,

Petitioner needs total assistance (cannot do at all) for [REDACTED]
[REDACTED]
[REDACTED] See supra ¶ 5.

21. Respondent bears the burden of proof to show that it correctly reduced Petitioner’s weekly homemaker hours from fifty-six (56) to fourteen (14). At the Fair Hearing, Dr. Sherman explained that based on the 701B review, fourteen (14) hours of homemaker services is more than adequate to meet the medical necessity criteria, *supra* ¶ 5, especially with seven (7) meals per week being delivered to Petitioner at home. See *supra* ¶ 6. Although the 701B is lacking some up-to-date information, such as Petitioner’s recent hospitalization, [REDACTED] worsening symptoms from [REDACTED] current list of medications, *supra* ¶ 8, these facts do not alter the medical necessity for more than fourteen (14) hours weekly of the particular service of homemaker care for Petitioner, at this time.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that Respondent’s reduction of Petitioner’s homemaker services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of homemaker services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction of homemaker services is **DENIED**.

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



Debbie K. Winicki
23-FH0294
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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]
[REDACTED]
[REDACTED]
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