



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

FILED

Aug 07, 2023, 4:20 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0500

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 21, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Moens
Grievance and Appeals
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 Petitioner's request for five (5) additional hours of personal care services, weekly, was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED], appeared on behalf of the Petitioner.

The following attended on behalf of Respondent: Michael Moens, (“Mr. Moens”), Grievance and Appeals Coordinator, Humana Medical Plan (“Humana”) The following attended as witnesses for Respondent: Dr. Wayne Sherman (“Dr. Sherman”), Medical Director for Humana.

Suzanne Chillari (“Ms. Chillari”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of the Agency.

Spanish interpreter Eileen appeared to offer translation services for [REDACTED].

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and sixty-four (264)-page evidence packet. The two hundred sixty-four (264)-page packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH500_Part1.pdf” “Evidence Packet 23-FH500_Part2.pdf”; “Evidence Packet 23-FH500_Part3.pdf”; “Evidence Packet 23-FH500_Part4.pdf”; “Evidence Packet 23-FH500_Part5.pdf”; “Evidence Packet 23-FH500_Part6.pdf”; “Evidence Packet 23-FH500_Part7.pdf” “Evidence Packet 23-FH500_Part8.pdf”; “Evidence Packet 23-FH500_Part9.pdf”; “Evidence Packet 23-FH500_Part10.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and sixty-four (264)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. *See* p. 1 RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id* at 104.

2. Petitioner is [REDACTED]. *Id.* at 24. Petitioner lives with [REDACTED] *Id.* at 25.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id* at 26, 28, 30-31.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all). *Id.* at 28. [REDACTED]
[REDACTED] Petitioner uses assistive devices. *Id.*

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], Petitioner uses assistive devices. *Id.*

6. Petitioner requested an additional five (5) hours of personal care services, weekly. In a Notice of Adverse Benefit Determination (“NABD”), dated November 17, 2022, Respondent denied the additional hours of personal care services. 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:

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 plans approved review criteria and guidelines.

You currently have 35 hours of direct service worker (PDO) personal care service each week; 2 packs of wipes each week; 5 home delivered meals each week; 150 disposable Chux underpads each month; and one box of gloves each month. You are also receiving Hospice services. You have requested an additional 5 hours of direct service worker (PDO) personal care service per week.

You have [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

You have not had any recent changes in your health. You have not been recently in the hospital.

You live with your [REDACTED] helps care for you and is your direct service worker (PDO). Your [REDACTED] does not work outside the home. You [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Your request for an additional 5 hours of direct service worker (PDO) personal care service each week is being denied as not medically necessary. The hours you are receiving should be enough to meet your medical

needs and can be divided into shifts to better meet your medical needs. We are also terminating the 2 packs of wipes each week; 150 disposable chuks under pads each month; and one box of gloves each month. These items should be provided by your Hospice provider.

...

Id at page 4.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated December 27, 2022, denying the appeal. *Id.* at 16-17. The NPAR explained as follows:

On December 22, 2022, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested your initial request of 5 hours of personal care PDO services be reconsidered (appeal).

[Member] currently has 35 hours of direct service worker (PDO) personal care service each week and 5 home delivered meals each week. You have requested an additional 5 hours of direct service worker (PDO) personal care service each week.

[Member] has [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] She has not had any recent changes in her health. She has not recently been in the hospital.

[Member] lives with you. You help care for [REDACTED] direct service worker (PDO). You do not work outside of the home. [Member] uses a [REDACTED] [REDACTED] needs help transferring (move from bed to chair). [REDACTED] needs help bathing, dressing, and toileting. [REDACTED] needs help with house chores, shopping, and making meals. [REDACTED] has bladder and bowel problems (incontinence). After thorough review of her chart, we have decided to uphold the denial of 5 hours of personal care PDO services weekly. The hours [REDACTED] e is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

...

Pages 16-17 of RCE 1.

8. On March 8, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On April 7, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 10, 2023, at 10:00 a.m. EST. Petitioner did not appear for this hearing. The hearing was reset for June 21, 2023, at 1:00 p.m. EST.

9. [REDACTED] caregiver and [REDACTED] of Petitioner testified to the following at the Fair Hearing:

- a. All of Petitioner's needs are being met, but [REDACTED] wants the extra hours.
- b. Petitioner depends completely on [REDACTED]
- c. Petitioner is in a "final condition."

10. Dr. Sherman is a Medical Director for Humana. Dr. Sherman testified to the following:

- a. Petitioner receives 35 hours of personal care services and 5 home delivered meals weekly.
- b. Dr. Sherman opined that these hours are sufficient to meet Recipient's needs.

11. Respondent's coverage policy, SMMC Long Term Care Program provides the following regarding personal care services:

Personal Care:

These are in-home services to help you with:

- [REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]

RCE1 at 155.

...

CONCLUSIONS OF LAW

12. 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).

13. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

14. Because Petitioner is requesting new services, 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.)

15. 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 and homemaker 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.

16. 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.

17. 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.

18. In this case, Petitioner requested an additional five (5) hours, weekly, of personal care services. See ¶ 6. In an NABD dated November 17, 2022, Respondent denied Petitioners request *Id.* Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity but did not specify which medical necessary criteria was the basis for its decision. *Id.*

19. In the NPAR dated December 29, 2022, Respondent denied Petitioners appeal, explaining that the requested personal care hours were in excess of Petitioner’s needs. See ¶7

20. As provided in the LTC policy, personal care services are 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. See ¶ 11,15

21. Petitioner is currently approved to receive 35 hours of personal care and 5 home delivered meals weekly. As shown by the record, Petitioner’s needs for assistance with ADLs is as follows:

[Redacted text block]

22. Regarding her IADLs, Petitioner’s needs are:

[Redacted text block]

devices. See ¶ 5.

23. At the Fair Hearing, [REDACTED] stated that Petitioner's needs were being met. ¶ 9. Dr. Sherman provided testimony that the approved 35 personal care hours were enough to take care of Recipient's needs. See ¶ 10. As a physician and medical director, Dr. Sherman's testimony is credible.

24. In all, Petitioner did not show that [REDACTED] request for an additional five (5) hours of personal care, was "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." For example, Petitioner did not demonstrate which ADLs and IADLs were not attended to with the services in place. In fact, Petitioner stated that her needs were being met. See ¶ 9.

25. 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 five (5) additional personal care hours, weekly, was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 7th day of August 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
Office: (850) 412-3649**

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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GAMedicaidRightFax@humana.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**