



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

FILED

Jul 12, 2023, 1:14 pm
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0832

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 15, 2023, at 10:59 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Suzanne Chillari
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that the Respondent's denial of Petitioner's For Cause disenrollment request was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

Suzanne Chillari (“Ms. Chillari”), Medical/Health Care Program Analyst with the Agency for Healthcare Administration (“Agency” or “AHCA”), appeared on behalf of Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighteen (18) page evidence packet. The eighteen (18) page evidence packet appears in the Office of Fair Hearings’ document management system as file title “Agency [REDACTED] Evidence Packet 23-FH0832.pdf”. Absent an objection from Petitioner, the undersigned admitted the eighteen (18) page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Following the hearing, the undersigned held the record open until May 22, 2023, to allow Petitioner to submit additional evidence. On May 15, 2023, [REDACTED] e-mailed to the Office of Fair Hearings an evidence letter. The evidence letter appears in the Office of Fair Hearings’ document management system as file title “23-FH0832 Evidence”. The undersigned held the record open until May 29, 2023, to allow Respondent to submit any objections or responses. As of the date of this Final Order, the Office of Fair Hearings has not received any objections or responses to Petitioner’s evidence.

FINDINGS OF FACT

1. Petitioner is an enrolled member of MCNA Dental, Inc. (“MCNA”). See pages 13 and 15 of RCE 1. MCNA is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. On February 21, 2023, MCNA issued to [REDACTED] a Grievance Determination Letter. *Id.* at 15. The letter reads as follows in pertinent part:

We completed a facility search and we were able to locate the following in-network MCNA Dental participating providers within 35 miles of your address:

[REDACTED]

Time: 42 minutes / Distance 23.2 miles

Next appointment [REDACTED]

[REDACTED]

Time: 36 minutes / Distance 20.9 miles

Next appointment [REDACTED]

[REDACTED]

Time: 35 minutes / Distance 19.8 miles

Next appointment [REDACTED] 10am or 11am

...

Pages 15 and 16 of RCE 1.

3. On [REDACTED], [REDACTED] requested to change Petitioner’s Medicaid plan from MCNA to Liberty Dental, Inc. (“Liberty”). *Id.* at 1. Petitioner requested the change due to the unreasonable delay or denial of orthodontic services. *Id.*

4. On April 7, 2023, the Agency denied the request because the action taken by the plan was deemed appropriate, as outlined in the plan’s Grievance Determination letter. *Id.* at 1, 2, 17.

5. On April 10, 2023, the Agency issued to [REDACTED] a letter of Denial of For Cause Plan Change. *Id.* at 2. The letter reads as follows in pertinent part:

The reason given for the requested For Cause plan change, outside of your Open Enrollment period, was the enrollee experienced an unreasonable delay or denial of service pursuant to Section 409.969(2), F.S. The Agency has considered your request and denied it as it does not meet the requirements for a For Cause plan change as outlined in

Rule 59G-8.600. The request was denied because the Appeal process is complete and the action taken by the plan is deemed appropriate – as outlined in your Plan’s Appeal resolution letter.

...

Page 3 of RCE 1.

6. On April 13, 2023, [REDACTED] requested a Fair Hearing regarding the denial of a For Cause disenrollment request. *Id.* at 2, 18. On April 25, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, scheduling the hearing for May 15, 2023, at 11:00 a.m. EST.

7. On May 15, 2023, the Office of Fair Hearings received an evidence letter from [REDACTED]. The letter reads as follows:

We are writing to request a change of insurance for [Petitioner] [REDACTED]) from MCNA to either Dentaquest or Liberty. [REDACTED] is currently undergoing orthodontic treatment with [REDACTED] and our office is not contracted with MCNA. Please let us know if you need any additional information to help facilitate this request.

Thank you!

Sincerely,

Lauren Kovaleski, DMD
[REDACTED]

...

PE 1.

8. [REDACTED] is the [REDACTED] of the Petitioner. [REDACTED] testified to the following at the Fair Hearing:

a. In [REDACTED], Petitioner’s dental plan was changed to MCNA as part of the statewide change beginning [REDACTED].

- b. Petitioner is under [REDACTED] with [REDACTED] current provider, and this provider does not accept MCNA. Petitioner has been under this provider's care for the past [REDACTED].
- c. [REDACTED] stated that it is not allowed for Petitioner to go to another provider to finish the treatment begun by another orthodontist. Petitioner has not been to the orthodontist since [REDACTED].

9. Ms. Chillari is a Medical/Health Care Program Analyst with the Agency. Ms. Chillari testified to the following at the Fair Hearing:

- a. On March 29, 2023, [REDACTED] requested a plan change from MCNA to Liberty due to an unreasonable delay or denial of orthodontic services.
- b. On March 31, 2023, MCNA submitted to the Agency the Grievance Resolution letter.
- c. On April 7, 2023, the Agency denied [REDACTED] request upon review of the Grievance Resolution letter.
- d. On April 10, 2023, a For Cause denial letter was issued to [REDACTED] by the Agency.
- e. On April 13, 2023, [REDACTED] requested a Fair Hearing.
- f. There is not record that Petitioner was with another plan prior to MCNA.
- g. Once treatment is begun with one provider, one cannot go to another provider.

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 section 409.285(2) of the Florida Statutes (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 change of managed medical care plans outside of their enrollment period, 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.).

13. Fla. Admin. Code R. 59G-8.600 governs Disenrollment from Managed Care Plans. It states the following:

(1) Purpose. A Florida Medicaid recipient (herein referred to as an enrollee) who is required to enroll in the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) or Long-term Care (LTC) program, may request to change managed care plans. Requests must be submitted via telephone to the Agency for Health Care Administration (AHCA) or its enrollment broker. Enrollees required to enroll in SMMC programs should not interpret this rule as an exemption from participation in Florida Medicaid’s SMMC program. This rule applies to the process and reasons that SMMC managed care plan enrollees may change plans.

(2) Requests for disenrollment must be completed in accordance with sections 409.969, Florida Statutes (F.S.), and Title 42, Code of Federal Regulations (CFR), section 438.56 (42 CFR 438.56).

(3) For Cause Reasons.

(a) Reasons outlined in 42 CFR 438.569(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment at any time from a managed care plan:

1. The managed care plan does not cover the service the enrollee seeks because of moral or religious objections.

2. The enrollee would have to change his or her residential or institutional provider based on the provider’s change in status from an in-network to an out-of-network provider with the managed care plan.

3. Fraudulent enrollment.

(b) Reasons outlined in 42 CFR 438.56(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment from a managed care plan when the enrollee first seeks resolution through the managed care plan's grievance process, as confirmed by AHCA, in accordance with 42 CFR 438.56(d)(5), except when there is an allegation of immediate risk of permanent damaged to the enrollee's health:

1. The enrollee needs related services to be performed concurrently, but not all related services are available within the managed care plan's network, and the enrollee's primary care provider or another provider has determined that receiving the services separately would subject the enrollee to unnecessary risk.

2. Poor quality of care.

3. Lack of access to services covered under the managed care plan's contract with AHCA, including lack of access to medically-necessary specialty services.

4. There is a lack of access to managed care plan providers experienced in dealing with the enrollee's health care needs.

5. The enrollee experienced an unreasonable delay or denial of service pursuant to section 409.969(2), F.S.

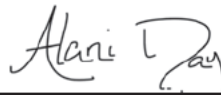
14. In this case, the evidence admitted and testimony presented is sufficient to support a *de novo* reversal of the Agency's decision, and establishes that the Petitioner's request can be granted. Here, Petitioner bears the burden of proof. As provided by statute, a For Cause plan change is permissible when "the enrollee experiences an unreasonable delay or denial of service pursuant to Section 409.969(2), F.S." (Rule 59G-8.600(3)(b)5). However, the enrollee must "first [seek] resolution through the managed care plan's grievance process" (Rule 59G-8.600(3)b). In the instant case, ██████████ sought resolution through the required grievance process, evidenced by the Grievance Determination Letter dated February 21, 2023. See supra ¶ 2. The letter listed three in-network providers available to Petitioner. *Id.* However, Petitioner cannot visit any of these providers, as Petitioner is currently under treatment with another provider and has several months of treatment remaining. See supra ¶ 7. Petitioner may not continue

treatment with a different provider, as [REDACTED] is already undergoing treatment with [REDACTED] current provider. See supra ¶ 8. Accordingly, the undersigned finds that Petitioner proved by a preponderance of the evidence that Respondent's denial of Petitioner's For Cause disenrollment request was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's For Cause disenrollment request is **REVERSED**.
Petitioner's appeal based on Respondent's denial is **GRANTED**.

DONE and ORDERED this 12th day of July, 2023, in Tallahassee, Leon County, Florida.



Alani Day
23-FH0832
2023.07.12 10:25:04 -04'00'


ALANI DAY, 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]



AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com