



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

FILED

Jun 12, 2023, 10:30 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0857

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a Hearing Officer convened a telephonic Fair Hearing on the instant case on May 10, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Sandra Durden
Medicaid/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 Respondent’s decision to deny personal care services was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency or “AHCA”), appeared on behalf of Respondent. Dr. Rakesh Mittal (“Dr. Mittal”), Physician Consultant for eQHealth Solutions (“eQHealth”), attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a nine (9)-page evidence packet. The nine (9)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH0857 DAR & Supporting Documents.pdf”. Absent an objection from the Respondent, the undersigned admitted the nine (9)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 76-page evidence packet and an 81-page evidence packet. The 76-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “57499685 FH 05.10.2023.pdf” and the 81-page evidence packet appears as file title “23-FH0857_CDC plus child evidence packet.pdf”. Absent an objection from the Petitioner, the undersigned admitted the 76-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the 81-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

At the Fair Hearing, Petitioner requested that the record be held open to allow for the submission of additional documents. On May 11, 2023, Petitioner timely submitted an 11-page document that appears in the Office of Fair Hearings’ document management system as file title “23-FH0857 Supporting Documents.pdf”. Absent an objection from the Respondent, the undersigned hereby admits the 11-page document into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the agency to review prior authorization requests for services. *See* page 2 of RCE 2.

2. Petitioner was [REDACTED] at the date of the Fair Hearing. *See* page 16 of RCE 1.

3. Petitioner is diagnosed with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *d.*

4. [REDACTED] works from 7:30 a.m. until 3:30 p.m., Monday through Friday. *Id.* at 74. [REDACTED]

[REDACTED] attends Seminary on Monday and Wednesday, from 5:45 p.m. to 8:45 p.m., and Saturday from 9:00 a.m. to 12:00 p.m. *See* page 4 of PCE 1.

5. Petitioner requested personal care services as follows: six (6) hours, daily, Monday through Friday, and eight (8) hours, daily, Saturday through Sunday. *See* pages 21 – 22 of RCE 1.

In the Notice of Outcome (“NOO”), dated April 7, 2023, Respondent denied Petitioner’s request.

Id. The NOO explained the basis for the denial as follows:

[T]he requested services are not medically necessary under the following standard(s):

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.

The NOO further provided:

PR Principal Reason – Denial:

Submitted information does not support the medical necessity for requested services.

Request is for PCS services under CDC + program for this [REDACTED]. Patient is [REDACTED] [REDACTED] will be providing PCS services. As [REDACTED] is available to provide care to the patient so deny this request. As per guidelines parents must provide as much care as they can.

...

Pages 21 of RCE 1.

6. Petitioner requested a reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated April 17, 2023, Respondent upheld its decision.

Id. at 30 – 31. Respondent explained as follows:

The patient is [REDACTED] [REDACTED] work full time and [REDACTED] is the PCS provider. After reconsidering the submitted information, the original decision has to be upheld. [REDACTED] is available to provide care. PCS is not intended for monitoring and supervision and [REDACTED] have to provide to the best of their ability.

...

Page 31 of RCE 1.

7. On April 17, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On April 20, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 10, 2023, at 1:00 p.m. EST.

8. [REDACTED] testified to the following:

- a. [REDACTED] attends seminary and ministers on Sundays.
- b. [REDACTED]
- c. Petitioner attends [REDACTED]
- d. [REDACTED] wants supervision for Petitioner because [REDACTED] is not aware of danger, [REDACTED]

e. Petitioner's [REDACTED] works from Tuesday through Sunday from 2:00 p.m. until 10:30 p.m.

9. Dr. Mittal is a Physician Consultant for eQHealth. Dr. Mittal testified to the following:

a. He is approving two (2) hours of personal care services on Monday and Wednesday, each.

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 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.)

13. The Florida Medicaid Personal Care Services Coverage Policy ("Policy") incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services and companion care services:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary
- 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 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

...

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

4.3 Early and Period Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures

described in section 1095(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary.

14. The Policy further addresses excluded services as follows:

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers

- Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipients place of residence
- Yard work, gardening, or home maintenance work.

15. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

16. Petitioner is under age 21, and therefore EPSDT applies to [REDACTED] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

17. The Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definition Policy provides the following definitions applicable to the instant case:

2.2 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

2.64 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)

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 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. Petitioner requested personal care services as follows: six (6) hours, daily, Monday through Friday, and eight (8) hours, daily, Saturday through Sunday. See ¶ 5. Respondent denied Petitioner's request because it determined that the requested services did not meet the medical necessity criterion "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." *Id.* However, at the Fair Hearing, Dr. Mittal awarded Petitioner two (2) hours of personal care services for each Monday and Wednesday. See ¶ 9.

19. As provided by the ESPDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that services must be "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." As provided in the PCS Policy, personal care services are intended to "provide medically necessary assistance . . . with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL)." As shown by the record, Petitioner needs assistance with [REDACTED]. See ¶ 3. As such, personal care services are individualized and specific for [REDACTED] needs. Further, Petitioner's [REDACTED] works 7:30 a.m. until 3:30 p.m., Monday through Friday, and attends Seminary on Monday and Wednesday evenings, and Saturday mornings from 9:00 a.m. until 12:00 p.m. See ¶ 4. Petitioner's [REDACTED] works Tuesday through Sunday, from 2:00 p.m. until 10:30 p.m. See ¶ 8.

20. Here, Petitioner, although Petitioner established that personal care services are appropriate [REDACTED] it was not shown that the requested number of hours were medically necessary. For example, Petitioner did not establish how many hours were required to assist with


Petitioner's ADLs and IADLs. Further, [REDACTED] testified, *supra* ¶ 8, that the request was made in part to provide supervision, which is not a covered service under personal care. See ¶ 14. As such, Petitioner did not show that [REDACTED] was not in excess of [REDACTED].

21. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that additional personal care services was medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that additional personal care services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of personal care services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 12th day of June, 2023, in Tallahassee, Leon County, Florida.


Joseph Mabry
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JOSEPH MABRY, 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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