



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

FILED

Jun 06, 2023, 8:29 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0509

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 30, 2023, at 9:02 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Markeshi Lee
Medicaid Fair Hearing Specialist
Humana Healthy Horizons, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s Adult Companion Care (“ACC”) services was correct.

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

Markeshi Lee (“Ms. Lee”), Medicaid Fair Hearing Specialist for Humana Healthy Horizons, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Avra Bowers (“Dr. Bowers”), Medical Director for Humana, attended as a witness for Respondent.

Marielisa Amador (“Ms. Amador”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer. Kameisha Presley (“Ms. Presley”), Hearing Officer with the Office of Fair Hearings, appeared as an observer.

Peter, interpreter number 062138, appeared to offer translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twelve (12)-page evidence packet. The twelve (12)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file titles “23-FH0509 Faxed Correspondence.pdf” and “23-FH0509 Faxed Evidence.pdf”. Absent an objection from Respondent, the undersigned admitted the twelve (12)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two-hundred and eighty-three (283)-page evidence packet. The two-hundred and eighty-three (283)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file titles “Evidence Packet_Part1.pdf”, “Evidence Packet_Part2.pdf”, and “Evidence Packet_Part3.pdf”. The two-hundred and eighty-three (283)-page evidence packet included: Appeal; Notice of Adverse Benefit Determination (“NABD”); Notice of Plan Appeal Resolution (“NPAR”); Authorization Screen Shot; Medical Records; 701B; Plan of Care; Summary of Services; Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy; and Member Handbook. Absent an objection from the Petitioner, undersigned admitted the two-hundred and

eighty-three (283)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana Healthy Horizons, Inc. (“Humana”). See page 1 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.* at 1. Petitioner resides with [REDACTED] primary caregiver, [REDACTED]. *Id.* at 50. [REDACTED] provides care for Petitioner through the PDO program. *Id.* at 65. [REDACTED] job to provide care for Petitioner. *Id.* Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), which was taken on March 16, 2023, Petitioner’s needs for Activities of Daily Living (“ADLs”) are as follows: [REDACTED], Petitioner needs assistance (but not total help); [REDACTED], Petitioner needs supervision or prompt; [REDACTED] Petitioner uses assistive device [REDACTED], Petitioner needs no assistance. *Id.* at 53. Petitioner always has assistance with the ADLs of [REDACTED]. *Id.* Petitioner needs no assistance with ADLs of eating and transferring. *Id.*

4. As provided in the 701B, Petitioner’s needs for Instrumental Activities of Daily Living (“IADLs”) are as follows: [REDACTED]

[REDACTED]
[REDACTED]). *Id.* at 54. Petitioner always has assistance with IADLs. *Id.*

5. As provided in the 701B, the Assessor wrote, [REDACTED]
[REDACTED] C. There are no gaps in other areas of ADL functioning at this time.” *Id.* at 53.

6. Petitioner talks to friends, relatives, or others (by phone, computer or other means) once per week. *Id.* at 63. Petitioner spends time with someone who does not live with [REDACTED] a few times per year. *Id.* Petitioner never participates in activities outside of the home that interest [REDACTED]. *Id.*

7. Petitioner’s thirty-one (31)-hours weekly of ACC services were terminated in the NABD dated February 3, 2023. *Id.* at 9. The NABD explained the basis of the termination 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 31 hours of direct service worker (PDO) 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 have a personal emergency response system. [REDACTED]
[REDACTED] The service of 31 hours of direct service worker (PDO) adult Companion Care each week is being terminated (stopped). You live with others who should be able to meet your companionship needs. You are being approved for an additional 3 hours of direct service worker (PDO) personal care service each week and 7 hours of direct service worker (PDO) homemaker service each week. These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

...

Pages 9 and 10 of RCE 1.

8. Petitioner requested a plan appeal and received an NPAR dated March 8, 2023, upholding the termination. *Id.* at 18. The NPAR explained as follows:

On February 22, 2023, 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, who, hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested the termination of 31 hours of adult companion care services weekly be reconsidered (appeal).

[Petitioner] currently has 14 hours of personal care services weekly and 7 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.

█ has not had any recent changes in █ health. █ has not recently been in the hospital. █ lives with █ family █ needs some help to move around. █

After thorough review of █ chart, we continue to uphold the termination of 31 hours of adult companion care services weekly. The hours █ is receiving should be enough to meet █ needs and can be divided into shifts to better meet █ 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.

...

Pages 18 and 19 of RCE 1.

9. On March 9, 2023, Petitioner requested a Fair Hearing to challenge the termination of ACC services. On May 8, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 30, 2023, at 9:00 a.m. EST.

10. Dr. Bowers is a Medical Director with Humana. Dr. Bowers testified to the following at the Fair Hearing:

- a. This review was based on an annual review for medical necessity. The review was not based on a request for increased hours.
- b. The current 701B demonstrates that Petitioner lives with █ caregiver. Petitioner's caregiver does not work outside the home and can meet Petitioner's supervision and companionship needs. Petitioner is able to operate a personal emergency response system and does not wander. The thirty-one (31) hours of ACC services are no longer medically necessary.

- c. An additional three (3)-hours of personal care services and seven (7)-hours of homemaker services per week were deemed medically necessary. Petitioner currently receives seven (7)-hours of homemaker services and fourteen (14)-hours of personal care services. The twenty-one (21)-hours of services should be enough to meet Petitioner's medical needs. This equals three (3)-hours of care per day which can be divided to meet Petitioner's medical needs.
- d. Petitioner was given fourteen (14)-hours of personal care services due to her mental health conditions. Petitioner was given (7)-hours of homemaker services because she lives with others who can assist with IADLs.
- e. Petitioner has not had recent hospitalizations or psychotic events.
- f. Petitioner's emergency response system was terminated based on a request from Petitioner.

11. [REDACTED] of the Petitioner. [REDACTED] testified to the following at the

Fair Hearing:

- a. [REDACTED] believes Petitioner's condition has worsened since initially receiving the adult companion care services.
- b. [REDACTED] works as Petitioner's paid caregiver.
- c. Petitioner cannot be left alone, nor can [REDACTED] operate the personal emergency response system due to [REDACTED] mental health episodes. There is not a personal emergency response system in Petitioner's home. Petitioner wanders and leaves the house.

- d. Petitioner needs [REDACTED].
[REDACTED]. Petitioner requires daily medications multiple times a day.

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 Respondent is terminating or reducing 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.)

15. The Florida Medicaid Statewide Managed Care Long-Term Care Program Coverage Policy (March 2017) (“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:

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

...

4.2.1.1 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.

...

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 the instant case, Respondent terminated Petitioner’s ACC services. *See* ¶ 6. In the NABD dated February 3, 2023, Respondent explained that ACC services were not medically necessary. *Id.* In the NPAR dated March 8, 2023, Respondent determined that “[Petitioner] has [REDACTED] family to give [REDACTED] company. [Petitioner] has 21 hours of home health aide services weekly to meet [REDACTED] needs.” *See* ¶ 7. Respondent further explained that “the hours [Petitioner] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.” *Id.*

19. As provided in the LTC policy, ACC services are intended for “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.” *See* ¶ 14. Respondent explained that, “[Petitioner] live[s] with a caregiver.” *See* ¶ 6. Petitioner currently “has 21 hours of home health aide services weekly to meet [REDACTED] needs.” *See* ¶ 7. “The hours [Petitioner] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.” *Id.* Furthermore, according to the 701B, “there are no gaps in other areas of ADL functioning at this time.” *See* ¶ 5. Further, as shown by the record, Petitioner talks to friends, relatives or others once per week; spends times with someone who does not live with [REDACTED] a few times per year; but does not participate in activities outside [REDACTED] home that interest [REDACTED] *See* ¶ 6.

20. As shown above, Petitioner has ample opportunity to socialize, based on the twenty-one (21) hours of services she receives and the fact that [REDACTED] lives with [REDACTED]. *Id.* However, the record shows that [REDACTED] does not provide such services as a natural support – rather [REDACTED] does so as a paid support. *See* ¶ 2. Further, the record shows that Petitioner no longer has a PERS. *See* ¶ 10. This is concerning as Petitioner requires constant supervision. *See* ¶ 2. In all, based on the need for supervision and lack of natural supports, Respondent did not meet its burden.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of ACC services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of ACC services is **REVERSED**. Petitioner's appeal based on Respondent's termination of ACC services is **GRANTED**.

DONE and **ORDERED** this 6th day of June, 2023, in Tallahassee, Leon County, Florida.

Joseph Mabry
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JOSEPH MABRY, 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:



Humana

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**AHCA Medicaid Hearing Unit
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