

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



FILED

Jun 02, 2023, 3:16 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0482

[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 11, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

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

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

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

[REDACTED] attended as Petitioner's witnesses.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Respondent, appeared on behalf of Humana Medical Plan, Inc. ("Humana"). Avra Bowers, ("Dr. Bowers"), Medical Director for Humana, appeared as witness for Respondent.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA") attended as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and thirty-four (334)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file titles "Evidence Packet 23-FH0482_Part1.pdf", "Evidence Packet 23-FH0482_Part2.pdf", and "Evidence Packet 23-FH0482_Part3.pdf". Absent an objection from the Petitioner, the undersigned admitted the three hundred and thirty-four (334) pages of evidence as Respondent's Composite Exhibit 1 ("RCE-1").

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a nine (9) page evidence packet. The evidence packet and the email correspondence appear in the Office of Fair Hearings' document management system as file title "23-FH0482 Additional Documents.pdf". Absent an objection from the Respondent, the undersigned admitted the nine (9) pages of evidence as Petitioner's Composite Exhibit 1 ("PCE-1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See page 36 of RCE-1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner [REDACTED]. *Id.* Petitioner [REDACTED]
[REDACTED] *Id.* at 94.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 99 -101. In the past, Petitioner has [REDACTED]
[REDACTED] *Id.* at 100, 113.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessments (“701B”), which was taken on November 4, 2022, Petitioner needs total assistance (cannot do at all) and uses assistive devices for the following activities of daily living (“ADLs”): [REDACTED]
[REDACTED] *Id.* at 97. Petitioner [REDACTED]
[REDACTED] *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]
[REDACTED] *Id.* Petitioner always has assistance for [REDACTED]. *Id.*

6. As provided in the 701B, for which [REDACTED] was a representative for Petitioner, Petitioner is [REDACTED]
[REDACTED] *Id.* at 102. The Assessor noted that the member representative, [REDACTED] stated that Petitioner has [REDACTED]

██████████ *Id.* The Assessor also noted that ██████████ indicated that if one talks loudly, Petitioner becomes restless and makes noises, but ██████████ remains calm with classical music. ██████████

██████████ always plays music for ██████████ during the day because ██████████ notices it keeps ██████████ very calm. *Id.*

7. Petitioner talks to friends, relatives, or others two to six times per week. *Id.* at 107.

Petitioner spends time with someone who does not with ██████████ two to six times per week. *Id.*

Petitioner never participates in activities outside the home that interest ██████████. *Id.*

8. In the Notice of Adverse Benefit Determination (“NABD”), dated January 10, 2023,

Humana reduced Petitioner’s adult companion care services from seventy (70) hours per week

to nine (9) hours per week. 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 currently receive 70 hours of Adult Companion Care non-medical care for supervision and socialization each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You live with a caregiver. You [REDACTED]. The service of 70 hours of Adult Companion Care each week is being reduced to 9 hours weekly. You live with others who should be able to meet your companionship needs.

...

Pages 3 - 4 of RCE-1.

9. On January 30, 2023, Petitioner requested a plan appeal. *Id.* at 32. Subsequently, Petitioner received a Notice of Plan Appeal Resolution (“NPAR”), dated February 28, 2023, upholding the denial. *Id.* at 32 - 34. The NPAR explained as follows:

The reason for the decision was based on information received. You have requested the termination of 61 hours of adult companion care services weekly be reconsidered (appeal).

[REDACTED] currently has 36 hours of personal care services weekly, 7 home delivered meals weekly, 9 hours of adult companion care services weekly, and 11 hours of homemaker services weekly. [REDACTED] has several (multiple) medical problems. [REDACTED] has trouble making [REDACTED] needs known. [REDACTED] has trouble thinking clearly or remembering things. [REDACTED] has not had any recent changes in [REDACTED] health. [REDACTED] has not recently been in the hospital.

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

After thorough review of [REDACTED], we continue to uphold the termination of 61 hours of adult companion care services weekly. The hours [REDACTED] is receiving should be enough to meet [REDACTED] 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 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 32 - 33.

10. On March 7, 2023, Petitioner requested Fair Hearings to challenge the reduction of adult companion care services. On March 29, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 11, 2023, at 1:00 p.m. EST.

11. Petitioner's [REDACTED], lives with Petitioner and [REDACTED] is [REDACTED] primary caretaker. [REDACTED] and also on a long term care plan. Petitioner's [REDACTED] [REDACTED] lives less than twenty (20) miles from Petitioner, and [REDACTED] helps with Petitioner's ADLs and IADLs. [REDACTED] testified that Petitioner needs assistance and supervision every day, all day. [REDACTED] testified that Petitioner is practically in a catatonic state and cannot do anything without assistance and supervision. For instance, Petitioner has the assistive devices of glasses, a wheelchair, a hospital bed, and a Hoyer lift for [REDACTED] ADLs, but [REDACTED] is incapable of using these devices on [REDACTED] own. [REDACTED] testified that when the home aide is not at Petitioner's residence, Petitioner does not get [REDACTED] diapers changed and [REDACTED] is not given water to keep [REDACTED] hydrated because [REDACTED] primary caregiver, [REDACTED], is incapable of lifting and transferring [REDACTED] testified and submitted evidence that Petitioner's provider, Dr. Carmenate, believes that Petitioner needs to restart the 112 hours home health service as before to prevent any complication in her medical condition. See page 5 of PCE-1. [REDACTED] contends that reducing Petitioner's adult companion care services is a gross injustice. [REDACTED] further contends that the differentiation of adult companion care services from other long term care

services, such as personal care and homemaker services, is only semantics and should not be considered in determining the amount of adult companion care services provided to Petitioner.

12. Dr. Bowers is a Medical Director for Humana. Dr. Bowers' testimony established that Respondent's decision was based on the 701B assessment and [REDACTED] medical records. Based on the assessment and medical records, a Plan of Care was made to ensure that Petitioner has adequate weekly care service hours, including nine (9) hours of adult companion care, eleven (11) hours of homemaker services, thirty-six (36) hours of personal care services, and seven (7) home delivered meals, to be used weekly, Sunday through Monday. *Id.* at 116 - 135. Dr. Bowers contends that the total of fifty-six (56) hours in weekly care service hours, plus seven (7) home delivered meals, is enough to assist with Petitioner's needs, since those hours may be apportioned as needed for any day of the week. Dr. Bowers further established in her testimony that the service of adult companion care is for a recipient's socialization to prevent isolation, and supervision, but it does not include assistance with [REDACTED]

[REDACTED] Dr. Bowers explained that Petitioner's ADL needs are being met by the other long term care services [REDACTED] is receiving. For example, the maximum assistance for Petitioner's ADLs would be approximately thirty-six hours per week in personal care services, given approximately 30 minutes per day for each ADL. Dr. Bowers contends that Petitioner's [REDACTED] would be able to provide companionship and support to [REDACTED] is alert of mind, and the other home services provided would take care of the other medically necessary needs of Petitioner. Therefore, Dr. Bowers upholds the determination that seventy (70) hours of adult companion care services are not medically

necessary for Petitioner, and that nine (9) hours of adult companion care services per week, combined with the other home care services, will meet her needs.

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 Respondent reduced a previously approved service, Fla. Admin Code R. 59-1.100(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.)

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:

- 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

...

4.2.1.1 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. Respondent reduced Petitioner’s weekly adult companion care services from seventy (70) hours per week to nine (9) hours per week. *See* ¶ 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

reduction of adult companion care services to nine (9) weekly hours, by determining that “[t]he hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] 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. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” See supra ¶ 16. Adult companion care services are distinguished from other LTC services provided to members, under the rules governing LTC services under Florida Medicaid. For instance, the service of personal care for LTC members is defined as providing “assistance with both 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.” *Id.* But, adult companion care [REDACTED]

21. Petitioner currently receives “56 hours of home health aide services weekly to meet [REDACTED] needs. . . . The hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.” See supra ¶ 9. Petitioner also has family other than [REDACTED] who provide companionship and supervision from time-to-time. For instance, [REDACTED] visits and assists [REDACTED] IADLs. See supra ¶ 11. In the 701B it is indicated that two to six times a week Petitioner talks to friends, relatives, or others by phone, computer, or other means, and spends time with someone who does not live with [REDACTED] See supra ¶ 7. The 701B Assessor also noted that [REDACTED] is also participating in the LTC program, and

he provides companionship and support to [REDACTED], as [REDACTED] is alert and oriented. *Id.* As such, the record reflects that Petitioner is not socially isolated and has adequate supervision, which is the intention for having adult companion care services. *See supra* ¶ 16.

22. Dr. Bowers provided persuasive and convincing testimony that nine (9) hours of adult companion care services per week, inclusive with Petitioner’s total home health care services of fifty-six (56) hours per week, and seven (7) home delivered meals per week, are sufficient to meet [REDACTED] needs in that they are “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” . . . 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.

23. Petitioner’s [REDACTED] provided testimony and evidence that Petitioner’s provider, Dr. Carmenate, believes that Petitioner needs to restart the 112 hours home health service as before to prevent any complication in [REDACTED] medical condition. *See supra* ¶ 11. However, “[t]he 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.” *See supra* ¶ 18.

24. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has proved by a preponderance of the evidence that Respondent’s reduction of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of Petitioner’s adult companion care services is **AFFIRMED**.
Petitioner’s appeal based on Respondent’s reduction of adult companion care services is **DENIED**.

DONE AND ORDERED this 2nd day of June, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0482
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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]
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