



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

FILED

May 16, 2023, 9:26 am
OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 23-FH0381
█

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 5, 2023, at 1:08 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

█
Petitioner

For the Respondent:

Christian Pacheco
Senior Manager for Quality Improvement
Sunshine State Health 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 adult companion care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on █ own behalf. Petitioner’s

█ attended as a witness for Petitioner.

Christian Pacheco, Senior Manager for Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for the Respondent: Dr. Andrew Russell, for Sunshine; Conseulo Suarez, Supervisor for Sunshine; Cynthia Morisaki, Supervisor for Sunshine; Casey Narain, Utilization Management for Sunshine; Lauren Greenwald, Utilization Management for Sunshine; Katie Maldonado, Utilization Management for Sunshine; and Erica Chauta, Care Coordinator for Sunshine.

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

Janiris, interpreter number 337953, appeared to offer translation services for the Petitioner.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-five (135)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner Surname].pdf". Absent an objection from the Petitioner undersigned admitted the one hundred and thirty-five (135)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

At the hearing the record was held open to allow Petitioner to submit documents. On April 11, 2023, Petitioner timely submitted a two (2)-page document. The document appears in the Office of Fair Hearings' document management system as file title "23-FH0831 Evidence.pdf". Absent an objection from Respondent, the undersigned admitted the two (2)-page document into evidence as Petitioner's Exhibit 1 ("PE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 2 of RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] *Id.* at 63. Petitioner [REDACTED] *Id.* at 64. Petitioner is [REDACTED] *Id.* at 63. Petitioner is [REDACTED] [REDACTED] [REDACTED] *Id.* at 69-70, 72. Petitioner does not need supervision. *Id.* at 72.

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] [REDACTED] [REDACTED] *Id.* at 67.

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] *Id.* at 68.

5. Petitioner requested fourteen (14) hours of adult companion care services. In the Notice of Adverse Benefit Determination (“NABD”), dated December 21, 2022, Respondent denied Petitioner’s request. 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: The request for an extra 14 hours per week of Companion Care Services is denied for lack of medical necessity. Based on the assessment the member’s currently approved services are adequate to meet the member’s care needs. The member’s present care plan includes:

- 9 hours per week of Personal Care Services
- 5 hours per week of Homemaker Services
- 4 hours per week of Companion Care Services

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 4 – 6 of RCE 1.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 25, 2023, upholding the denial. *Id.* at 91 – 93.

7. On February 22, 2023, Petitioner requested a Fair Hearing to challenge the denial of adult companion care services. On March 13, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 5, 2023, at 1:00 p.m. EST.

8. Petitioner testified to the following:

- a. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- e. Petitioner wants someone to keep [REDACTED] company and talk to [REDACTED] keep [REDACTED] mind busy.
- f. Petitioner [REDACTED] him 2 or 3 time per week.
- g. [REDACTED] no longer visits [REDACTED] spouse daily.

9. [REDACTED] testified to the following:

- a. Petitioner [REDACTED]

10. Dr. Russell is a Medical Director for Sunshine. Dr. Russell testified to the following:

- a. 18 hours, weekly, of combined services (9 hours of personal care services, 5 hours of homemaker services, and 4 hours of adult companion care services, weekly).
- b. Petitioner has no cognitive issues or recent hospital stays.
- c. It does not appear that Petitioner is at risk for social isolation.
- d. The Home Health aide is not a licensed therapist.

11. LT.UM.09 provides as follows in regards to adult companion care services:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform

these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental illness requiring supervision
- Parkinson's disease
- Multiple sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End State Renal Disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c for more details
- Informal supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.

4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

...
Pages 115 – 116 of RCE 1.

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 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.)

15. 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 **adult companion 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

...

4.2.1.1 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.

...

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. Petitioner requested fourteen (14) hours, weekly, of adult companion care services. *See* ¶ 5. In the NABD, dated December 21, 2022, Respondent denied Petitioner's request. *Id.* Respondent indicated that the requested services were not medically necessary but did not identify which component of medical necessity the denial of medically was based on. *Id.*

19. As provided in the LTC Policy, adult companion care services are intended to provide for the "health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." *See supra* ¶ 15. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee. *Id.* As Petitioner bears the burden of proof, Petitioner must show that that the requested services are medically necessary. A component of medical necessity is that services 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." *See* ¶ 16. As shown by the record, Petitioner [REDACTED], *see* ¶ 2, but visits with [REDACTED] two (2) or three (3) times per week. *See* ¶ 8. Moreover, Petitioner has eighteen (18) hours of combined services, which will allow him the opportunity to visit with [REDACTED] health aide. In all, as testified to by Dr. Russell, Petitioner does is not at risk


for social isolation. See ¶ 10. Lastly, Petitioner does not need supervision. See ¶ 2. Accordingly, Petitioner has not shown that the requested adult companion care services are “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.”

20. 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 the requested adult companion care services are medically necessary. Accordingly, Petitioner did not demonstrate that Respondent’s decision to deny Petitioner’s request for fourteen (14) hours of adult companion care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s denial of adult companion care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE and **ORDERED** this 16th day of May, 2023, in Tallahassee, Leon County, Florida.

 Joseph Mabry
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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]

AHCA Medicaid Hearing Unit
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