



FILED

Jul 10, 2023, 8:57 am
OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0806

[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 May 16, 2023, at 1:30 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Christian Pacheco
Senior Director of Quality Improvement
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’s Authorized Representative and [REDACTED]

[REDACTED] appeared on behalf of the Petitioner. Alicia Pasquel, Petitioner’s Home Health Aide,

appeared as a witness for Petitioner.

Christian Pacheco, Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. (“Sunshine Health”) appeared on behalf of Respondent. Dr. John Carter (“Dr. Carter”), Long-Term Care Medical Director for Sunshine Health, attended as a witness for Respondent. Katie Maldonado, Utilization Management for Sunshine Health, attended as a witness for Respondent. Andrea Hoffman, Utilization Management for Sunshine Health, attended as a witness for Respondent. Georginia Rivera, Multiterm Care Coordinator for Sunshine Health, attended as a witness for Respondent.

Marielisa Amador, Medical Health Care Program Analyst, for the Agency for Health Care Administration (“Agency” or “AHCA”) and Joseph Mabry, Hearing Officer for the Agency, appeared as observers.

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 “23-FH0806 Emailed Correspondence.pdf.” Absent an objection from the Respondent, the undersigned admitted the three (3)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one-hundred and thirty-seven (137)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as “MFH packet [Petitioner Last Name]-Part 1.pdf” and “MFH packet [Petitioner Last Name]-Part 2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the one-hundred and thirty-seven (137)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Health who became effective with the plan on May 1, 2015, for the Long-Term Care (LTC) and December 1, 2015, for Medicaid Medical Assistance (MMA). RCE1 at 2. Sunshine Health is a statewide Medicaid managed care (SMMC) organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. PCE1 at 3. Petitioner has [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

3. Petitioner has [REDACTED]
[REDACTED] 40. The notes and summary of the current Form 701B Comprehensive Assessment (“701B”), dated March 6, 2023, observe:

Member is resistant to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

feels member would pull it off easier than a pull up.

The member refuses to [REDACTED]
[REDACTED]
[REDACTED]. The rep voiced as a safety measure he has an system alarm if the member tries to get up unattended. Per rep the member has [REDACTED]

Member currently receives CMS products and 8 hours of companion care, 14 hours of homemaking and 12 hours of personal care-utilized Monday through Friday only.

The member [REDACTED] assist with [REDACTED]

Members [REDACTED] supervision on the weekends, depending on [REDACTED] schedule. The member Rep works 6:30 am-2:30pm, however [REDACTED] lives far from member. [REDACTED] not reliable due to [REDACTED] own family affairs.

Member needs assistance with [REDACTED] [REDACTED] is in the home. Member's [REDACTED] manages members money. Aide completes shopping for member and assists with transportation to medical appointments. Aide arranges transportation to medical appointments and accompanies member to these appointments. Aide prompts member to take medications and ensures member is taking correct medications at correct time and in correct quantities.

Member has [REDACTED].

RCE1 at 42, 43, 47.

4. Petitioner formerly lived with [REDACTED], did not provide care for [REDACTED], but relied on the services provided to [REDACTED] RCE1 at 39. [REDACTED] passed away on March 20, 2023. PCE1 at 2.

5. On March 24, 2023, Sunshine Health received Petitioner's authorization request for an additional fourteen (14) hours per week of homemaker services. Petitioner's request was denied by the Medical Director in a Notice of Adverse Benefit Determination ("NABD"), dated March 27, 2023. 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 additional 16 hours a week of Personal Care Services, an additional 14 hours a week of Homemaker Services, and an additional 48 hours a week of Companion Care Services is denied as not medically needed. 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: 12 hours a week of Personal Care Services, 14 hours a week of Homemaker Services, and 8 hours a week of Companion Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

RCE1 at 4 to 8.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 10, 2023, upholding the denial of the requested additional 14 hours per week of Homemaker Services. The NPAR states, in pertinent part, as follows:

The reason for our decision was on appeal the request for an extra 16 hours/week of Personal Care Services and an extra 14 hours/week of Homemaker Services and an extra 48 hours/week of Companion Care Services is denied as not medically needed. Based on the assessment, the members currently approved services are adequate to meet the members care needs. The member's present care plan includes 12 hours/week of Personal Care Services and 14 hours/week of

Homemaker Services and 8 hours/week of Companion Care Services. The prior decision is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

RCE1 at 92.

7. On April 11, 2023, Petitioner requested a Fair Hearing to challenge the denial of homemaker services. On April 26, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 16, 2023, at 1:30 p.m., Eastern Standard Time.

8. Petitioner either receives or was receiving ongoing case management monthly (4/5/2022 – 4/3/2023), 8 hours of adult companion care weekly (4/5/2022 – 4/4/2023), 14 hours weekly of homemaker services (4/5/2022 – 4/4/2023), 11 hours weekly of personal care services (4/5/2022 – 9/21/2022), 2 cases of pull-ups monthly (4/5/2022 – 4/4/2023), and 12 hours weekly of personal care (9/22/2022 – 4/30/2023). *Id.* at 32.

9. The Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) states that Petitioner needs total assistance (cannot do at all) with the following Activities of Daily Living (“ADLs”): [REDACTED] RCE1 at 42. [REDACTED]

[REDACTED] Petitioner needs assistance (but not total help). *Id.* The 701B states that Petitioner has the following assistance with ADLs: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 42.

10. The 701B states that Petitioner needs total assistance (cannot do at all) with the following Instrumental Activities of Daily Living (“IADLs”): [REDACTED]

[REDACTED]. *Id.* at 43.

As to using transportation, Petitioner needs assistance (but not total help). *Id.* The 701B states that Petitioner has the following assistance with IADLs: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 43.

11. Petitioner's Authorized Representative, [REDACTED], testified:

a) [REDACTED]. Petitioner lives alone and [REDACTED] less than five (5) minutes away. [REDACTED] visits with Petitioner daily, on average from eight (8) to twelve (12) hours per day.

b) [REDACTED] is not employed outside of the home.

c) The request for additional hours is due to Petitioner's conditions.

d) [REDACTED] read from a letter provided by Petitioner's physician, Rooptza Sibli, M.D. and signed by physician's assistant, Nicolle Melendez. The letter states in pertinent part:

"[Petitioner] needs assistance with ADLs including: [REDACTED]
[REDACTED] needs to have 4 hours of personal care per day, 4 hours of home making per day and 8 hours of companion care per day.

Additional hours of care were previously declined due to [REDACTED]
[REDACTED] (and thereby [Petitioner]) receiving care. On March 20, 2023 [REDACTED]
[REDACTED] [Petitioner] relied upon the care hours that [REDACTED]
received."

PCE1 at 2

12. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified:

a) It is Dr. Carter's opinion that the approved hours are sufficient to meet Petitioner's

needs. Petitioner lives alone in the community since the death of [REDACTED]. Dr. Carter agreed that Petitioner suffers from [REDACTED] [REDACTED]s. Among Petitioner's functional problems are difficulty [REDACTED] [REDACTED]g.

- b) Petitioner's presently approved plan includes: twelve (12) hours per week of personal care services, fourteen (14) hours per week of homemaker services, and eight (8) hours per week of companion care services. In total, Petitioner receives thirty-four (34) hours per week of combined services.
- c) In March of 2023, Petitioner requested extra home services in three categories: sixteen (16) hours per week of personal care services, fourteen (14) hours per week of homemaker services, and forty-eight (8) hours per week of companion care services.
- d) Respondent received Petitioner's appeal documentation including letters of medical need from at least two (2) physician assistants, stating Petitioner's medical and functional problems and request for extra services.
- e) Dr. Carter reached the conclusion that any of the thirty-four (34) hours per week of combined services can be used for homemaker services if requested by the Member or Member's representative. For example, fourteen (14) hours of homemaker services can all be applied to housekeeping tasks such as [REDACTED], etc. The companion care service hours are meant to supervise the Member or for light housekeeping. Personal care hours are primarily used for hands on care, such as

[REDACTED], and helping a member with bathroom or hands on assistance.

Personal care hours can be used for housekeeping as well.

f) Dr. Carter also concluded that if the hours were distributed equally then Petitioner would have between four-and-a-half (4 ½) and five (5) hours daily of services, since any and all of the services can potentially be used for housekeeping or homemaker services.

g) Dr. Carter testified that each individual [REDACTED] is their own person, that each situation could be different, and that in Petitioner's case, the amount of services is enough to take care of Petitioner's homemaker needs.

CONCLUSIONS OF LAW

13. 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).

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

15. 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.)

16. The Statewide Medicaid 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 Homemaker services:

15.1 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.

...

17. 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.

18. 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.

19. The Sunshine Health Policy LTC Ancillary Service Criteria 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 member's 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

...

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.

Meal Preparation considerations

- 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
- Will additional supports allow the member to eat more often or improve nutritional status

20. In the present case, Respondent denied Petitioner's request for an additional fourteen (14) hours of homemaker services. As established on the record by the evidence and testimony, Respondent denied the request because Petitioner's current level of services are adequate to meet [REDACTED] care needs and because the additional hours requested are not medically necessary. *See supra* ¶¶ 5, 6, and 14.

21. Pursuant to LT.UM.09, the purpose of homemaker services is to provide assistance with essential shopping, light housework, laundry, and meal preparation. LT.UM.09 provides that the related approval criteria involve a review of IADL limitations; living situation; supervision needs, and available supports. *Supra* ¶ 21. LT.UM.09 provides a detailed methodology for calculating the appropriate level of homemaker services based on various homemaker related activities. *Supra*. As shown by the record, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, and shopping. *See* ¶ 10. The evidence shows that in addition to fourteen (14) hours of homemaker services, Petitioner is also receiving eight (8) hours of companion care and twelve (12) hours of personal care. *Supra* ¶¶ 3, 5, and 6.

22. As Petitioner bears the burden of proof, Petitioner must show that the denial was incorrect. Here, Petitioner did not offer any evidence relating to the homemaker services to state any specific argument as to why the services were medically necessary. The 701B reflects that at

the current service level Petitioner always has assistance for [REDACTED] needs with regards to meal preparation or household care. *Supra* ¶ 12. Petitioner's testimony does not address whether the homemaker services requested are medically necessary in the amount requested. Petitioner has not accounted for the time required to meet [REDACTED] needs for tasks such [REDACTED]. Accordingly, Petitioner has not met the burden of proof to show that the homemaker services requested are 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. Furthermore, Dr. Carter opined that Petitioner's approved hours are sufficient to meet Petitioner's needs. *Supra* ¶ 14. In all, Petitioner offered no evidence addressing any needs for additional homemaker services. As such, Petitioner has not shown that the additional homemaker services requested are medically necessary.

23. Lastly, Petitioner's physician proffered via a written letter that the Petitioner needs to have 4 hours of personal care per day, 4 hours of home making per day, and 8 hours of companion care per day. *Supra* ¶ 13 However, as stated in the Florida Medicaid Definitions Policy, 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. *Supra* ¶ 20

24. Therefore, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of fourteen (14) hours of homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is

DENIED.

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



Kameisha Presley
23-FH0806
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KAMEISHA PRESLEY, 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:



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