

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



FILED

Jul 10, 2023, 10:08 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0804

[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 1:00 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee
Medicaid Fair Hearing Specialist
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 additional homemaker services was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Manohar Chenchugalla (“Dr. Chenchugalla”), Medical Director for Humana, attended as a witness for Respondent.

Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Certified Spanish-English Language Interpreter, John, Identification Number 401246, attended to interpret the hearing proceedings for [REDACTED]

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-six (276)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles: “Evidence Packet _Part1.pdf”; “Evidence Packet _Part2.pdf”; “Evidence Packet _Part3.pdf”; “Evidence Packet _Part4.pdf”; and “Evidence Packet _Part5.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-six (276)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Petitioner did not send any documentary evidence to the Office of Fair Hearings and Respondent prior to the hearing.

FINDINGS OF FACT

1. Petitioner is an enrolled member of 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] at the time of the present hearing. *Id.* Petitioner lives with [REDACTED] *Id.* at 4, 45.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 32 - 33.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated December 5, 2022, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED] Petitioner uses assistive devices and needs assistance (but not total help); [REDACTED], Petitioner needs assistance (but not total help); and [REDACTED], Petitioner needs no assistance. *Id.* at 30. Petitioner has assistance most of the time with [REDACTED] ADLs of [REDACTED], and rarely has assistance with [REDACTED] ADLs of [REDACTED]. *Id.*

5. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs no assistance; and for [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 31. Petitioner rarely has assistance [REDACTED]
[REDACTED], and has assistance most of the time [REDACTED]. *Id.*

6. In the Notice of Adverse Benefit Determination ("NABD"), dated December 15, 2022, Respondent denied Petitioner's request for an additional five (5) hours of homemaker 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.

....

- 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 have requested 14 hours of personal care (PC) and 5 hours of homemaker (HMK) services weekly. You currently receive 10 hours of PC and 7 hours of HMK services weekly, and 5 home delivered meals (HDM) weekly. You need help with



November 2022. We are temporarily approving 5 of the 14 hours of PC service requested to receive care Tue to Sat for 30 days while you recover completely from the procedure. We are denying additional HMK hours as your current 7 hours of HMK service along with 5 HDM should be sufficient to meet your needs.

We recommend installation of 24/7 personal emergency response system (PERS) service for emergencies.

Pages 9 – 10 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated February 6, 2023, upholding the denial. *Id.* at 18 – 20. The NPAR explained as follows:

The reason for the decision was based on the information received. You have requested that the additional 5 hours of homemaker services each week that was denied in your initial request be reconsidered (appeal) for [Petitioner].

[Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble making [REDACTED] needs known. [REDACTED] does not have trouble thinking clearly or remembering things. [REDACTED] [REDACTED]

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

The denial of 5 additional hours of homemaker service each week is being upheld. The hours and home delivered meals [Petitioner] is currently receiving should be enough to meet [REDACTED] medical needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) 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 18 - 19.

8. On April 10, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services and homemaker services. On May 11, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 30, 2023, at 1:00 p.m. EST.

9. Petitioner's [REDACTED] and primary caregiver, [REDACTED] testified that Petitioner needs more homemaker care services because [REDACTED] is in poor condition and needs supervision while [REDACTED] is at work outside the home. [REDACTED] testified that [REDACTED] cannot [REDACTED] [REDACTED] further testified that [REDACTED] recently had [REDACTED] [REDACTED] testified that Petitioner had been receiving thirteen (13) homemaker service hours weekly during the thirty (30) day period following [REDACTED], and [REDACTED] needs all those hours restored. [REDACTED] testified that even with the [REDACTED] continues to have shortness of breath, particularly when [REDACTED] gets agitated. [REDACTED] that others living in the home also work outside the home, and that [REDACTED] cannot be left alone for that long, while everyone is at work.

10. Dr. Chenchugalla is a Medical Director for Humana. Dr. Chenchugalla's testimony established the facts that Petitioner's request for an additional five (5) hours of weekly homemaker services were being denied because they were not medically necessary. Referring to the 701B assessment, Dr. Chenchugalla pointed out that homemaker services are provided for general household activities, such as meal preparation, and routine household care by a trained homemaker. Petitioner's IADLs needs, [REDACTED] [REDACTED], are assisted [REDACTED]. Dr. Chenchugalla testified that Petitioner currently receives seven (7) hours of homemaker services, ten (10) hours of personal care services, and has five (5) home meals delivered each week, and that these services are adequate for Petitioner's needs.

Dr. Chenchugalla noted that Petitioner was provided additional personal care services for the thirty (30) days following her heart surgery.

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. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

14. In the instant case, Petitioner requested new services. As such, 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 Long Term Care (LTC) Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC 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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

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 reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

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.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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.

16. The LTC Policy also addresses the medical necessity for services:

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 program determines the amount or necessity for services based on the State of Florida's published definition of medical necessity. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

2.83 Medically Necessary or Medical Necessity

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 severe 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, Respondent denied Petitioner's request for five (5) additional homemaker services because they were not medically necessary. In the NABD, Respondent denied Petitioner's request. *See supra* ¶ 6.

19. As provided in the LTC policy, homemaker services are 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." *See supra* ¶ 15. In regards

to her IADLs, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows:

for [REDACTED]

[REDACTED]

[REDACTED] Petitioner needs assistance

(but not total help). Petitioner rarely has assistance for [REDACTED]

[REDACTED]

[REDACTED]. See supra ¶ 5.

20. Petitioner bears the burden of proof to show that Respondent incorrectly denied Petitioner’s request for five (5) additional homemaker hours. At the Fair Hearing, Dr. Chenchugalla explained that based on the 701B review, five (5) hours of homemaker services is more than adequate to meet the medical necessity criteria, *supra* ¶ 5, considering that Petitioner lives with family who share in the household activities, and that [REDACTED] receives five (5) home delivered meals per week, and ten (10) hours of personal care services per week. See supra ¶ 6. Although it is stated in the 701B that Petitioner rarely has assistance for heavy chores and light housekeeping, there was not enough information given for which chores and housekeeping [REDACTED] is responsible, considering that [REDACTED] lives in a household with others who may be regularly responsible for these activities. See supra ¶ 5, 10, 19. In all, it was not shown that homemaker tasks were not completed with the services already in place.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 10th day of July, 2023, in Tallahassee, Leon County, Florida.



Laura Gallagher
for Debbie Winicki 23-
FH0804
2023.07.10 07:21:32 -04'00'

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]

Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com