



FILED

Jul 10, 2023, 12:36 pm
OFFICE OF FAIR HEARINGS

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

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH0865

[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 31, 2023 at 10:00 a.m. EST.

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The parties agreed on the record that the issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for an additional ten (10) hours per week of personal care services was incorrect.¹

¹ On February 15, 2023, the Petitioner requested an additional twenty-eight (28) hours of personal care services. On April 17, 2023, the Respondent approved eight (8) of the originally requested twenty-eight (28) hours of personal care services, leaving the remaining requested twenty (20) hours in dispute. At the May 31, 2023, Fair Hearing, the Respondent approved an additional ten (10) hours of personal care services for the Petitioner. Therefore, the remaining ten (10) of the originally requested hours remain in dispute, which are the subject matter of this case.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] the Petitioner's [REDACTED] and primary caregiver appeared on behalf of the Petitioner as [REDACTED] Authorized Representative.

Kimberly Bouchette, Clinical Appeals Coordinator, for Sunshine State Health Plan, Inc., ("Sunshine") appeared on behalf of Respondent. Dr. Bonnie Koreff-Wolf (Dr. Koreff-Wolf) Medical Director for Sunshine, attended as a witness for Respondent. The following employees of Sunshine attended as witnesses but did not testify at the Fair Hearing: Fabiana Garcia Dos Santos, the Petitioner's Care Coordinator, and Natheli Toussaint, Case Management Supervisor with Sunshine.

Doris Rivera, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

The Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-four (144)-page evidence packet that 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 "MFH packet [Petitioner].pdf".

FINDINGS OF FACT

1. The Petitioner is an enrolled member of Sunshine Long Term Care ("LTC") plan. See Respondent's Composite Exhibit 1 at page 13. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner [REDACTED] and lives in an apartment with [REDACTED], who is also the Petitioner's primary caregiver. Respondent's Composite Exhibit 1, pages 29 and 84. The Petitioner's primary language is Romanian and [REDACTED] is unable to speak or read English. Respondent's Composite Exhibit 1, pages 29 and 68.

3. The Petitioner's current health situation is principally related to a [REDACTED] [REDACTED]. Respondent's Composite Exhibit 1, page 67. The Petitioner is [REDACTED] [REDACTED] *Id.* The Petitioner uses a [REDACTED] and requires a person besides [REDACTED] at all times to make sure he does not fall. *Id.* The Petitioner suffers from [REDACTED]

[REDACTED]. Respondent's Composite Exhibit 1, page 69.

4. As provided in the latest Florida Department of Elder Affairs 701B Comprehensive Assessment, dated May 16, 2023, ("701B Assessment") Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED] [REDACTED], Petitioner total needs some assistance (but not total help). See Respondent's Composite Exhibit 1, page 67. With respect to the ADL of [REDACTED] the Petitioner requires supervision or prompt. *Id.* The Petitioner uses assistance devices for [REDACTED] [REDACTED] *Id.*

5. Petitioner's needs with Instrumental Activities of Daily Living ("IADLs") are as follows: needs total assistance (cannot do at all) with [REDACTED] [REDACTED]. See Respondent's Composite Exhibit 1, page 68. The Petitioner is [REDACTED]

[REDACTED] *Id.* The Petitioner is [REDACTED]

[REDACTED]. *Id.* The

Petitioner's [REDACTED] and primary caregiver manages the Petitioner's medications and transports [REDACTED] to and from all doctor's appointments or outings. See Respondent's Composite Exhibit 1, page 68.

6. On February 15, 2023, the Petitioner requested an additional twenty-eight (28) hours per week of personal care services. See Respondent's Composite Exhibit 1, pages 4-12. On February 22, 2023, the Respondent denied the requested hours in their Notice of Adverse Benefit Determination ("NABD") and explained the basis of their decision as follows:

We made our decision because:

(Check all boxes that apply)

We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: *(See Rule)*

Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

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 extra 28 hours/week of Personal 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 14 hours/week of Personal Care Services + 4 hours/week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

See Respondent's Composite Exhibit 1, pages 4-5.

7. On April 4, 2023, the Petitioner requested an appeal of the earlier denial and received the Respondent's Notice of Plan Appeal Resolution ("NPAR"), dated April 21, 2023, approving eight (8) of the requested additional hours of personal care services and upholding the denial of the remaining twenty (20) hours as not medically necessary. Respondent's Composite Exhibit 1, pages 96-99. The NPAR states, in pertinent part:

The reason for our decision was based on the information provided by the member's doctor regarding [REDACTED] failing health, the denial of an extra 28 hours per week of Personal Care Services is partially overturned on appeal. Sunshine Health will approve an extra 8 hours per week of Personal Care Services and will deny the remaining 20 hours per week of Personal Care Services. The updated care plan will include 22 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director Board Certified in Internal Medicine

Id.

8. On April 17, 2023, the Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On May 11, 2023, the undersigned Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 31, 2023, at 10:00 a.m. EST.

9. At the time of the Petitioner's April 17, 2023, Fair Hearing Request, [REDACTED] was approved for twenty-two (22) hours of Participant Directed Option ("PDO") personal care services and four (4)

hours of PDO homemaker services. Respondent's Composite Exhibit 1, page 35. During the hearing, the Respondent verbally approved an additional ten (10) hours of PDO personal care services for a total of thirty-two (32) hours of personal care services per week.²

10. The Petitioner's Authorized Representative testified that [REDACTED] refuses any help from anyone other than [REDACTED] is the sole caregiver for the Petitioner. The Petitioner's [REDACTED] also testified that it is nearly impossible for [REDACTED] to find any home healthcare workers that speak and understand the Romanian language. Finally, the Petitioner's [REDACTED] testified that after [REDACTED] quit [REDACTED] job to take care of [REDACTED], and alone provides all of the personal care and homemaker services required and approved for the Petitioner.

11. Dr. Koreff-Wolf testified that with the addition of the ten (10) hours of personal care services authorized during the May 31, 2023, Fair Hearing, the Petitioner will now have a total thirty-two (32) hours of PDO personal care services per week and those hours are sufficient to meet the Petitioner's home healthcare needs.

12. On March 13, 2023, Pedro Morales, M.D., the Petitioner's physician submitted a letter respectfully requesting additional home healthcare hours for the Petitioner somewhere between four to five hours per day, seven days per week. See Respondent's Composite Exhibit 1, page 86.

² The Respondent issued a written authorization for the additional ten (10) hours of PDO personal care services per week that was verbally approved at the May 31, 2023, Fair Hearing.

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

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

15. Because Petitioner is requesting new services, 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 personal care and homemakers:

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

...

4.2.1.1 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.

...

4.2.2.6 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 individual 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. [emphasis supplied]

LTC Policy at pages 1 – 8.

17. The LTC Policy also provides the following regarding 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.

18. The Florida Medicaid Definitions Policy (August 2017) ("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.

Definitions Policy at page 7.

19. The Petitioner requested an additional twenty-eight (28) hours per week of personal care services on February 15, 2023, and were denied based on the lack of medical necessity. *See supra* ¶ 5, 6. Specifically, Respondent determined that the services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and are "in excess of the patient's needs." *See supra* ¶ 5, 6 and 11.

20. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual 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. *See supra* ¶ 16.

21. Subsequent to the Petitioner's February 15, 2023, request for twenty-eight (28) additional hours of personal care services, the Respondent approved an additional eighteen (18) hours of PDO personal care services per week, leaving a total of ten (10) hours in dispute for this matter. The evidence presented reflects that Respondent's denial of an additional ten (10) hours per

week of personal care services is not warranted under the circumstances of this case. As provided in the LTC Policy, personal care is 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.” See supra ¶ 16. The record reflects that Petitioner lives with [REDACTED], who is also [REDACTED] sole caregiver. See supra ¶¶ 2 and 10.

22. With regards to ADLs, Petitioner needs some assistance (but not total help) with

[REDACTED]

[REDACTED] g. See supra ¶ 4. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

See supra ¶ 5. Petitioner currently has approximately five (5) hours per day of assistance as follows: thirty-two (23) hours per week of PDO personal care services and four (4) hours per week of PDO homemaker services, for a total of thirty-seven (37) hours of home healthcare. See supra ¶ 9.

23. The Petitioner’s authorized representative provided compelling testimony that she requires additional personal care hours to care for her father. However, the Petitioner has received eighteen (18) of the requested twenty-eight (28) personal care hours per week. See supra ¶ 9. In his March 13, 2023, letter, Dr. Pedro Morales, the Petitioner’s physician, specifically requested more personal care hours for the Petitioner somewhere between four (4) to seven (7) hours per day, seven (7) days per week. See supra ¶ 12. At the time of this Final Order, the Petitioner is receiving thirty-six (36) hours of PDO home healthcare per week, which equals approximately five (5) hours per day, and is in accordance with the recommendation of Pedro


Morales, M.D. *Id.* In light of the additional PDO personal care hours already provided in this matter, the Petitioner's [REDACTED] and Authorized Representative has not provided compelling evidence by a preponderance of the evidence that yet an additional ten (10) hours of personal care is medically necessary for the home-based care for the Petitioner. Should the Petitioner's Authorized Representative later conclude that the eighteen (18) additional hours of Personal Care Services already approved in this matter are insufficient to care for [REDACTED] can make another request to Sunshine for additional personal care hours.

24. Therefore, upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional ten (10) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of an additional ten (10) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

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

Alan J. Leifer
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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:

[REDACTED]
[REDACTED]
[REDACTED]
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