



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

FILED

Jun 30, 2023, 12:05 pm

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA CASE NO.: 23-FH0813
[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, a Hearing Officer with the Office of Fair Hearings convened the telephonic Fair Hearing on the instant case on May 10, 2023, at 2:00 p.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner

For the Respondent:

Michael Moens
Medicaid Fair Hearing Specialist
Humana State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate fifteen (15) hours of Petitioner's adult companion care services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. The Petitioner and [REDACTED]

[REDACTED] testified at the Fair Hearing.

Michael Moens, Medicaid Fair Hearing Specialist, appeared as the representative for Humana Medical Plan, Inc. (“Humana”). Dr. Wayne Sherman (“Dr. Sherman”), Medical Director for Humana, appeared as a witness for Respondent.

Suzanne Chillari, Medical Health Care Program Analyst, for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes. Interpreter Silvio, ID No. 700040, provided translation services for Petitioner.

The Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-two (272)-page evidence packet. The evidence packet was admitted into evidence without objection, is identified as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings’ case management system as “Evidence Packet 23-FH0813_Part1.pdf,” “Evidence Packet 23-FH0813_Part2.pdf,”; “Evidence Packet 23-FH0813_Part3.pdf,”; “Evidence Packet 23-FH0813_Part4.pdf,”; “Evidence Packet 23-FH0813_Part5.pdf,”; “Evidence Packet 23-FH0813_Part6.pdf,”; “Evidence Packet 23-FH0813_Part7.pdf,”; and “Evidence Packet 23-FH0813_Part8.pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana Long Term Care Plan. See Respondent’s Composite Exhibit 1 at page 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is a [REDACTED] living in a private residence with [REDACTED]
[REDACTED] See Respondent’s Composite Exhibit 1, page 49, and testimony of [REDACTED]. Petitioner’s [REDACTED], is

Petitioner's Direct Service Worker ("DSW") under the Participant Direction Option ("PDO"), and [REDACTED] does not work outside the home. *Id.* at 47.

3. Petitioner suffers from [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Respondent's Composite Exhibit 1, pages 39-40. Petitioner

has not fallen, visited the ER, or been admitted into the hospital in the past 6 months. *Id.* at 36.

4. Petitioner's most recent Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B Assessment") states the following regarding Petitioner's Activities of Daily Living ("ADLs"): the Petitioner needs some assistance (but not total help) with [REDACTED]
[REDACTED].

See Respondent's Composite Exhibit 1, page 37. The Petitioner uses an assistive device for walking. *Id.*

5. Regarding Instrumental Activities of Daily Living ("IADLs"), the 701B Assessment states that Petitioner needs total assistance (cannot do at all) with [REDACTED]
[REDACTED]. See Respondent's Composite Exhibit 1, page 38. The Petitioner needs some assistance but not total help [REDACTED]
[REDACTED]. *Id.*

6. Regarding socialization, the 701B Assessment states that Petitioner talks to friends, relatives, or others once per week, spends time with someone [REDACTED] does not live with once per week, and participates in activities outside the home several times per month. See Respondent's Composite Exhibit 1, page 47. Petitioner requires some level of supervision. See

Respondent's Composite Exhibit 1, pages 37 and 42. [REDACTED]

[REDACTED], but [REDACTED] does not get lost or wander off. See Respondent's Composite Exhibit 1, page 42. The Petitioner is alert, oriented and able to express [REDACTED] needs. See Respondent's Composite Exhibit 1, pages 35 and 42.

7. On March 6, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") terminating the Petitioner's PDOadult companion care services. See Respondent's Composite Exhibit 1, pages 3-10. The NABD stated the reason for Respondent's termination as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) 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:

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 15 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 your [REDACTED] helps to care for you and is your direct service worker (DSW). Your [REDACTED] does not work outside the home. You have trouble thinking clearly or remembering things. The service of 15 hours of direct service worker (PDO) Adult Companion Care each week is being terminated (stop). You live with others who should be able to meet your companionship needs.

Id.

8. Petitioner requested a plan appeal on March 13, 2023, and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 7, 2023, upholding Humana’s decision to terminate the Petitioner’s adult companion care services. See Respondent’s Composite Exhibit 1, pages 18-28.

In the NPAR, Humana stated as follows:

[REDACTED] has several (multiple) medical problems. [REDACTED] does not have trouble making [REDACTED] needs known. [REDACTED] often has trouble thinking clearly or remembering things. [REDACTED] who help take care of [REDACTED] and share in household responsibilities. [REDACTED] uses a wheelchair to move around. She needs some help [REDACTED]

[REDACTED] The denial of 15 hours of direct service worker (PDO) adult companion care service each week is being upheld. [REDACTED] lives with others who should be able to meet [REDACTED] companionship needs. The hours [REDACTED] is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED].

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.

9. Petitioner is currently approved to receive five (5) hours of PDO personal care services weekly, ten (10) hours of PDO homemaker services weekly, and fifteen (15) hours of PDO adult companion care services weekly. See Respondent's Composite Exhibit 1, pages 57-74.

10. Dr. Sherman testified that the decision in this case was based on Petitioner's medical conditions, functional difficulties, and living arrangements as specified in the 701B Assessment. Dr. Sherman further testified that adult companion care is non-medical, is directed towards socialization, is primarily for members who live alone, and that the Petitioner's [REDACTED] [REDACTED] provide sufficient companionship and socialization. Finally, Dr. Sherman testified that since the Covid pandemic has ended and people can socialize outside their homes, Humana is performing a review of companion care services. Dr. Sherman concluded that the adult companion care services are not medically necessary and the remaining approved services are adequate to meet the Petitioner's needs.

11. [REDACTED] the Petitioner's [REDACTED] and primary caregiver testified that [REDACTED] depends on the financial support [REDACTED] earns to provide [REDACTED] PDO adult companion care, and that it helps to support the household, pay bills, and buy food [REDACTED] questioned who is going to take care of [REDACTED] is forced to get a job outside the home.

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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of the Agency under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code ("F.A.C.").

14. Because Respondent is terminating a previously approved service, Rule 59-1.100(17)(g), F.A.C., 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 Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Rule 59G-4.192, F.A.C., governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services, homemaker services, and adult companion care:

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)

...

1.3.16 Natural Supports

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

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.

...

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.

...

6.2 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.

LTC Policy at pages 1 - 8.

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.

LTC Policy at pages 2 – 3.

17. In this case, Respondent terminated the Petitioner's adult companion care services. See supra ¶¶ 7 and 8. The Respondent's rationale for terminating the adult companion care services was that Petitioner's request failed to meet the requirements of medical necessity. Specifically, Respondent's witness indicated that the adult companion care services at issue are in excess of Petitioner's needs as [REDACTED] receives socialization from those [REDACTED] lives with, talking to family and friends on the telephone, and activities outside the home. See supra ¶¶ 6 and 10.

18. As provided in the LTC Policy, the purpose of adult companion care services is to provide “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 supra ¶ 15. Thus, adult companion care services are designed to prevent social isolation and to provide supervision to protect the enrollee’s safety. See supra ¶ 15. The LTC Policy covers services that meet all of the following: are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTP Policy. See supra ¶ 15. The 701B states that [REDACTED] needs some level of supervision but [REDACTED] does not work outside the home, Petitioner does not get lost or wander off, [REDACTED] has no recent history of falls or ER visits, [REDACTED] is alert and oriented and able to make [REDACTED] needs known. See supra ¶ ¶ 3 and 6.

19. The record does not demonstrate that the previously approved fifteen (15) hours per week of adult companion care services are medically necessary based on the Petitioner’s need for supervision or socialization.

20. Based on the Petitioner’s living arrangements, [REDACTED] medical condition, and [REDACTED] functional abilities, the record does not demonstrate by a preponderance of the evidence that the previously approved adult companion care services are not in excess of Petitioner’s supervision needs.


21. Upon consideration of the testimony provided, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned finds that Respondent did meet its burden of proving by a preponderance of the evidence that previously approved fifteen (15) hours per week of adult companion care services are no longer medically necessary.

22. Accordingly, the undersigned Hearing Officer concludes that Respondent did prove by a preponderance of the evidence that Respondent's termination of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction is **DENIED**.

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

Alan J. Leifer
 23-FH0813
2023.06.30
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ALAN LEIFER, 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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