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

FILED

Jun 28, 2023, 10:23 am

OFFICE OF FAIR HEARINGS

PETITIONER,

AHCA Case No.: 23-FH0477
Plan ID No.:

vs.

SIMPLY HEALTHCARE PLANS, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on June 13, 2023, at 9:00 a.m., Eastern Standard Time (EST).

APPEARANCES

For the Petitioner:
Petitioner's Authorized Representative

For the Respondent: Sharon Neally
Fair Hearing Coordinator
Simply Healthcare Plans, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that the denial of personal care services, specifically, home health aide, was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. appeared on behalf of Petitioner.

Sharon Neally, Fair Hearing Coordinator for Simply Healthcare Plans, Inc. ("Simply"), appeared for the Fair Hearing as a representative for Respondent. Dr. Rebecca Moles, a Medical Director for Simply, attended the Fair Hearing as a witness for Respondent.

The following persons attended the Fair Hearing as observers: Dr. Marc Kaprow, a Medical Director for Simply; and Chrissie Simmons, a Medical Health Care Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "ACHA").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-nine (79)-page evidence packet that appears in the Office of Fair Hearings' document management system as file title "FL Simply Packet [Petitioner Name]_Part1.pdf" and "FL Simply Packet [Petitioner Name]_Part2.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a twenty-eight (28) page evidence packet that appears in the Office of Fair Hearings' document management system as file title "23-FH0477 Supplemental SFH packet.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

Prior to hearing, Petitioner sent to the Office of Fair Hearings three (3) pages of evidence. The evidence appears in the Office of Fair Hearings' case management system as file title "23-FH477 Letter & (DAR duplicate copy).pdf." Absent an objection from Respondent, the undersigned admitted the documentation into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Simply's Medicaid program. See Respondent's Composite Exhibit 1, page 56. Simply is a Medicaid 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 is [redacted] with the following diagnoses: [redacted] *Id*. at 29. Petitioner presents functional limitations of [redacted]). *Id*. at 29, 32.

3. On January 25, 2023, Petitioner's provider, [redacted], submitted an Authorization Request Form For Rec-Certification ("Request Form"), for Petitioner to receive four hundred and eighty (480) hours of home health aide services, for the period beginning January 31, 2023 through March 31, 2023. *Id*. at 40 – 47.

4. According to the Request Form, with respect to activities of daily living ("ADLs"), Petitioner requires assistance for major ADLs, including [redacted] *Id*. at 45 – 47. Petitioner requires assistance for instrumental activities of daily living ("IADLs") such as [redacted]. *Id*. at 45.

5. On February 2, 2023, Respondent, Simply, issued a Notice of Adverse Benefit Determination ("NABD") denying the requested home health aide services. *Id*. at. 49 - 52. Respondent explained the basis of its decision 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 59G-1.010).
>
> ___ Must be needed to protect your child's life, prevent significant illness or disability to your child, or to alleviate your child's severe pain.
> _X_ 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;

___ Must meet accepted medical standards and not be experimental or investigational.

___ Must be able to be 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.

___ Must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)

. . . .

The facts that we used to make our decision are: We cannot cover the aide for your child (Deny: S9122). We know your child has health problems. We know your child needs help with selfcare. The records show that this care is being provided by a family member. Your child's health plan does not cover healthcare services that are rendered by a relative. Because your child's parents are able to provide this care, no other care is needed at this time. This is based on the Florida Medicaid Personal Care Services Coverage Policy, 4.2.1, 5.2. Your reference number is: [redacted].

Pages 49 - 50 of RCE 1.

6. Petitioner appealed the NABD, and on February 17, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR"), upholding the determination to deny the home health aide services. *Id.* at 62 – 64. Respondent explained the denial, as follows, in pertinent part:

> The facts that we used to make our decision are: We cannot cover your child's home aide (S9122). We do not have the information needed to cover this (no signed care plan, no AHCA parental work forms, no recent clinical notes from pediatrician). This decision is based on Florida Medicaid Personal Care Services Coverage Policy 4.0 -4.2, 9.1. Your reference # [redacted].
>
> On 02/17/2023, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your Home Health Aide plan appeal. We have read your notes. Based on this and health plan guidelines (Florida Medicaid Personal Care Services Coverage Policy, 5.2), the previous denial for home health aide (S9122) is upheld. We know your child has medical problems. We know your child cannot care for [redacted] (needs assistance with activities of daily living). We see that your child's aide care has been provided by [redacted] parent. Your health plan (Florida Medicaid) does not allow parents to be paid to provide aide care to their children. This type of care can be covered when the child needs care and the parent is not able to provide the care needed. This is why we cannot

cover the aide for your child the way it was asked. Your case was looked at by a Medical Director Rebecca Moles, MD Board Certified in Pediatrics for Simply.

Page 62 of RCE 1.

7. On February 28, 2023, [redacted] requested a Fair Hearing on behalf of Petitioner due to Respondent's denial of home health aide services. On April 12, 2023, the undersigned scheduled that Fair Hearing for May 2, 2023. After two continuances, on May 26, 2023, the undersigned scheduled the hearing for June 13, 2023, at 9:00 am, EST, and all parties were duly notified.

8. [redacted] testified that Petitioner has many medical needs: [redacted]

9. Dr. Moles' testimony established that Respondent denied the home health aide services to Petitioner because it did not have the information needed to cover the services, such as a signed care plan, AHCA parental work forms, and no clinical notes from [redacted] pediatrician. During the Fair Hearing, Dr. Moles testified, additionally, that the Plan denied [redacted] request for home health aide because it was brought to the Plan's attention that [redacted] was being paid to be Petitioner's home health aide. Dr. Moles testified that AHCA provides that [redacted] cannot be paid to be their [redacted] caregiver. Dr. Moles explained that as part of the review for a child's care, the Plan looks at the parents' work schedule, as required by Florida Medicaid. In this case, Dr. Moles further explained, the [redacted]

Petitioner. *See* pages 3 – 28, RCE 2. Dr. Moles referred to Sections 4.2 and 5.2 in the ACHA Personal Care Coverage Policy that Florida Medicaid reimburses for personal care services to provide assistance with ADLs and IADLs if a recipient does not have a parent or legal guardian able to provide the required care; and that Florida Medicaid does not reimburse for services furnished by relatives, household members, or any person with custodial or legal responsibility for the recipient. *See* pages 70 – 71, RCE 1. Dr. Moles testified that there may be other services available to Petitioner under the Plan. Dr. Moles further testified that if [redacted] has concerns that [redacted] is being mistreated by other home health aides, there are procedures to report that information, and get a new provider.

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 Fla. Stat. § 409.285(2). 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-l.100(17)(b), which states "[e]ach fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

12. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-l.100(17)(g), which provides as follows:

> The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

13. In the instant case, Petitioner requested new services. As such, Fla. Admin. Code R. 59G-l.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.).

14. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision for personal care services available under the Florida Medicaid program. The PC Policy states as follows, in pertinent part:

> **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.
> . . .
> **1.1.2 Statewide Medicaid Managed Care Plans**
> Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.
> . . .
> **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.
> . . .
> **1.3.6 Home Health Services**
> Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.
> . . .
> **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.

Early and Periodic 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 1905(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, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

5.0 Exclusion

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

. . .

- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services

. . .

- 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)

. . .

Respondent's Composite Exhibit 1 at pages 68-72.

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. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

> 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. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.010, 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 severe 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.

Definitions Policy at page 7.

18. The Definitions Policy also provides the following definitions that are relevant to this 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)
IADLs include:

- 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)

Definitions Policy at page 1 and 6.

19. In the instant case, Petitioner is under the age of 21, and therefore, EPSDT applies to [redacted] request for home health aide services. As established on the record by the evidence and testimony, Respondent denied Petitioner's request because the documentation support in support of Petitioner's request failed to establish that the requested home health aide services are medically necessary. *See* supra ¶ 6, 9.

20. Section 4.1 of the Home Health Policy provides that Florida Medicaid reimburses for services that meet all of the following: (a) are determined to be medically necessary; (b) do not duplicate another service; and (c) meet the criteria as specified in this policy. *See* supra ¶ 14.

21. The Florida Medicaid program provides coverage to its recipients for home health services. *See* supra ¶ 14. Home health services provide "medically necessary skilled nursing and

home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home in the community." *See* supra ¶ 14. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. *See* supra ¶ 14. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *See* supra ¶ 14. Personal care services, such as the home health services at issue, must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ 15. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy. *See* supra ¶ 17. Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient's needs. *See* supra ¶ 17.

22. The evidence presented in this case does not reflect that the requested services are medically necessary. Here, Respondent determined that home health services were not medically necessary because the care was being provided by a family member. The Plan does not cover home health services that are being rendered by a relative except when a recipient is enrolled in the Consumer-Directed Care Plus program, which does not apply in this case. *See* supra ¶¶ 5, 6, 9. Dr. Moles provided credible and persuasive testimony that because Petitioner's [redacted] is able to and, in fact, does provide the home health services to [redacted], no other care is needed at this time. *See* supra ¶9. Evidence of the [redacted] work schedule as completed by [redacted] employer indicates that Petitioner has [redacted] to assist with all [redacted] ADLs and IADLs. *See* supra ¶ 9.

23. Based on the foregoing, the record does not show that home health services provided by the [redacted] are "individualized, specific, and consistent with symptoms or confirmed diagnosis of

the illness or injury under treatment, and not in excess of [Petitioner's] needs." *See* supra ¶ 5, 15. Accordingly, the record does not show that the home health aide services at issue are medically necessary.

24. 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 personal care services, specifically, home health services, were medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that home health aide services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner has not proven by a preponderance of the evidence that Respondent's denial of Petitioner's request for home health aide services was incorrect.

Based on the foregoing,

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of personal care services, specifically, home health aide services, is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of personal care services, specifically, home health aide services, is **DENIED.**

DONE AND ORDERED this 28th day of June, 2023 in Tallahassee, Leon County, Florida.

Debbie K. Winicki
23-FH0477
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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:

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