



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

FILED

May 24, 2023, 9:50 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0426

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 28, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell

Grievances and Appeals Fair Hearing Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny the request for additional adult companion care ("AC") services was incorrect.

PRELIMINARY STATEMENT

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

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Respondent, appeared on behalf of Humana Medical Plan, Inc. (“Humana”). Dr. Manohar Chenchugalla, (“Dr. Chenchugalla”), Medical Director for Humana, appeared as witness for Respondent.

The following attended as observers: Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”); and Kameisha Presley, Hearing Officer, Office of Fair Hearings for the Agency.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and twenty-five (325) page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH0426_Part1.pdf”, “Evidence Packet 23-FH0426_Part2.pdf”, “Evidence Packet 23-FH0426_Part3.pdf”, “Evidence Packet 23-FH0426_Part4.pdf”, “Evidence Packet 23-FH0426_Part5.pdf”, and “Evidence Packet 23-FH0426_Part6.pdf”. Absent an objection from the Petitioner, the undersigned admitted the three hundred and twenty-five (325) pages of evidence as Respondent’s Composite Exhibit 1 (“RCE-1”).

The Petitioner did not send any evidence to the Office of Fair Hearings.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See page 16 of RCE-1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED] *Id.* Petitioner lives with [REDACTED], and [REDACTED] *Id.* at 77.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]

[REDACTED] *Id.* at 82.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessments (“701B”), which was taken on February 21, 2023, Petitioner needs total assistance (cannot do at all) for the following activities of daily living (“ADLs”): [REDACTED]

[REDACTED] *Id.* at 80. Petitioner always has assistance for those ADLs. *Id.*

5. As provided in the 701B, Petitioner needs total assistance (cannot do at all) for the following instrumental activities of daily living (“IADLs”): [REDACTED]

[REDACTED]
[REDACTED]. *Id.* at 81.

6. As provided in the 701B, for which [REDACTED] was a representative for Petitioner, the assessment was that Petitioner does not have mental health problem behaviors at all, but Petitioner needs supervision. *Id.* at 85. The Assessor noted that “Member has family that checks on member and friends. No gaps identified.” *Id.*

7. Petitioner talks to friends, relatives, or others, (by phone, computer, or others means) several times per month. *Id.* at 90. Petitioner spends time with someone who does not live with [REDACTED] several times per month. *Id.* Petitioner participates in activities outside the home that interest [REDACTED] several times per month. *Id.*

8. In the Notice of Adverse Benefit Determination (“NABD”), dated December 12, 2022, Humana denied Petitioner’s request for seven (7) additional adult companion care services. The NABD explained the basis of the reduction 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.

....

- **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 have requested 10 additional hours of homemaker (HMK), 10 additional hours of personal care (PC), and 7 additional hours of adult companion care (ACC) services weekly. You currently receive 28 hours of HMK, 28 hours of PC, and 3 hours of ACC services weekly. Your medical problems include [REDACTED]

[REDACTED] several times a week. You also [REDACTED]

[REDACTED] You [REDACTED]

[REDACTED] You are alert and oriented and answer with gestures. You reside at home

with [REDACTED] who reported to work 12 hours, M-F with 1 hour commute time each way to work and also reported working some weekends for 8 hours on Sat/Sun. You are [REDACTED] We are denying 10 additional hours of HMK, denying 10 additional hours of PC, and denying 7 additional hours of ACC service weekly as you currently receive 59 hours of HHA care weekly which should be sufficient to meet your needs. You can split these hours to receive care during the weekends as well when [REDACTED] is working.

...

Pages 7 -8 of RCE-1.

9. On December 27, 2022, Petitioner requested a plan appeal. *Id.* at 19. Subsequently, Petitioner received a Notice of Plan Appeal Resolution (“NPAR”), dated January 24, 2023, upholding the denial. *Id.* at 18 - 21. The NPAR explained as follows:

The reason for the decision was based on information received. You have requested that the additional 7 hours of adult companion care each week that was denied in your initial request be reconsidered (appeal).

[Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble making [REDACTED] needs known. [REDACTED] sometimes has trouble thinking clearly or remembering things.

[Petitioner] lives with [REDACTED] caregiver. [REDACTED] is [REDACTED]. [Petitioner] needs [REDACTED]. [REDACTED]. [REDACTED].

The denial of the additional 7 hours of adult companion care each week is being upheld. The hours he is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan’s approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Id. at 19 - 20.

10. On February 28, 2023, Petitioner requested Fair Hearings to challenge the denial of adult companion care services. On April 14, 2023, the undersigned issued an Order Scheduling Fair

Hearing by Telephone and Prehearing Instructions, setting the hearing for April 28, 2023, at 9:00 a.m. EST.

11. Petitioner's [REDACTED], testified that [REDACTED] is the primary caretaker for Petitioner, who needs assistance and supervision every day, all day. [REDACTED] testified that [REDACTED] has returned to work as a retail store manager in early December of 2022, after the recent death of [REDACTED] [REDACTED] who used to help with some household finances and with Petitioner's ADLs and IALDs. [REDACTED] works approximately ten (10) hours per day, Monday through Saturday, and sometimes leaves the house for work at 3:45 a.m. [REDACTED] testified that sometimes [REDACTED], who is [REDACTED] visits to help Petitioner when [REDACTED] is at work. [REDACTED] represented in the 701B that [REDACTED] with them, but [REDACTED] also works outside of the home for long hours and is unable to assist Petitioner during those times. *Id.* at 92.

12. Dr. Chenchugalla is a Medical Director for Humana. Dr. Chenchugalla's testimony established that Respondent's decision was based on the 701B assessment. Based on the assessment, a Plan of Care was made to ensure that Petitioner has adequate weekly care service hours, including three (3) hours of adult companion care (one (1) hour each on Monday, Wednesday and Friday); and twenty-eight (28) hours of homemaker services and twenty-eight (28) hours of personal care services, to be used weekly, Sunday through Monday. *Id.* at 127. Dr. Chenchugalla contends that the total of fifty-nine (59) hours in weekly care service hours is enough to assist with Petitioner's needs, since fifty-six (56) of those hours may be apportioned as needed for any day of the week. Therefore, Dr. Chenchugalla upholds that determination that the additional seven (7) hours of adult companion care are not medically necessary for Petitioner.

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 requested the additional adult companion care services, Fla. Admin Code R. 59-1.100(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 adult companion care services:

4.1 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:

...

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.

...

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. Petitioner requested an additional seven (7) hours of weekly adult companion care services. Respondent denied Petitioner's request in the NABD. *See supra* ¶ 8. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which prong of medical necessity was used to make its decision. *Id.* In the NPAR, Respondent asserted its denial of the additional seven (7) weekly hours of adult companion care services, by determining that "[t]he hours ■■■ is currently receiving should be enough to meet ■■■ medical needs and can be divided into shifts to better meet ■■■ needs..." *See supra* ¶ 9.

20. As provided in the LTC policy, adult companion care services are intended 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* ¶ 16. Petitioner currently receives "59 hours of HHA care weekly which should be sufficient to meet [Petitioner's] needs. [Petitioner] can split these hours to receive care during the weekends as

well when [Petitioner's ██████████ is working." See supra ¶ 8. Petitioner also has family other than ██████████ primary caregiver who assist with ██████████ needs from time-to-time, for instance, ██████████ and ██████████. See supra ¶ 11. Further, in the 701B assessment, for which ██████████ was a representative for Petitioner, the Assessor wrote that "Member has family that checks on member and friends. No gaps identified." See supra ¶ 6. As such, the record reflects that Petitioner has adequate supervision.

21. Dr. Chenchugulla provided persuasive and convincing testimony that Petitioner's total home health care services of fifty-nine (59) hours per week, including the three (3) hours of adult companion services, are sufficient to meet ██████████ needs and are "furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See supra ¶ 17.

22. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of an additional seven (7) hours of weekly adult companion care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's request for an additional seven (7) hours weekly of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of additional adult companion care services is **DENIED**.

DONE AND ORDERED this 24th day of May, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0426
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DEBBIE WINICKI, 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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