

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



FILED

May 23, 2023, 11:51 am

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 23-FH0329
[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, a Hearing Officer with the Office of Fair Hearings convened the telephonic Fair Hearing on the instant case on April 19, 2022, at 12:01 p.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee
Medicaid Fair Hearing Specialist
Humana State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's adult companion care services from forty-nine (49) hours per week to twenty-two (22) hours weekly was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED]

Petitioner's Authorized Representative, represented Petitioner at the hearing.

Markeshi Lee, Medicaid Fair Hearing Specialist, appeared as the representative for Humana Medical Plan, Inc. (“Humana”). Dr. Avra Bowers (“Dr. Bowers”), Long Term Care Medical Director for Humana, appeared as a witness for Respondent.

Marielisa Amador, Medical Health Care Program Analyst, for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes. Kameisha Presley from the Office of Fair Hearings appeared as an observer.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-three (283)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “Evidence Packet_Part1.pdf,” “Evidence Packet_Part2.pdf,” “Evidence Packet_Part3.pdf,” “Evidence Packet_Part4.pdf,” “Evidence Packet_Part5.pdf,” “Evidence Packet_Part6.pdf.” Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. *See* Respondent’s Composite Exhibit 1 at page 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a [REDACTED] in a private residence. *Id.* at 1, 38-39. Petitioner’s [REDACTED]. *Id.* at 39. The Supplemental Assessment, dated March 9, 2023 (“Supplemental Assessment”), indicates that Petitioner’s [REDACTED] is no longer willing to provide natural support. *Id.* at 87. Petitioner’s [REDACTED] lives nearby and provides approximately one hour per day of assistance, but [REDACTED] is unable to provide more

natural support due to working full time and tending to the needs of [REDACTED] own family. *Id.* at 91-92.

3. Petitioner suffers from advancing [REDACTED]. *Id.* at 40, 42, 58. The Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B Assessment”) indicates that Petitioner requires supervision. *Id.* at 47. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 44-45.

4. Petitioner’s most recent 701B Assessment states the following regarding Petitioner’s Activities of Daily Living (“ADLs”): Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 49.

5. Regarding Instrumental Activities of Daily Living (“IADLs”), the 701B Assessment states that Petitioner needs total assistance (cannot do at all) with [REDACTED],

[REDACTED] *Id.* at 43.

6. Regarding socialization, the 701B Assessment states that Petitioner talks to friends, relatives, or others once per day. *Id.* at 52. Petitioner also spends time with someone who does not live with [REDACTED] two to six times per week. *Id.*

7. On January 10, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) reducing Petitioner’s adult companion care services. *Id.* at 19-23. The NABD stated the reason for Respondent’s actions as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) 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 receive 49 hours of Adult Companion Care (non-medical care for supervision and socialization each week). The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You live with a caregiver. You so have a memory problem. The service of 49 hours of Adult Companion care each week is being reduced to 22 hours weekly. You live with others who should be able to meet your companionship needs.

Id. at 19-20.

8. Petitioner requested a plan appeal on January 25, 2023, and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 27, 2023, upholding Humana’s decision to reduce Petitioner’s adult companion care services. *Id.* at 28-30. The NPA stated that the reason for the determination was based on the information received by Humana showing that Petitioner lives with a caregiver/spouse for companionship, has a memory problem, and has home health aides to meet [REDACTED] needs. *Id.* at 28. Humana stated that “[t]he hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.” *Id.* The NPAR states that the decision was based on medical necessity guidelines, but Humana did not specify which of the medical necessity criteria were no longer met.

9. In a letter dated January 24, 2023, Petitioner’s physician, Dr. Alex Taveras, provided a letter which states, in pertinent part, “[Petitioner] is a fall risk and experiences sundowner’s syndrome where [REDACTED] will get up in the middle of the night and wander if not watched. [REDACTED] is of advanced age as well and needs assistance with [REDACTED] condition will continue to progress and [REDACTED] need for companion care will continue.”

10. Dr. Bowers is a Long Term Care Medical Director for Humana. Dr. Bowers established that, apart from the companion care services at issue, Petitioner is currently approved to receive twenty-one (21) hours of personal care services weekly, six (6) hours of homemaker services

weekly, and twenty-two (22) hours of adult companion care services weekly. Dr. Bowers testified that the decision in this case was based on Petitioner's medical conditions, functional difficulties, and living arrangements as specified in the 701B Assessment. Regarding living arrangements, Dr. Bowers testified that Petitioner lives with [REDACTED]. Dr. Bowers stated that, although Petitioner's [REDACTED] may have physical limitations, "it is unclear whether" [REDACTED] could provide some supervision. Dr. Bowers testified that Petitioner has [REDACTED], but she concludes that Petitioner's [REDACTED].

Dr. Bowers testified that Petitioner's [REDACTED] is mentioned in the 701B Assessment as a social resource, and she stated that it is "unclear" how often the [REDACTED] or any family member assist. Dr. Bowers concluded that the approved services are adequate to meet Petitioner's needs.

11. Mr. Parsons testified that with Petitioner's [REDACTED] Petitioner can become agitated, and [REDACTED] is unable to care for [REDACTED]. He asserted that Petitioner needs constant redirection to complete activities and ensure transference from one activity to the next. Referring to a letter from Petitioner's physician, Dr. Alex Taveras, dated January 24, 2023, Mr. Parsons testified that Petitioner's condition will continue to progress and [REDACTED] need for adult companion care services will continue. *Id.* at 36. Mr. Parsons testified that Petitioner is progressing with Alzheimer's disease and is attempting to be active, but [REDACTED] has medical issues of her own and [REDACTED] is unable to step up any longer due to the needs of [REDACTED] own family.

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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of the Agency under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code (“F.A.C.”).

14. Because Respondent is reducing a previously approved service, Rule 59-1.100(17)(g), F.A.C., 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.)

15. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Rule 59G-4.192, F.A.C., governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care, adult companion care, and homemaker 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)

...

1.3.16 Natural Supports

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

4.1 General Criteria

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

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.1.1. Adult Companion Care

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

...

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.

...

6.2 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.

LTC Policy at pages 1 - 8.

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.

LTC Policy at pages 2 – 3.

17. In this case, Respondent reduced Petitioner's adult companion care services from forty-nine (49) to twenty-two (22) hours per week. See supra ¶¶ 6 and 7. Respondent's rationale for

reducing the services was that Petitioner's request failed to meet the requirements of medical necessity. Specifically, Respondent's witness indicated that the adult companion care services at issue are in excess of Petitioner's needs. See supra ¶ 6, 7, and 10.

18. As provided in the LTC Policy, the purpose of adult companion care services is to provide "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." See supra ¶ 15. Thus, adult companion care services are designed to prevent social isolation and to provide supervision to protect the enrollee's safety. See supra ¶ 15. The LTC Policy covers services that meet all of the following: are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTP Policy. See supra ¶ 15.

19. The record does not demonstrate that the previously approved forty-nine (49) hours per week of adult companion care services are no longer medically necessary based on Petitioner's need for supervision. Regarding Petitioner's medical condition, Petitioner is a [REDACTED]

[REDACTED] See supra ¶ 3.

Petitioner's 701B Assessment indicates that Petitioner requires supervision for safety reasons due to the following: Petitioner [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 3. Petitioner is [REDACTED]

[REDACTED] See supra ¶

3. Although Dr. Bowers testified that Petitioner's wandering is not a safety risk, the record shows that Petitioner [REDACTED]

[REDACTED]

See supra ¶ 3, 11. All of the above stand in contrast to Dr. Bowers' testimony and show that

[REDACTED] is a safety risk and do not support a reduction in the level of supervision.

20. Regarding Petitioner's living arrangements, Dr. Bowers testified that Humana based its decision in part on the fact that Petitioner lives with his spouse. Dr. Bowers stated that, although Petitioner's [REDACTED] may have physical limitations, "it is unclear whether" [REDACTED] could provide some supervision. The record reflects that, although Petitioner lives with [REDACTED] has extensive medical issues herself. See supra ¶ 2. Moreover, due to his illness, Petitioner has a history of [REDACTED] and the Supplemental Assessment indicates that [REDACTED] no longer wishes to provide natural support. See supra ¶ 2, 3. The record indicates that Petitioner is up 3-4 times per night, [REDACTED] (i.e. hospitalized after a fall in March 2022), will wander if [REDACTED] is not watched, and that the situation is more than [REDACTED] who is advanced in age, is able to handle on [REDACTED] own. See supra 9, 11. Petitioner's [REDACTED] lives nearby and provides approximately one hour per day of assistance, but [REDACTED] works full time and tends to [REDACTED] own family's needs. See supra ¶ 2. Based on the above, Petitioner's living arrangements do not support a reduction in adult companion care services.

21. Regarding Petitioner's functional limitations, Petitioner's 701B Assessment indicates that Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See supra ¶ 4. As [REDACTED] testified,

Petitioner is attempting to be active notwithstanding [REDACTED] limitations, but [REDACTED] needs constant

redirection to complete activities and ensure transference from one activity to the next. See supra ¶ 11. Dr. Bowers concluded that the approved services are adequate to meet Petitioner's needs; however, she also testified that "it is unclear whether" Petitioner's [REDACTED] or other family members could provide some supervision. Therefore, the undersigned did not find Dr. Bowers' testimony persuasive in this matter.

22. Based on the aforementioned living arrangements, medical condition, and functional abilities of the Petitioner, and the progressive nature of Petitioner's [REDACTED], the record does demonstrate by a preponderance of the evidence that the previously approved adult companion care services are in excess of Petitioner's supervision needs.

23. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned finds that Respondent did not meet its burden of proving by a preponderance of the evidence that previously approved forty-nine (49) hours per week of adult companion care services are no longer medically necessary.

24. Accordingly, the undersigned Hearing Officer concludes that Respondent failed to prove by a preponderance of the evidence that Respondent's reduction of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 23rd day of May, 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH0329



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**LAURA GALLAGHER, 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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**Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com**

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