

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



FILED

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OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0786

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 9, 2023, at 10:30 a.m. Eastern Standard Time (EST).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco
Senior Director for Quality Improvement
Sunshine 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 personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and

[REDACTED]

appeared on behalf of the Petitioner.

Christian Pacheco (“Mr. Pacheco”), Senior Director for Quality Improvement for Sunshine Health (“Sunshine”), appeared on behalf of Respondent. Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine, attended as a witness for Respondent. Theresa Bonfante, Supervisor of Case Management for Sunshine, Andrea Hoffman, Long Term Care Coordinator for Sunshine, Yuly Loyola, Case Manager for Sunshine, appeared on behalf of Sunshine but did not testify.

Stephanie Lang (“Ms. Lang”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a seventeen-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file title “23-FH0786 Hearing Evidence.pdf”. Absent any objection from Respondent, this packet was admitted as Petitioner Composite exhibit 1 (“PCE1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred thirty-nine (139) page evidence packet. This packet is located in the Office of Fair Hearings document management system as file titles “MFH packet[redacted]-Part1.pdf” and “MFH packet [redacted]-Part2.pdf”. Absent an objection from Petitioner, this evidence packet was admitted as Respondent Composite Exhibit 1 (“RCE1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. See RCE 1 p. 2.

2. Petitioner is [REDACTED]. *Id.* at 54. Petitioner lives with [REDACTED] *Id.* at 55.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 60-61.

4. Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]
[REDACTED], Petitioner needs assistance (but not total help) with [REDACTED]
[REDACTED] Petitioner uses assistive devices when transferring and for walking/mobility.
Petitioner needs no assistance with eating. *Id.* at 58. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]
[REDACTED] Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help); Petitioner needs no assistance with [REDACTED]
[REDACTED]. *Id.* at 59.

5. Petitioner requested an additional twenty-four (24) hours of personal care services, weekly. Petitioner’s request was denied in a Notice of Adverse Benefit Determination (“NABD”) dated February 9, 2023. *Id.* at 4 –15. 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:

- 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; and
- 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 24 hours per week of personal care services is denied for lack of medical necessity. Based on the assessment, the members current approved services are adequate to meet the member’s needs. The members present care plan includes:

- 14 hours per week of personal care services
- 4 hours per week of homemaker services
- 10 meals per week of home delivered meals

This decision was made with sunshine health policy LT.UM.09 Long Term Care Ancillary Service criteria.

...

Id. at 4 - 5

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal (“NPAR”) dated February 28, 2023, which approved 14 of the requested 24 hours of personal care services. *Id.* at 96-99. The NPAR explained as follows:

On February 14th, 2023, we received your timely plan appeal request about Sunshine Health Notice of Adverse Benefit Determination dated February 9th 2023, Notice of Adverse Benefit Determination number OP 328-406-4611, denying the services to be provided to [redacted].

On February 28th, 2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby partially approves your plan appeal. As a result, [redacted] will receive an extra 14 hours per week of personal care services to meet the members care needs, effective February 28th, 2023.

The reason for our decision was based on additional clinical information from the case manager notes regarding the members physical assistance needs, along with the family caregivers part-time work schedule outside the home, the denial of extra services is partially overturned.

Sunshine Health will now approve an extra 14 hours per week of personal care services to meet the members care needs. The denial of the remaining requested 10 hours per week of personal care 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 96.

7. On April 11, 2023, Petitioner requested a Fair Hearing to challenge the denial of ten (10) hours of personal care services, weekly. On May 10, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 9, 2023, at 10:30 a.m. Eastern Standard Time.

8. [REDACTED] testified to the following:

- a. [REDACTED] and employed as a Home Health aide.
- b. [REDACTED] was moved from Pennsylvania in January 2021 to [REDACTED] home to aid in [REDACTED] care.
- c. PCS hours do not include transport to medical visits.
- d. A [REDACTED] Petitioner's neck has developed.
- e. Recipient was receiving 42 hours per week in Pennsylvania.
- f. The personal care hours they are receiving currently do no cover: overnight incontinence care, transportation to and from: aqua therapy, chiropractic and massage; medication maintenance, and appointment scheduling.

9. Dr. Carter, Long Term Care Medical Director of Sunshine Health, testified to the following:

- a. Member is [REDACTED] of age with multiple medical issues.
- b. [REDACTED] works for the provider that is assigned to provide personal care hours for the member and [REDACTED] through that provider.
- c. Thirty-two total hours of services are currently approved. These are combined hours consisting of twenty-eight (28) personal care and four (4) homemaker hours.
- d. Presently approved services are adequate in light of fact that member lives with [REDACTED].
- e. According to page 121 of RCE1, the purpose of LTC Ancillary Service Criteria LT.UM.09; purpose to establish clinical criteria to review for members in home or community-based environment. Page 123 of RCE1 outlines determinants for services, elements to consideration of ADL, supervision, and living situation.
- f. Page 124 of RCE1 at letter d. outlines availability of family to be primary support. Services are meant to add to what the family in the home provide. Page 130-131 describes the personal care services that can be provided under the plan.
- g. Page 134 of RCE1 describes exclusions and limitations for PCS. These include Member must live alone for overnight services and services are meant to be provided in the home. The policy excludes escort services.

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) (2019). 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-1.100(17)(b).

12. Because Petitioner is requesting a new service, Fla. Admin Code R. 59-1.100(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.)

13. 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 personal 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

...

4.2.2.6 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.

14. 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.

15. In this case, in an NABD dated February 9, 2023, Respondent denied Petitioner's request for an additional twenty – four (24) hours, weekly, of personal care services. See ¶15. 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.* Petitioner requested an appeal of the decision. In an NPAR dated February 28, 2023, Respondent partially approved Petitioner's request adding 14 hours of personal care services and denying the remaining 10 hours of the original request. See ¶16.

16. As provided in the LTC policy, personal care services are to provide assistance with ADLs and IADLs, including assistance with [REDACTED] which are incidental to the care furnished or are essential to the health and welfare of the enrollee. Here, Petitioner's needs for ADL'S are for [REDACTED], Petitioner needs assistance (but not total help) with [REDACTED]. Petitioner uses assistive devices when transferring and for walking/mobility. Petitioner needs no assistance with eating. Petitioner's needs for IADL's are as follows: for [REDACTED] [REDACTED] Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help). See ¶14.

17. As shown by the record, Petitioner has twenty-eight (28) hours of personal care services, weekly, and four (4) hours of homemaker services, weekly, See ¶ 6. Page 134 of RCE1 describes exclusions and limitations for PCS. These include Member must live alone for overnight services and services are meant to be provided in the home. The policy excludes escort services.

18. Petitioner's needs for overnight care due to incontinence is not a benefit covered by the policy as this is a service for a member living alone. See ¶19 Additionally, the transportation needs outlined by [REDACTED] are not covered by the policy as they are services which would occur outside the home. See ¶18,9

19. Petitioner did not show that [REDACTED] request for an additional ten (10) hours of personal care, weekly, 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." Or "Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

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 partial denial of twenty-four (24) additional personal care hours, weekly, was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's partial denial of twenty-four (24) additional hours of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE AND ORDERED this 6th day of July, 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:

[REDACTED]
[REDACTED]
[REDACTED]

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