



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

FILED

May 17, 2023, 8:33 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0384

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on April 11, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Michael Moens
Medicaid Fair Hearings Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s reduction of personal care services was correct.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED] Petitioner’s Authorized Representative and [REDACTED] appeared for the Fair Hearing to

provide testimony on behalf of Petitioner. [REDACTED], appeared for the Fair Hearing as a witness for Petitioner.

Michael Moens, a Medicaid Fair Hearings Specialist for Humana Medical Plan, Inc. (“Humana”), appeared for the Fair Hearing as representative for Respondent. Dr. Avra Bowers, MD (“Dr. Bowers”), a Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

The following persons appeared for the Fair Hearing as observers: Suzanne Chillari, a Medical Health Care Program Analyst for the Agency for Health Care Administration (“AHCA” or “Agency”); and Kameisha Presly, a Hearing Officer for the Agency.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings (“Office”) and Petitioner a 257-page evidence packet, which was admitted into evidence as Respondent’s Composite Exhibit 1. Respondent’s Composite Exhibit 1 includes the following documents: a Medicaid Fair Hearing Case Summary; a Notice of Adverse Benefit Determination (“NABD”) (dated October 24, 2022); Humana’s plan appeal information; a Notice of Plan Appeal Resolution (“NPAR”) (dated February 8, 2023); Humana’s authorization screenshots; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Comprehensive Assessment”) (dated May 12, 2022); Humana’s Plan of Care; Humana’s Plan of Care Summary; Humana’s Service Gap Contingency & Back-up Plan; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017); and Humana Member Handbook– English and Spanish.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana’s Long-term Care (“LTC”) program. See Respondent’s Composite Exhibit 1, pages 1, 24-25. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner [REDACTED] *Id.* at 1, 28, 51. Petitioner [REDACTED] *Id.* at 29. Petitioner is [REDACTED] *Id.* at 30, 32. Petitioner has no recent history of falls, hospitalizations, or emergency room (“ER”) visits. *Id.* at 31. Petitioner requires [REDACTED] [REDACTED] *Id.* at 32, 37. Petitioner is currently with the following: [REDACTED] [REDACTED] *Id.* at 34-35. Petitioner [REDACTED] *Id.* at 39. Petitioner is prescribed medication to be taken daily. *Id.* at 40. [REDACTED] assists with ADLs and IADLs. *Id.* at 30-33. *Id.* at 29. [REDACTED] also works full-time outside of the home. *Id.* at 42-44.

3. The 701-B Comprehensive Assessment reflects that with respect to Activities of Daily Living (“ADLs”), Petitioner needs assistance (but not total help) with [REDACTED] [REDACTED] *Id.* at 32. Petitioner needs [REDACTED] [REDACTED] *Id.* Petitioner does not need assistance with eating. *Id.* The 701-B Comprehensive Assessment reflects that with respect to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED] *Id.* at 33. Petitioner needs assistance (but not total help) with [REDACTED] *Id.* Petitioner’s primary caregiver assists with ADLs and IADLs. *Id.* at 32-33.

4. On October 24, 2022, Humana issued a NABD *reducing* Petitioner’s Personal Care services from 42 hours per week to 28 hours per week. *Id.* at 2-10. This was a reduction of 14 hours per week of Personal Care services. *Id.* The NABD explained the basis of the denial as follows, in pertinent part:

We made our decision because:
(Check all boxes that apply)

✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)

...

✓ 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 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 14 hours homemaker service weekly, 42 hours personal care service weekly, and incontinence supplies monthly. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You have [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] You have not had any recent changes in your health. You have not recently been in the hospital. You [REDACTED]. Your caregiver works full time outside of the home. You [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]). **We are reducing to 28 hours personal care 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.**

...
Sincerely,
Avra Carpousis-Bowers, MD, MBA, CPE ["Dr. Bowers"]
Medical Director

Respondent's Composite Exhibit 1, pages 2-10. (Emphasis added).

5. On December 8, 2022, Petitioner requested a plan appeal. *Id.* at 13-15. On February 8, 2023, Humana issued an NPAR *upholding* the reduction of Personal Care services. *Id.* at 16-23.

The NPAR states the following, in pertinent part:

On February 6, 2023, after consideration of the information you provided to Humana Healthy Horizons Comprehensive Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Internal Medicine hereby **denies your plan appeal.**

The reason for the decision was based on information received. [REDACTED]
[REDACTED] has requested the termination of 14 hours of personal care services weekly be reconsidered (appeal). [Petitioner] currently has 28 hours of personal care services each week and 14 hours of homemaker services weekly.

[Petitioner] has [REDACTED]
[REDACTED]
[REDACTED] is not able to [REDACTED]
[REDACTED] sometimes leaves [REDACTED] home without someone (wandering). [Petitioner] has not had any recent changes in [REDACTED] health. [REDACTED] has not recently been in the hospital [REDACTED] lives with you, [REDACTED] help care for [REDACTED]

[Petitioner]’s caregiver works full time outside of the home. [Petitioner] uses a walker to move around. [REDACTED]

(incontinence).

[Petitioner] has 42 hours of home health aide services weekly to meet [REDACTED] needs. After thorough review of [REDACTED] chart, we continue to uphold the termination of 14 hours of personal care services weekly. The hours you are receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

...

Sincerely,

Srujani Gaddam, Medical Director [“Dr. Gaddam”]

Respondent’s Composite Exhibit 1, pages 16-23. (Emphasis added).

6. On February 24, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the reduction of Personal Care services. On March 22, 2023, the undersigned Hearing Officer issued a notice, to all parties of record, scheduling the Fair Hearing to be convened by telephone on April 11, 2023, at 9:00 a.m. EST.

7. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: 14 hours per week of Homemaker services; 28 hours per week of Personal Care services; and a monthly supply of various disposable medical supplies. *Id.* at 66.

8. According to Dr. Bowers’ testimony presented at the Fair Hearing, Humana reduced Petitioner’s Personal Care services by 14 hours after a review of Petitioner’s Plan of Care and the 701B Comprehensive Assessment. Dr. Bowers did not cite any improvements in Petitioner’s improvement in their ability to perform ADLs and IADLs, or any increased natural support. Dr. Bowers cited the presence of family and a primary caregiver as evidence of natural support, but did not quantify how much natural support is provided or [REDACTED] work schedule outside of the home. Dr. Bowers is not sure if the most recent 701B Comprehensive Assessment was used

in the medical necessity determination; the submitted 701B Comprehensive Assessment was completed on May 12, 2022.

9. According to [REDACTED] testimony presented at the Fair Hearing, Petitioner's medical condition has not improved, Petitioner's ability to perform Personal Care tasks, and Petitioner cannot be left alone. [REDACTED] both works full-time outside of the home along with [REDACTED] work commute is approximately 60-90 miles each way for work; [REDACTED] travels to multiple sites for work. [REDACTED] works a 40-hour work week, not including travel time. Both [REDACTED] have obligations of caring for their [REDACTED] which limits their ability to provide natural support.

CONCLUSIONS OF LAW

10. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statutes ("Fla. Stat." or "F.S.") § 409.285(2) (2022). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

12. Because Respondent is reducing existing 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.).

13. Petitioner's request for a continuation of Florida Medicaid LTC services is governed by the Florida Medicaid LTC Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.192.

See Respondent's Composite Exhibit 1, pages 71-93. The Florida Medicaid LTC Policy provides the following, in pertinent part:

1.0 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 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 (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
- 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)

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.

1.3.16 Natural Supports

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

...

4.0 Coverage Information

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 LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

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.

Respondent's Composite Exhibit 1, pages 71-93. (Emphasis added).

14. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides 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 Florida Medicaid Definitions Policy defines "Medically Necessary" or "Medical Necessity" as follows:

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 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.

(Emphasis added).

15. Based on the NABD, and the NPAR, Respondent reduced Petitioner's Personal Care services by 14 hours per week after a review of Petitioner's approved Florida Medicaid LTC services, Petitioner's natural support, and the 701-B Comprehensive Assessment. See supra ¶ 4-5, 8. Respondent reduced Petitioner's Personal Care services from 42 hours per week to 28 hours per week. See supra ¶ 4-5, 8. Respondent determined that 14 hours per week of Personal Care services was no longer medically necessary because it was in excess of Petitioner's needs. See supra ¶ 4-5, 8. Specifically, Respondent determined the Petitioner's currently approved LTC services (14 hours per week of Homemaker services; 28 hours per week of Personal Care services) are sufficient to meet Petitioner's needs. See supra ¶ 4-5, 8. The undersigned Hearing Officer considered the elicited testimony and submitted documentation with respect to the Florida Medicaid LTC Policy and the Florida Medicaid Definitions Policy with respect to the termination of 14 hours per week of Personal Care services.

16. The Florida Medicaid program covers Personal Care services that are determined to be medically necessary. See supra ¶ 13. Personal Care services administered under the Florida Medicaid program 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." See supra ¶ 13. Medicaid services such as Personal Care services must meet the medical necessity criteria set forth by the Florida Medicaid program. See supra ¶ 14. To no longer be medically necessary, the quantity of services at issue

(e.g., 14 hours per week) must now be in excess of the recipient's needs. Thus, in order to justify reducing Petitioner's Personal Care services, Respondent must prove that the recipient does not have an unmet need of 14 hours per week for assistance with ADLs and IADLs. The entire 14 hours per week of Personal Care services must be in excess of the recipient's needs or the request is not medically necessary. *See supra* ¶ 14.

16. The crux of this case rests on how Respondent calculated that 14 hours per week of Personal Care services were in excess of Petitioner's needs. Upon review of the documentation and Dr. Bowers' testimony there is insufficient evidence explaining how Respondent reached this medical determination. The record indicates that Respondent (Dr. Bowers, Dr. Gaddam) relied upon the 701-B Comprehensive Assessment in their medical necessity to determine Petitioner's needs for assistance with ADLs and IADLs. *See supra* ¶ 4-5. It is unclear in the record and by Respondent at the Fair Hearing whether the most recent assessment was used in the medical necessity determination. Michael Moens and Dr. Bowers were unsure if the submitted assessment is the most recent assessment. *See supra* ¶ 7. Petitioner requires some level of assistance with ADLs and IADLs. *See supra* ¶ 4-5. However, nothing in the NABD or in the NPAR explains how this information factored into a calculation that 14 hours per week of assistance with ADLs and IADLs are no longer needed. Further, Dr. Bowers' testimony did not provide any insight as to how this information factored into a calculation that 14 hours per week of assistance with ADLs and IADLs are no longer needed. Next, Dr. Bowers referenced the fact that Petitioner has some level of natural support in the home as a basis that 14 hours per week of assistance with ADLs and IADLs are no longer needed. *See supra* ¶ 7. However, Dr. Bowers was unaware of how often Petitioner's [REDACTED] works, and how much natural support Petitioner receives, and how

much natural support Petitioner's [REDACTED] can provide considered other obligations (e.g., work, [REDACTED]). See supra ¶ 7. Also, Dr. Bowers did not elaborate as to how an unquantified amount of natural support factored into a determination that 14 hours per week of assistance with ADLs and IADLs are no longer needed. See supra ¶ 7. Lastly, Dr. Bowers cited no improvements in Petitioner's ability to perform ADLs and IADLs, or any increase in Petitioner's natural support. See supra ¶ 7. All in all, Respondent relied upon declaratory statements of Dr. Gaddam and Dr. Bowers without sufficient explanations. Dr. Bowers provided no substantive testimony beyond what was stated in the NABD and in the NPAR, leaving vital information regarding the medical necessity calculation left unaddressed. It's unclear as to how much natural support was factored by Respondent, and how the medical necessity determination was calculated; it is Respondent's burden to show that their decision was correct.

17. Thus, the undersigned Hearing Officer found [REDACTED] testimony regarding [REDACTED] natural support and Petitioner's functional ability to be both credible and reliable. [REDACTED] and [REDACTED] have a full-time work schedule that includes a lengthy commute. See supra ¶ 7. They also have [REDACTED], which they must care for. See supra ¶ 7. This limits their ability to provide natural support. It is clear from Dr. Bowers' testimony that she was not aware of this information when she issued the NPAR. Upon review of the NABD, there is no indication that Dr. Gaddam was aware of this information either. Respondent and Dr. Bowers failed to address whether how this *new* information factors into the medical necessity determination and the aforementioned calculation that 14 hours per week of Personal Care services are no longer needed. The undersigned Hearing Officer found Dr. Bower's testimony to

be significantly lacking as she did not address vital factors and information, which the NABD and NPAR indicated played a role in the medical necessity determination.


17. Respondent **failed** to establish that the quantity of Personal Care services at issue are no longer “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are now “in excess of the patient’s needs.” See supra ¶ 15. As a result of not meeting their burden of proof, Respondent’s medical necessity determination was incorrect in this case. Respondent **failed** to show that the Petitioner no longer needs the 14 hours per week of Personal Care services at issue for the hearing.

18. Accordingly, upon consideration of the evidence into the record, the sworn testimony of all witnesses presented at the scheduled Fair Hearing, and the aforementioned applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Respondent **has not** shown that the 14 hours per week of Personal Care services are now in excess of Petitioner’s needs. Respondent **has not** proven by a preponderance of the evidence that Respondent’s reduction of Personal Care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of Personal Care services is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction of Personal Care services is **GRANTED**.

DONE and ORDERED this 17th day of May, 2023, in Tallahassee, Leon County, Florida.


Joseph Mabry
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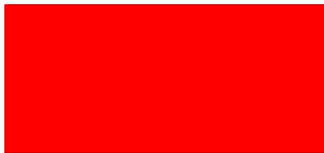
JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration

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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:



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