



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

FILED

Jul 20, 2023, 3:27 pm

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 23-FH0934
[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 July 6, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette

Clinical APP Coordinator

Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

Kimberly Bouchette ("Ms. Bouchette") Clinical APP Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine, attended as a witness for Respondent. The following attended on behalf of Sunshine but did not testify: Katie Maldonado, Utilization Review for Sunshine; Tracie Pisaneschi, Case Manager Supervisor for Sunshine; Tracie Grant, LTC Coordinator for Sunshine; Alshenetha Williams-Jamerson, Case Management Supervisor, for Sunshine; and Andrea Hoffman, LTC Utilization Management.

Sandra Durden, 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 one hundred and twenty-four (124)-page evidence packet. This packet is identified in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner].pdf". Absent an objection from the Petitioner undersigned admitted the one hundred and twenty-four (124)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1")

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a forty-six (46) page evidence packet. This packet is identified in the Office of Fair Hearings document management system as file titles "23-FH0934 Evidence.pdf" "23-FH0934 Evidence (2).pdf" "23-FH0934 Evidence (3).pdf". Absent an objection from the Respondent, the undersigned admitted the forty-six (46) page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. RCE 1 at 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id* at 104

2. Petitioner is [REDACTED]. *Id* at 15. Petitioner lives with [REDACTED] *Id*.

3. Petitioner is diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id*. at 71 – 72. Further, Petitioner [REDACTED]
[REDACTED] *Id*. at 74.

4. Petitioner’s needs for assistance with activities of daily living (“ADLs”) are as follows: [REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all);
for eating, Petitioner needs assistance (but not total help); [REDACTED]
[REDACTED]. *Id*. at 69. Petitioner needs total assistance (cannot do at all) for
all instrumental activities of daily living (“IADLs”). *Id* at 70.

5. On March 9, 2023, Respondent sent a Notice of Adverse Benefit Determination (“NABD”) which reduced the adult companion care hours Petitioner was receiving from ten (10) hours to four (4) hours. The NABD explained the basis of the 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:

We received your request to continue 10 hours of Adult Companion Care services in the home each week. This request was denied because the information provided does not support that it is required to manage your medical condition(s). Adult companion care is given to prevent isolation and supervision. You speak to and spend time with others daily. You require hands on assistance help with your daily activities. Personal care and homemaker services are in place to provide hands on help. Adult companion care services will be reduced from 10 hours per week to 4 hours per week. Sunshine Health Policy LT. UM. 09 LTC (Long Term Care Ancillary Service Criteria.

...

Id at 5.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated April 17, 2023, upholding the reduction. The NPAR explained as follows:

On 4/6/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denying your plan appeal. As a result, {REDACTED} will not receive the request for 10 hours per week of adult companion care services effective 4/6/2023. The reason for our decision was based on the assessment of the members care needs and household and caregiver status. The reduction of the companion care services from 10 hours per week to 4 hours per week is upheld. The presently approved services are enough to meet the members care needs. 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 who is Board Certified Physician in Internal Medicine.

...

Id. at 90.

7. On April 25, 2023, Petitioner requested a Fair Hearing to challenge the reduction. On May 31, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 6, 2023, at 1:00 p.m., Eastern Standard Time.

8. At the Fair Hearing, [REDACTED] testified to the following:

- a. Petitioner has [REDACTED]
- b. When Petitioner [REDACTED] with another activity.
- c. [REDACTED] from home and [REDACTED] needs quiet time to do [REDACTED] job.

9. Dr. Carter is a Long-Term Care Medical Director for Sunshine. Dr. Carter testified to the following:

- a. Petitioner is an [REDACTED]
[REDACTED]
[REDACTED]
- b. She needs total assistance with most everything.
- c. Petitioner's direct service worker is [REDACTED].
- d. Petitioner currently receives 10 hours in personal care services, 10 hours of homemaker services, and 4 hours of adult companion care services.
- e. After the 701B was reviewed, it was felt that the adult companion care hours were excessive given that [REDACTED]
- f. Adult companion care is for supervision and socialization.
- g. Continued authorization had been more than what was medically necessary for quite a while.

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 Fla. Stat. § 409.285(2)(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 Respondent reducing a previously approved service, 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.)

13. 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:

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.

...

4.2.1.9 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.

...

4.2.2.6 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.

14. 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.

15. 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.

16. In an NABD dated March 9, 2023, Respondent reduced the adult companion care hours that Petitioner was receiving from ten (10) to four (4). See ¶ 5. Respondent explained that these services were reduced because the information provided in the 701 B did “not support that it is required to manage [REDACTED] medical conditions”. See ¶ 5. Further, the NABD stated that Adult Companion Care is given to prevent isolation and supervision. See ¶ 5.

17. Here, Petitioner lives with [REDACTED] works from home. See ¶ 2, 8, 9. [REDACTED] direct-service-worker. See ¶ 5. The purpose of adult companion care is to reduce isolation and provide non-medical assistance and supervision. See ¶ 14. It does not include the hands-on type of medical assistance that is provided in other types of home health care. As Petitioner lives [REDACTED] the record reflects that Petitioner has ample opportunities to socialize and have supervision. Moreover, Dr. Carter also stated that the amount of adult companion care hours Petitioner was receiving was in excess of what was medically necessary. I find Dr. Carter’s testimony to be logical and credible. Given the limits of adult companion care services, this benefit was being provided in excess of what is medically necessary for Petitioner’s numerous medical needs.

18. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did prove by a preponderance of the evidence that Respondent’s reduction of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction is **DENIED**.

DONE and ORDERED this 20th day of July, 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
23-FH0934
2023.07.20 08:19:22 -04'00'

LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649

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]

Sunshine
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com