

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



FILED

Jul 21, 2023, 3:50 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0901

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 26, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

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

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s adult companion services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner’s Authorized Representative, [REDACTED], appeared on behalf of Petitioner.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”), appeared as a representative for Humana. The following attended as witnesses for Respondent: Dr. Avra Bowers, (“Dr. Bowers”), Long Term Care Medical Director for Humana.

Suzanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”) appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and sixty-seven (267)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH0901_Part1.pdf”; “Evidence Packet 23-FH0901_Part2.pdf”; “Evidence Packet 23-FH0901_Part3.pdf”; “Evidence Packet 23-FH0901_Part4.pdf”; and “Evidence Packet 23-FH0901_Part5.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and sixty-seven (267) pages of evidence as Respondent’s Composite Exhibit 1 (“RCE-1”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Petitioner a fourteen (14)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “23-FH0901 Received Mail Evidence.pdf”. Absent an objection from Respondent, the undersigned admitted the fourteen (14) pages of evidence as Petitioner’s Composite Exhibit 1 (“PCE-1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See page 23 of RCE-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.* at 27. Petitioner lives with [REDACTED] [REDACTED] *Id.* at 24.

3. Petitioner is diagnosed with the following [REDACTED] [REDACTED] [REDACTED] *Id.* at 33 - 34.

Petitioner is [REDACTED] *Id.* at 36.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessments (“701B”), which was taken on February 20, 2023, Petitioner needs degrees of assistance for the following activities of daily living (“ADLs”): total assistance (cannot do at all) for [REDACTED] [REDACTED] [REDACTED]; and assistance (but not total help) for [REDACTED] [REDACTED] *Id.* at 31. Petitioner has assistance most of the time for [REDACTED]. Petitioner has no need for assistance for eating, transferring, and walking/mobility. *Id.*

5. As provided in the 701B, Petitioner needs total assistance (cannot do at all) for the instrumental activities of daily living (“IADLs”) of [REDACTED] [REDACTED] [REDACTED] *Id.* at 32.

6. Petitioner’s primary caregiver is [REDACTED] *Id.* at 36. [REDACTED] [REDACTED] are approved direct service workers (“DSW”) under the Participant Directed Option (“PDO”) program. Petitioner did not participate in the 701B assessment due to [REDACTED]

cognitive status. *Id.* at 46. [REDACTED] was present during the assessment, and [REDACTED] answered all the questions. *Id.* at 28, 46. As provided in the 701B, the assessment was that [REDACTED] assists [REDACTED] with [REDACTED]. [REDACTED]. Petitioner [REDACTED]. [REDACTED].” *Id.* at 36. [REDACTED]; therefore, [REDACTED] is constantly busy with the care of both Petitioner and [REDACTED]. *Id.* at 32. [REDACTED] does not work outside of the home. *Id.* at 43. Petitioner receives home delivered meals per week. *Id.* at 38.

7. Petitioner has a strong support system. [REDACTED] spend time with one another doing various things. *Id.* at 36. Petitioner talks to friends, relatives, or others by phone, computer, or other means two (2) to six (6) times per week. *Id.* at 41.

8. In the Notice of Adverse Benefit Determination (“NABD”), dated February 3, 2023, Humana terminated Petitioner’s twenty-seven (27) hours of weekly adult companion services. The NABD explained the reason for the termination, 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.

....

- Other authority

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 27 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 your [REDACTED] helps to care for you. You [REDACTED]. The service of 27 hours of direct service worker (PDO) Adult Companion Care each week is being terminated. You live with others who should be able to meet your companionship needs.

You are being approved for 7 hours of direct service worker (PDO) homemaker service each week. You live with others who share in household responsibilities. You receive 7 home delivered meals each week. These hours/services should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

....

Page 4 - 5 of RCE-1.

9. On February 13, 2023, Petitioner requested a plan appeal. *Id.* at 12. Subsequently, Petitioner received a Notice of Plan Appeal Resolution ("NPAR"), dated February 16, 2023, upholding the denial. *Id.* at 92 - 95. The NPAR explained as follows:

[Petitioner] currently has 9¹ hours of personal care PDO services each week, 7 hours of homemaker PDO services weekly, and 7 home delivered meals weekly.

█ has several (multiple) medical problems. █
█
█
█ does not need help transferring (move from bed to chair), and toileting. █
█
█
█

After thorough review of [Petitioner's] chart we continue to uphold the termination of 27 hours of adult companion care services weekly. The hours █ is receiving should be enough to meet █ needs and can be divided into shifts to better meet █ needs.

This determination of the Medical Director has been made based on medical necessity and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Page 19 - 20 of RCE-1.

10. On April 20, 2023, Petitioner requested Fair Hearings to challenge the denial of adult day care services. On May 11, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 26, 2023, at 9:00 a.m. EST.

11. Dr. Bowers is a Long Term Care Manager and Medical Director for Humana. Dr. Bower's testimony established that Respondent's decision was based on the 701B assessment. Based on the assessment, a Plan of Care was made to ensure that Petitioner has adequate weekly home health care service hours, including seven (7) hours of personal care services; seven (7) hours of homemaker services; and seven (7) home delivered meals. *Id.* at 58 - 61. Dr. Bowers explained that the previously approved twenty-seven (27) hours of weekly adult companion care services

¹ The Plan of Care for the period starting February 20, 2023 through February 19, 2024 includes authorization for only seven (7) hours of personal care PDO services per week. Page 58 of RCE-1.
² See footnote 1, *infra*.

were terminated, then the seven (7) hours of PDO direct homemaker services were added to Petitioner's Plan of Care. Dr. Bowers commented that, in addition, the currently authorized seven (7) hours of weekly personal care PDO hours could be increased by a couple of hours, if requested, to assist with Petitioner's ADLs and IADLs. Dr. Bowers noted that Petitioner lives [REDACTED]

[REDACTED] Dr. Bowers testified that based on the 701B, Petitioner does not require constant supervision (for example, [REDACTED] is not at risk for elopement), and [REDACTED] is not disruptive. Dr. Carter concluded that twenty-seven (27) hours per week of adult day care services are not medically necessary for Petitioner.

12. [REDACTED] testified that [REDACTED] used to work as a teacher, but [REDACTED] left when coronavirus came about to take care of Petitioner, [REDACTED] direct service worker ("DSW") and [REDACTED]

[REDACTED] testified that while [REDACTED] will not wander off, [REDACTED] cannot be left alone, for instance, [REDACTED]

[REDACTED] further testified that there are no other family members in the Country other than

[REDACTED] in Colorado. [REDACTED] testified that [REDACTED] alone takes care of Petitioner, all day and all night, and that [REDACTED] cannot be left alone. [REDACTED] is the only companion to [REDACTED] and if, for

example, [REDACTED] needs a nebulizer in the middle of the night, [REDACTED] must assist [REDACTED].

[REDACTED], and fishing for outdoor activity. [REDACTED] concluded that [REDACTED] to stop teaching in order to take care of Petitioner.

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

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

15. Because Respondent terminated the adult companion care services, Fla. Admin Code R. 59-1.100(17)(g) 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.)

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 adult companion care services:

4.1 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:

...

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.

...

Pages 1 – 4, LTC Policy.

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.

Pages 2 – 3, LTC Policy.

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.

....

Page 7, Definitions Policy.

19. Respondent terminated Petitioner's twenty-seven (27) hours per week of adult companion services, as of February 13, 2023. RCE-1 at 3. In the NABD, Respondent indicated that Petitioner did not meet all of the criteria of medical necessity but did not specify which prong of medical necessity was used to make its decision. *Id.* In the NPAR, Respondent upheld the termination of the twenty-seven (27) hours of adult companion care services for Petitioner by determining that "the member's currently approved services are adequate to meet the member's care needs." *See supra* ¶ 8.

20. As provided in the LTC policy, adult companion care is 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." *See supra* ¶ 16. Petitioner currently lives with [REDACTED],

who is [REDACTED] DSW, does not work outside of the home, and [REDACTED] receives weekly seven (7) hours of personal care PDO services, seven (7) hours of homemaker PDO services, and seven (7) home delivered meals. *See supra* ¶ 11. Additionally, Petitioner has a strong support system, doing activities with [REDACTED], like shopping and fishing, and [REDACTED] talks to friends, relatives, or others by phone, computer, or other means two (2) to six (6) times a week. *See supra* ¶¶ 7, 12. For nutritional services other than the seven (7) home delivered meals she receives each week, the 701B assessment provides that Petitioner's [REDACTED] prepares [REDACTED] meals every day, they eat together. Petitioner needs supervision eating but can chew [REDACTED] food and drink beverages [REDACTED]. *See supra* ¶ 6. As such, the record reflects that Petitioner has adequate social interaction and nutritional services.

21. Respondent denied Petitioner's request for adult companion care services for the reason that "[y]ou live with your [REDACTED] helps to care for you. You [REDACTED] [REDACTED] [REDACTED]." *See supra* ¶ 8. Respondent's assertion is reasonable in regards to whether Petitioner's socialization needs are met. *See supra* ¶ 13. However, that does not fully address the supervisory function that adult companion care also provides. *See supra* ¶ 20.

22. As adult companion care services are to provide, among other things, supervision to protect the safety of the enrollee, in the 701B assessment, relied upon by the Respondent in reaching its decision to terminate Petitioner's adult companion care services, shows that Petitioner's request for the continuation of twenty-seven (27) hours of weekly adult companion care is "individualized specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment." *See supra* ¶ 8. In the 701B assessment, the Assessor wrote

that “does have [REDACTED] all the time.” *See supra* ¶

6. The Assessor also commented in the 701B that “[REDACTED] also provides care for [REDACTED] who has [REDACTED] and extensive medical conditions.” *See supra* ¶ 6. Therefore, Petitioner’s [REDACTED], is not capable of providing any supervision to his [REDACTED]

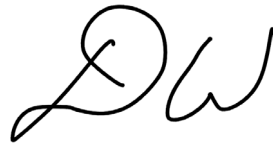
23. As Petitioner needs supervision at all times, and Petitioner’s [REDACTED] sole caretaker to meet that need, Petitioner has shown that [REDACTED] request to not terminate adult companion care services is “not in excess of the patient’s needs,” is “reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide,” and is not “intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” *See supra* ¶ 7. Further, Petitioner’s request may enable [REDACTED] to “live . . . in the setting of [REDACTED] choice.” *See supra* ¶ 7. As such, Petitioner has shown that [REDACTED] has an unmet need for supervision. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has not proved by a preponderance of the evidence that Respondent’s termination of twenty-seven (27) hours of weekly adult companion care services was correct. Therefore, the twenty-seven (27) hours per week of adult companion care is medically necessary, as defined in the Florida Medicaid Definitions Policy. *See supra* ¶¶ 17, 18.

24. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has not proven by a preponderance of the evidence that Respondent’s termination of twenty-seven (27) hours of adult companion care services per week was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of Petitioner's adult companion care services is **REVERSED**.
Petitioner's appeal based on Respondent's termination of adult companion care services is
GRANTED.

DONE AND ORDERED this 21st day of July, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0901
2023.07.21
15:41:53 -04'00'

DEBBIE WINICKI, 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]

Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com