

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



FILED

Jun 05, 2023, 11:01 am

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 23-FH0415

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 2, 2023, at 10:30 a.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner's Authorized Representative

For the Respondent:

Chrissie Simmons
Medical/Health Care Program Analyst
Agency for Health Care Administration

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 personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED]), and [REDACTED] Petitioner's

[REDACTED] appeared on behalf of the Petitioner.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency or “AHCA”), appeared on behalf of Respondent. Dr. Rakesh Mittal (“Dr. Mittal”), Physician Consultant for eQHealth Solutions (“eQHealth”), attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings an eleven (11) page e-mail, a fourteen (14) page e-mail, a twenty-one (21) page e-mail; and an eight (8) page email. The eleven (11) page e-mail is identified in the Office of Fair Hearings’ document management system as “23-FH0415 Petitioner correspondence and evidence.pdf”¹. The eight (8) page e-mail is identified in the Office of Fair Hearings’ document management system as “23-FH0415 Additional Evidence.pdf”². The fourteen (14) page e-mail is identified in the Office of Fair Hearings’ document management system as “23-FH0415 Supporting Documents.pdf”³. The twenty-one (21) page email is identified in the Office of Fair Hearings’ document management system as “23-FH0415 Petitioner correspondence and evidence.pdf”⁴. Absent an objection, these 54 pages were admitted into evidence as Petitioner Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a sixty-three (63) page evidence packet and an eighty (80) page evidence packet. The sixty-three (63) page document is identified in the Office of Fair Hearings’ document management system as “57000966 FH 05.02.2023.pdf”. The eighty (80) page document is identified in the Office of Fair Hearings’ document management system as “23-FH0415 AHCA Evidence.pdf”. Absent an

¹ Pages 1 – 11 of PCE 1.

² Pages 12 – 19 of PCE 1.

³ Pages 20 – 33 of PCE 1.

⁴ Pages 34 – 54 of PCE 1.

objection from the Petitioner, the undersigned admitted the sixty-three (63)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the eighty (80) page document into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the agency to review prior authorization requests for services. *See* RCE 2, page 2.

2. Petitioner [REDACTED]. *See* RCE 1, p. 16.

3. Petitioner has been diagnosed with the following: [REDACTED]

Id.

4. Petitioner’s [REDACTED] works from 5:00 p.m. until 10:00 p.m., Monday through Friday, and 9:00 a.m. until 6:00 p.m., on Saturday. *See* page 2 of PCE 1. On Sunday, Petitioner’s [REDACTED] works “every other week, sometimes every week” from 9:00 a.m. until 6:00 p.m. *Id.* Petitioner’s [REDACTED] works from 4:00 p.m. until 8:00 p.m., Monday through Friday, and 10:00 a.m. until 4:00 p.m. on Saturday. *Id.* at 10.

5. Petitioner requested seven (7) hours of personal care services (“PCS”), daily. *Id.* at 44. In a notice of Outcome (“NOO”) dated February 22, 2023, Respondent denied Petitioner’s request. *Id.* at 21 – 22. Respondent explained the basis of the denial as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59 G- 1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standards:

Individualized specific and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patients needs.

Rationale for our decision is as follows:

PR Principle Reason - Denial:

Submitted information does not support the medical necessity for the requested services.

Request is for PCA services under CDC + program for this [REDACTED] [REDACTED]. Patient eats by mouth ; [REDACTED] [Monday through Friday] until 2:30 PM and [REDACTED] [REDACTED]. Seems like [REDACTED] is providing PCS care after work. [O]ne schedule for the [REDACTED] indicates [REDACTED] works [10:00 AM to 3:00 PM] and then another one indicates [2:00 PM to 6:00 PM]. [REDACTED] can provide morning care. as [REDACTED] is available to provide care after work so deny this request [REDACTED] must provide as much care as they can.

Id. at 21-22.

6. On March 1, 2023, Petitioner requested a Fair Hearing to challenge the denial of Personal Care Services. On April 18, 2023 the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 2, 2023, at 10:30 a.m. Eastern Standard Time.

7. Petitioner's [REDACTED] testified to the following:

- a. [REDACTED] needs to be lifted at least 19 times per day.
- b. [REDACTED] is confined to a wheelchair and cannot do ADL's without full assistance.
- c. Due to the shortage of workers, they applied to the CDC plus program.
- d. They do not have a PCS worker at the home at the present time.
- e. The person that they had previously for PCS services quit and no one that the Agency has sent to take over is willing to work with them and [REDACTED].

8. Petitioner's [REDACTED] testified to the following:

- a. [REDACTED] are struggling, and no one is helping them.

- b. Their jobs are demanding, and they jump one from one work to the other and it is taking a toll on their emotional health.
- c. They get no breaks or quiet hours. They are physically and emotionally unable to continue without help as they are both in their [REDACTED]
- d. The PCS worker that they had previously has since quit and no one has come to replace her.
- e. Peitioner's [REDACTED] stated that they applied to the CDC plus program because no one from the Agency will come to help them.

9. Dr. Mittal, Physician Consultant for eQHealth, testified to the following:

- a. Referring to page 16 of RCE 2, under the CDC plus program, the [REDACTED] can pick a provider to replace the previous worker.
- b. Based on the schedule that [REDACTED] provided they drive [REDACTED] and [REDACTED] attends therapy three to four days a week. From 8:30 AM to 5:30 PM, the [REDACTED] is not at home.
- c. Monday through Saturday, [REDACTED] works and can provide care in the morning based upon the schedule that [REDACTED] gave. [REDACTED] is back home at 5:30 and the [REDACTED] can provide care once [REDACTED] returns.
- d. [REDACTED] wants a nurse in the [REDACTED] That is not personal care services, that is supervision.
- e. Dr. Mittal testified that two hours of personal care services after school may be appropriate, but those services cannot be used for supervision. The doctor can also approve help in the evening and weekends. Since the PCS worker that the

██████████ had previously quit, ██████████ can choose a worker from the CDC plus program.

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 section 409.285(2) of the Florida Statutes (2019). 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 Fla. Admin. Code R. 59G-1.100(17)(b).

12. 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.)

13. The Florida Medicaid Personal Care Services Coverage Policy (“Policy”) incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services and companion care services:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary
- 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 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

...

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

4.3 Early and Period Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1095(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary.

14. The Policy further addresses excluded services as follows:

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work.

15. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

16. Petitioner is [REDACTED] and therefore EPSDT applies to [REDACTED] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

17. The Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definition Policy provides the following definitions applicable to the instant case:

2.2 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

2.64 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)

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.

18. Services under the CDC plus program are not under the jurisdiction of the Office of Fair Hearings or AHCA.

19. In this case, PCS services were denied as they were found to not be “individualized, specific and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” See ¶ 4. Respondent based its denial was based upon Petitioner’s [REDACTED] availability to provide morning care and Petitioner’s [REDACTED] availability to provide care after work. See ¶ 4. As shown by the record, [REDACTED] works from 5:00 p.m. to 10:00 p.m., Monday through Friday, 9:00 a.m. to 6:00 p.m. Saturday, and on Sunday, “every other week, sometimes every week” 9:00 a.m. to 6:00 p.m. *Id.* [REDACTED] works Monday through Friday 4:00 p.m. to 8:00 p.m. and Saturday 10:00 a.m. to 4:00 p.m. *Id.* While [REDACTED] [REDACTED] must participate in providing care to the fullest extent possible, the [REDACTED] work schedules and prior authorization for personal care services is key information establishing their need for personal care services. See ¶ 6,7,11.

20. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did demonstrate that additional personal care services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. See ¶14.

21. Dr. Mittal testified that the parents can obtain a new PCS provider through the CDC + program. See ¶ 7. Skilled nursing is not required for supervision of [REDACTED] and therapies See ¶ 7. Dr. Mittal testified he could approve 2 hours per day of personal care services daily to assist the [REDACTED] in the evenings and weekends. See ¶7.

22. I find the testimony of Dr. Mittal to be persuasive in specifying when the [REDACTED] are available to provide care around their work schedules. Additionally, two (2) hours per day of personal care services evenings and weekends is an appropriate amount based upon the evidence submitted and testimony of Dr. Mittal.

23. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that seven (7) hours of personal cares services, daily, were necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the entirety of the request for personal care services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. See ¶14. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of seven (7) hours personal care services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial is partially **AFFIRMED**. Petitioner's appeal based on Respondent's denial is partially **DENIED**.

DONE AND ORDERED this 5th day of June, 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
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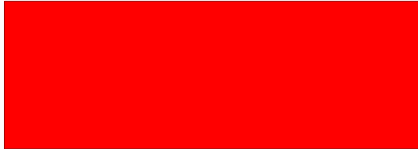
LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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:



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