



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

FILED

Jul 17, 2023, 10:59 am

OFFICE OF FAIR HEARINGS



PETITIONER,

AHCA Case No.: 23-FH0869



vs.

HUMANA MEDICAL PLAN INC.,

RESPONDENT.



PETITIONER,

AHCA Case No.: 23-FH0870



vs,

HUMANA MEDICAL PLAN INC.,

RESPONDENT



FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 30, 2023, at 1:00p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:



Petitioner

For the Respondent:

Michael Moens
Grievance and Appeals Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

The second issue is whether the Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's personal care services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner, [REDACTED] appeared on her own behalf.

Michael Moens, ("Mr. Moens") Grievance and Appeals Specialist, Humana Medical Plan, Inc., ("Humana") appeared on behalf of Respondent. Dr. Manohar Chenchugalla ("Dr. Chenchugalla"), Medical Director, Humana attended as a witness for Respondent.

Suzanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), and Lee Ann William, Medical/Health Care Program Analyst for the Agency, appeared as observers.

Daniel, translator number 700309, and Carlos, translator number 350651, provided translation services for the Petitioner.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-nine (289) page evidence packet. This packet is identified in the Office of Fair Hearings Document Management system as follows: "Evidence Packet 23-FH0869 23-FH0870_Part1.pdf"; "Evidence Packet 23-FH0869 23-FH0870_Part2.pdf"; "Evidence Packet 23-FH0869 23-FH0870_Part3.pdf"; and "Evidence Packet 23-FH0869 23-FH0870_Part4.pdf". Absent an objection from the Petitioner

undersigned admitted the page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. RCE 1 at 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] *Id.*

3. Petitioner has been diagnosed with the following [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id* at 43.

4. The Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”): [REDACTED]
[REDACTED] Petitioner needs assistance (but not total help); [REDACTED], Petitioner needs supervision or prompt; [REDACTED]
[REDACTED] Petitioner uses assistive devices. *Id* at 41.

5. Petitioner’s needs for assistance with instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED]
[REDACTED]
[REDACTED] Petitioner uses an assistive device. *Id* at 42.

6. Prior to Petitioner’s request for six (6) additional personal care hours, Petitioner was receiving forty-two (42) hours of personal care, eight (8) hours of homemaker hours and seven (7) hours of adult companion care per week. *Id.* at 27

7. Petitioner requested six (6) additional hours of personal care services, weekly. On March 3, 2023, Humana issued two (2) Notices of Adverse Benefit Determination (“NABD”), denying Petitioner’s request for six (6) additional personal care hours and reducing [REDACTED] existing authorized personal care hours from forty-two (42) hours to twenty-one (21) hours, weekly. *Id.* at 3 – 7 and 19 – 23. The NABD explained the basis of the denial and reduction 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:

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 have 8 hours of homemaker service each week; 42 hours of personal care hours each week; 7 home delivered meals weekly; and 7 hours of Adult Companion Care each week. You have requested an additional 6 hours of personal care hours each week.

You have multiple medical problems. You do not have trouble making your needs known. You [REDACTED]. You do not leave your home without someone (wandering).

You have not had any recent changes in your health. You have not recently been in the hospital.

You live alone. You [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Your request for an additional 6 hours of Personal Care each week is being denied as not medically necessary. We are reducing your current personal hours to 21 hours weekly. This will give you 36 hours of home health aide services daily to meet your needs. We are terminating your current supply of 192 bladder pads as not medically necessary. You have [REDACTED]
[REDACTED]
[REDACTED].

...

Id. at 3-4 and 19-20.

8. Petitioner requested a plan appeal regarding the denial and reduction of personal care services. In two (2) Notices of Plan Appeal Resolution (“NPAR”) dated April 12, 2023, Respondent denied Petitioner’s plan appeal. *Id.* at 11 – 13 and 27-29. The NPAR explained as follows:

The reason for the decision was based on the information received. You are appealing the denial of the requested 6 hours of personal care and the reduction of personal care from 42 hours to 21 hours per week. Prior to the reduction you were receiving 42 hours of PC per week. You currently receive 8 hours of homemaker, 21 hours of PC after reduction and 7 hours of adult companion care services per week. You receive 7 home delivered meals as well. You live alone and are alert and oriented to person place and time.

We have reviewed your documents and assessed your need based on the assessment form. The 36 hours of home health aide are sufficient for your needs and can be split into shifts. We are upholding the decision of the Medical Director denying your appeals.

...

Id. at 11 and 27.

9. On April 18, 2023, Petitioner requested a Fair Hearing to challenge the denial and the reduction. On May 12, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 14, 2023, at 1:00 p.m. EST. A partial hearing was held that day due to Petitioner's request for a continuance. The hearing was continued to June 30, 2023, at 1:00 p.m., EST, Eastern Standard Time.

10. At the Fair Hearing, Petitioner testified to the following:

- a. Petitioner believes [REDACTED] needs more hours for the weekend so [REDACTED] can have help to get up.
- b. Petitioner feels like [REDACTED]
[REDACTED]
- c. [REDACTED] wanted six extra hours but then [REDACTED] hours were cut.

11. At the Fair Hearing, Dr. Chenchugalla testified to the following:

- a. Initial request for six additional hours of Personal care which was denied.
- b. Based Respondent's review of the 701b, the 42 hours of personal care Petitioner was receiving is more than [REDACTED] needs.
- c. Based on 701b, Petitioner needs some help with daily activities, but not maximum assistance.
- d. Petitioner uses [REDACTED] walker to get around and has a personal emergency response system.
- e. Petitioner is getting more than [REDACTED] needs.
- f. Total of 36 hours of home health care or five hours per day should be sufficient for Petitioner's needs.

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 Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

14. Because Petitioner is requesting a new service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner with regard to the denial of [REDACTED] request for an increase of six (6) personal care hours.

15. Because Respondent is reducing a previously approved service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Respondent with regard to the reduction of personal care hours from forty-two (42) hours to twenty-one (21) hours. 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 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** services:

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)

...

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.

...

4.2.1.2 Adult Day Health Care

The provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 420, Part III, F.S. Nutritional meals are included as part of this service when the enrollee is at the adult day health care center during meal times. This service includes medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational, and speech therapies indicated in the enrollee's plan of care are furnished as components of this service. Nursing services, which include periodic

evaluation, medical supervision of self-care services directed toward activities of daily living, and personal hygiene are also a component of this service.

...

4.2.1.7 Home Accessibility Adaptation

The provision of physical adaptations to the home to ensure the health, safety, and welfare of the enrollee, or to enable the enrollee to function with greater independence in the home, without which an enrollee would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies necessary for the welfare of the enrollee. All adaptations must be compliant with applicable state and local building codes.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

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.

...

4.2.1.14 Personal Emergency Response System

For installation and service monitoring of an electronic device connected to an enrollee's phone that includes a portable "help" button, when provided to an enrollee at high risk of institutionalized to secure help in an emergency.

...

4.2.1.15 Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

...

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.

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.

A. PETITIONER REQUEST FOR ADDITIONAL PERSONAL CARE SERVICES

19. In an NABD of March 3, 2023, Respondent denied Petitioner's request for an additional six hours per week of personal care hours. See ¶ 7. At the time, Petitioner was receiving forty-two hours of personal care, eight (8) hours of homemaker services and seven (7) hours of adult companion care services. See ¶ 6.

20. As provided in the LTC Policy, personal care services provide assistance with ADLs and IADLs. See ¶ 16. Petitioner's assessment of ADLs in the 701B state that: [REDACTED]

[REDACTED], Petitioner needs assistance but not total help; [REDACTED]

[REDACTED], Petitioner needs supervision or prompt; and for [REDACTED]

[REDACTED], Petitioner uses assistive devices. See ¶ 4. For IADLs, the 701B states [REDACTED]

[REDACTED] Petitioner needs

total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance but not

total help; [REDACTED], Petitioner needs supervision or prompt;

for [REDACTED] uses an assistive device. See ¶ 5.

21. In [REDACTED] testimony, Petitioner stated that the extra hours were needed for help getting up on the weekends. In all, Petitioner was receiving fifty-seven (57) hours of care weekly. Petitioner currently receives thirty-six (36) hours of combined services, which is approximately five (5) hours per day. See ¶ 11. Petitioner did not provide any compelling evidence to support the need for six

additional hours on top of the fifty-seven Petitioner was already receiving. For example, Petitioner did not provide an explanation of how many hours were needed to accomplish ■ ADLs or IADLs, or explain what tasks were not completed with the services already in place.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional six hours of personal care services was incorrect.

B. RESPONDENT'S REDUCTION OF PERSONAL CARE SERVICES

23. In an NABD of March 3, 2023, Respondent reduced Petitioner's personal care hours from forty-two to twenty-one. See ¶ 7. At the time, Petitioner was receiving forty-two (42) hours of personal care, eight (8) hours of homemaker services and seven (7) hours of adult companion care services. See ¶6.

24. Petitioner's needs for ADLs and IADLs were addressed *supra* ¶ 20. Respondent stated at the Hearing that the reduction resulted in Petitioner receiving 36 hours of home health care, weekly to include personal care, homemaker and adult companion care services. See ¶11. Respondent witness Dr. Chenchugalla stated that the reduction was based on the 701B assessment, particularly the conclusions that Petitioner needs only some assistance with daily activities. See ¶11 Dr. Chenchugalla testified that after the reduction, Petitioner receives five (5) hours daily of care that should be sufficient to meet ■ needs. See ¶ 11

25. Here, in an NABD dated March 2, 2023, Petitioner's personal care hours were cut in half from forty-two (42) to twenty-one (21). RCE at 3-4. Respondent stated at the Fair hearing that this reduction was based upon the 701B. See ¶11 The 701B was completed May 16, 2023, over

two months after the reduction in hours. RCE1 at 38. Respondent provided no methodology, calculation or specific analysis regarding why the reduction in personal care hours was made. See ¶11. No evidence regarding an improvement in Petitioner's medical condition or a change in Petitioner's living circumstances was presented by Respondent. Without sufficient evidence to support the reduction of Petitioner's hours, Respondent has not satisfied their burden of proof that their decision was correct.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's reduction of Petitioner's personal care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

Respondent's reduction of services is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **AFFIRMED**.

DONE and **ORDERED** this 17th day of July, 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
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LYNNE RINGERS, 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]

Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com