



FILED

May 19, 2023, 11:25 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0412

[REDACTED]

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 12, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco
Senior Director 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 denial of an additional fourteen (14) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED], appeared on behalf of the Petitioner.

Christian Pacheco, Senior Director for Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter ("Dr. Carter"), LTC Medical Director for Sunshine; Talia Aguiar, Case Management Supervisor for Sunshine; Megan Banks, Care Coordinator for Sunshine; and Ashara Howard, Care Coordinator for Sunshine.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), and Kameisha Presley, Hearing Officer for the Agency, appeared as observers.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eight (8) page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as "23-FH0412 Supporting Documents(2).pdf". Absent an objection from the Respondent, the undersigned admitted the eight (8) page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty (140) page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as "MFH packet [Petitioner Surname].pdf". Absent an objection from the Petitioner, undersigned admitted the one hundred and forty (140) page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 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 45. Petitioner lives alone in independent living. *Id.* at 45.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 51 – 52. Petitioner is [REDACTED]
[REDACTED] *Id.* at 52.

4. On December 15, 2022, an assessment of Petitioner was reported in a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”). *Id.* at 45 – 61. Per the 701B, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]

[REDACTED]
[REDACTED] *Id.* at

49. [REDACTED]
[REDACTED]

always has assistance.

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. Petitioner requested an additional fourteen (14) hours of personal care. Petitioner's request was denied in a Notice of Adverse Benefit Determination ("NABD"), dated December 19, 2022. *Id.* at 4 – 6. 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/week of Personal Care Services is denied as not medically needed. 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 35 hours/week of Personal Care Services + 4 hours/week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated January 19, 2023, upholding the denial. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the denial of an extra 14 hours per week of Personal Care Services is denied for lack of medical necessity.

Based on the assessment, the members currently approved services are adequate to meet the members care needs. The member's present care plan includes 35 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Page 94 of RCE 1.

8. Petitioner's plan of care includes the following services: thirty-five (35) hours per week of personal care services and four (4) hours per week of homemaker services. *Id.* at 35.

9. On February 28, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On March 22, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 12, 2023, at 9:00 a.m. EST.

10. Petitioner's Authorized Representative, [REDACTED], testified:

a. [REDACTED] is a friend of Petitioner. Petitioner has [REDACTED] tries to visit as much as possible but cannot always be there. Petitioner needs [REDACTED] [REDACTED] [REDACTED]

b. Petitioner was hospitalized in October of 2022 after [REDACTED] [REDACTED]. Petitioner [REDACTED] [REDACTED] [REDACTED]

- c. Petitioner is hesitant to leave [REDACTED] building after being hit by an automated door more than once. Petitioner pays for an aide who is there in the morning and leaves at 4:00 p.m. Petitioner is in [REDACTED] pajamas at 4:00 p.m. in order to be ready to go to bed at night.

11. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified:

- a. It is Dr. Carter's opinion that the approved hours are sufficient to meet Petitioner's needs. Petitioner lives alone in an assisted living facility with no live-in caregiver and has multiple medical problems but the approved hours, if evenly distributed in a seven day period, would be five and a half (5 ½) hours of services per day. Dr. Carter believes that the denial for additional personal care services is appropriate.
- b. After the reduction, Petitioner is receiving a total of thirty-nine (39) hours per week of the following combined services: thirty-five (35) hours of personal care services and four (4) hours of homemaker services.
- c. Dr. Carter's opinion is based upon the services Petitioner is already receiving and the 701B.

12. LT.UM.09 provides as follows in regards to personal care services:

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)

- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders
The Personal Care Provider cannot administer any medications, but may bring medications to the member and remind the member to take the medications at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

Exclusions and Limitations for Personal Care services 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. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

Id. at 129

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 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.)

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

...

1.3.9 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

...

4.2.1.9 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.

...

4.2.2.6 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.

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 denied Petitioner’s request for an additional fourteen (14) hours per week of personal care services on the basis that the additional services are not medically necessary. *Id.* at 4 – 5. In order to be covered by Medicaid, the requested personal care services must be medically necessary. The services are required to 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. *Id.* at 5. Petitioner has failed to meet these criteria. [REDACTED] testified that the additional personal care hours are necessary because Petitioner [REDACTED] and


████████████████████ is greatly relieved when someone is with █████. Additionally, █████ testified that Petitioner has no children or family and that while █████, tries to visit as much as possible, █████ cannot always be there with Petitioner. Personal care services are intended to provide assistance with ADLs and IADLS, and not for general supervision or companionship. See ¶ 16. Petitioner has not established that Petitioner's current authorized services and natural supports are inadequate to meet Petitioner's ADL and IADL care needs, and that the requested amount of personal care services is consistent with the level of care █████ requires and are not in excess of █████ needs. Although the Petitioner's █████ is greatly relieved when someone is with █████, the services must not be furnished in a manner primarily intended for the convenience of the recipient. See ¶ 17.

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of additional personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 19th day of May, 2023, in Tallahassee, Leon County, Florida.

Joseph Mabry
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JOSEPH MABRY, Hearing Officer
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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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