



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

FILED

Jun 30, 2023, 10:40 am
OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 23-FH0614

█

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 27, 2023, at 1:17 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

█

Petitioner

For the Respondent:

Joanna Alvarez Martinez
Appeals Manager
Sunshine State Health 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 Homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared at the Fair Hearing on █ own behalf.

Joanna Alvarez Martinez (“Ms. Alvarez Martinez”), Appeals Manager for Sunshine State Health Plan, Inc. (“Sunshine”) appeared at the Fair Hearing on behalf of Respondent. The following individuals appeared at the Fair Hearing as witnesses for Respondent: Dr. John Carter (“Dr. Carter”), LTC Medical Director for Sunshine; Kaci Narine, Utilization Management for Sunshine; Lauren Greenwald, Utilization Management for Sunshine; Rosa Vigil, Long Term Care Coordinator for Sunshine; Samantha Sutton, Supervisor of Case Management for Sunshine.

Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Jessica, interpreter number 349382 of Voiance Language Service, appeared to offer translation services for the Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a three (3)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title “[Petitioner] Fair Hearing request.pdf.” The evidence packet included: a fax cover page, Petitioner’s letter to appeal Plan denial, and a letter from “MaxHealth.” Absent an objection from the Respondent, the undersigned admitted the three (3)-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 one hundred-forty (140)-page evidence packet. The one hundred-forty (140)-page packet appears in the Office of Fair Hearings document management system as the file title “MFH packet [Petitioner].pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred-forty (140)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 13 of RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [REDACTED]. *Id.* Petitioner lives alone. *Id.* at 46. Petitioner does not have assistance from family members. *Id.* at 49. Petitioner’s medical history includes [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 51 – 52, 54.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”) dated February 22, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]

[REDACTED] Petitioner needs assistance (but not total help); for [REDACTED]
[REDACTED]. *Id.* at 49. In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) for [REDACTED]
[REDACTED]. *Id.* at 50.

Petitioner needs no assistance for using the telephone, managing money, and managing medication. *Id.*

4. Petitioner requested an additional three (3) hours of Homemaker services, weekly. Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”) dated February 23, 2023. *Id.* at 4 – 8. 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: The request for an extra 3 hours per week of Personal Care Services and an extra 3 hours per week of Homemaker Services is denied for lack of medical necessity. Based on the assessment the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 25 hours per week of Personal Care Services and 10 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

5. Petitioner requested a plan appeal and received a Notice of Plan Appeal (“NPAR”) dated March 14, 2023, upholding the denial of additional Homemaker services. *Id.* at 90 – 92. The NPAR explained as follows:

The reason for our decision was based on additional clinical information from the case manager notes regarding the member's physical assistance needs, the denial of extra services is partially overturned. Sunshine Health will now approve an extra 3 hours per week of Personal Care Services to meet the member's physical assistance needs. The denial of an extra 3 hours per week of Homemaker Services is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...
Id. at 90.

6. On March 17, 2023, Petitioner requested a Fair Hearing to challenge the denial of the additional Homemaker services. On March 31, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 27, 2023, at 1:00 p.m. Eastern Standard Time.

7. Petitioner's primary care doctor, Dr. Hiram Cuevas, wrote a letter dated March 6, 2023, in support of Petitioner's request for services. The letter states as follows:

This letter is to inform you that the above-named patient has [REDACTED],
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]

...

See PCE 1 at page 3.

8. Petitioner testified to the following at Fair Hearing:

- a. Petitioner's schedule of care is sufficient on Mondays, Wednesdays, and Fridays. Petitioner contends that Tuesdays, Thursdays, Saturdays, and Sundays are insufficient as they only cover 5 hours each day, so Petitioner receives no more service until the following day. On those days, Petitioner asserts that [REDACTED] left alone between 12 and 18 hours without assistance to eat or go to the restroom which Petitioner cannot do [REDACTED]. For example, the home aide leaves at 8 p.m. on Monday and Petitioner does not receive help again until 1:30 p.m. on Tuesday.
- b. Petitioner has changed [REDACTED] primary care doctor. Petitioner has changed [REDACTED] insurance and had to look into Medicare assistance. Petitioner has looked into trying to get physician assistance in the home [REDACTED] cannot go to the doctor's office, move or walk without any assistance. Petitioner is always laying down in

bed because [REDACTED] get up on [REDACTED] own. Petitioner does not drive and cannot go pick up [REDACTED] medications. Petitioner cannot go to stores and cannot cook. Petitioner states sometimes [REDACTED] is left a sandwich until next day. Petitioner cannot get up to open door. Petitioner asserts that the case manager has visited and seen how Petitioner is dependent on assistance.

9. Dr. Carter testified to the following at Fair Hearing:

- a. Petitioner's current care plan includes twenty-eight (28) hours of personal care services and ten (10) hours of homemaker services, for a total of thirty-eight (38) hours of home health services. Sunshine acknowledges the following conditions: Petitioner suffers from problems with [REDACTED]; and Petitioner lives alone and needs assistance with some ADLs such as [REDACTED]
- b. Homemaker services are not hands-on services and do not involve physically assisting the member. Homemaker services such as housekeeping, preparing meals, and doing laundry can be done during the 28 hours of personal care services or the 10 hours of homemaker services. Any of those hours can be used if Petitioner asks the home health aide to do so.
- c. Because member is approved for 38 hours of combined services, Sunshine's position is that it believes Petitioner's request for an extra three (3) hours should continue to be denied.

10. The Sunshine Health Long Term Care Ancillary Service Criteria (May 2014) ("FL.LT.UM.09") provides as follows in regards to homemaker services:

...

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

...

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Criteria to consider for Housekeeping may include but are not limited to:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member.

- b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Criteria to consider for Shopping may include but are not limited to:

- Member's ability to obtain and put away groceries, household goods, and medications on their own

- Member lives with family or has other supports who do the shopping for the member and puts away groceries, household goods and medications
- c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Criteria to include for Meal Preparation may include but are not limited to:

- Number of meals per days eaten by member or number of meals the member should eat per day
 - Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
 - Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
 - Amount of assistance needed in the preparation and cleanup, such as:
 - Meal planning
 - Meal preparation
 - Special diets
 - Special food preparation
 - Assembling food on plates
 - Getting food to the table
- d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all laundromat and/or cleaning fees.

Criteria to include for Laundry Considerations may include but are not limited to:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.

- If laundry must be done in an apartment laundry room or a community laundry, additional time may be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

...

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders
The Personal Care Provider cannot administer any medications, but may bring medications to the member and remind the member to take the medications at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

Exclusions and Limitations for Personal Care services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:

5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

...

See *supra* RCE1 at 124 – 126, 129, 133.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Petitioner is requesting a new service, 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.)

14. 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 home health 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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

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 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

...

15. 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.

16. Petitioner requested an additional three (3) hours of Homemaker services, weekly. In the NABD, dated February 23, 2023, Respondent denied Petitioner's request. See ¶ 4. Respondent cited the lack of medical necessity as the basis for its decision. See ¶ 4. However, *supra*, Respondent did not specify which prong of medical necessity it used to make its decision. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 13.

17. According to the LTC Policy, homemaker services are a "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". See ¶ 14. In the instant case, Petitioner's current care plan includes twenty-eight (28) hours of personal care services and ten (10) hours of homemaker services, for a total of thirty-eight (38) hours of home health services, weekly. See ¶ 9. The record is very clear that Petitioner suffers from multiple medical conditions and requires support with these problems. See ¶¶ 2, 8. According to Petitioner's primary care physician, Petitioner has [REDACTED]

See ¶ 7. As provided in the 701B, Petitioner's needs for ADLs are as follows: [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED]

Petitioner needs assistance (but not total help [REDACTED]

[REDACTED] See ¶ 3. In regard to [REDACTED] IADLs, Petitioner needs total assistance

(cannot do at all) for [REDACTED]

[REDACTED]. See ¶ 3. Petitioner needs no assistance for using the telephone, managing money,

and managing medication. See ¶ 3. Petitioner lives alone and does not have assistance from family members. See ¶ 2.

18. It appears from the record Petitioner's request for additional services more closely aligns with a need for hands-on support with ADLs and IADLs, rather than with general household activities (such as meal preparation) and routine household care (including laundry and pest control). The undersigned finds this demonstration in Petitioner's testimony that there are days within the week that the home health aide is not present, and Petitioner is unable to tend to [REDACTED] personal care and functional needs. See ¶ 8. Petitioner testified, *supra*, that there are days [REDACTED] is left alone between 12 and 18 hours without assistance to eat or go to the restroom which Petitioner cannot do himself.

19. Further, Dr. Carter established that homemaker services are not hands-on services and do not involve physically assisting the member. See ¶ 9. In regard to homemaker services, the FL.LT.UM.09 maintains that these services "provide assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system." See ¶ 10. As discussed, Petitioner suffers from multiple medical problems and lacks appropriate assistance. See ¶ 17 – 18. The record, by and large, merits much broader support due to [REDACTED] physical inhibitions than simply shopping, light housework, laundry, and meal preparation. See ¶ 8. In view of the record, homemaker services would appear to only cover a minimal portion of Petitioner's needs due to [REDACTED] multiple medical problems. See ¶ 7 – 8, 17. Accordingly, Petitioner has not demonstrated that [REDACTED] request was for the "provision of general household activities (such as meal preparation) and routine household care (including laundry


and pest control).” Thus, the request for additional homemaker services is not warranted in the totality of the circumstances of this case.

20. 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 the additional three (3) hours of homemaker services, weekly, was medically necessary. In light of all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are not in excess of the Petitioner’s needs. Accordingly, the undersigned finds that Respondent’s denial of additional homemaker services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s denial of homemaker services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE AND ORDERED this 30th day of June, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche
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KIMBERLY ROCHE, 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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