



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

FILED

Sep 15, 2023, 1:08 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1074

[REDACTED]

vs.

FLORIDA COMMUNITY CARE, LLC,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1076

[REDACTED]

vs.

FLORIDA COMMUNITY CARE, LLC,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 2, 2023, at 10:33 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Jill Bennett, Esq.
Counsel to Florida Community Care, LLC
Florida Community Care

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 an additional sixteen (16) hours per week of Homemaker services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional twenty-four (24) hours per week of Personal Care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED] [REDACTED] appeared on behalf of the Petitioner. The following appeared as witnesses for Petitioner: [REDACTED] [REDACTED] of Petitioner. Petitioner was present for the hearing but did not testify.

Jill Bennett ("Ms. Bennett"), Counsel to Florida Community Care, LLC ("FCC"), appeared on behalf of Respondent. Sally Ingeno ("Ms. Ingeno"), Clinical Appeals Specialist for FCC, and Dr. Frank Astor ("Dr. Astor"), Medical Director for FCC, attended as witnesses for Respondent.

Chrissie Simmons ("Ms. Simmons"), Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eight (8)-page evidence packet. The eight (8)-page evidence packet appears in the Office of Fair Hearings' document management system as file titles "23-FH1074 and 23-FH1076 Supporting

Evidence.pdf” and “23-FH1074 23-FH1076 Evidence.pdf”. The evidence packet included email correspondence and an MRI report. Absent an objection from Respondent, the undersigned admitted the eight (8)-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 one-hundred and sixty-three (163)-page evidence packet. The one-hundred and sixty-three (163)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH1074 & 23-FH1076 [Petitioner] Evidence Packet_opt.pdf”. Absent an objection from the Petitioner, the undersigned admitted the one-hundred and sixty-three (163)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of FCC. See page 2 of RCE 1. FCC is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* at 15, 20. Petitioner is diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 32-33. Petitioner lives alone. *Id.* at 27, 30.

3. According to the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated May 24, 2023 (“701B”), Petitioner’s needs for Activities of Daily Living (“ADLs”) are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED]
[REDACTED] Petitioner needs assistance (but not total help);

for [REDACTED] Petitioner needs no assistance. *Id.* at 30. Petitioner rarely has assistance with the ADLs of [REDACTED] *Id.*

4. According to the 701B, Petitioner’s needs for Instrumental Activities of Daily Living (“IADLs”) are as follows: [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED] Petitioner needs assistance (but not total help); for managing medication, Petitioner uses assistive device; and for using the telephone, Petitioner needs no assistance. *Id.* at 31. Petitioner always has assistance with the IADLs of [REDACTED] [REDACTED]. *Id.*

5. Petitioner requested thirty (30)-hours per week of Homemaker services. *Id.* at 54. Respondent approved thirteen (13) hours per week and denied the balance of the request. in the Notice of Adverse Benefit Determination (“NABD”) dated March 21, 2023. *Id.* The NABD explained the basis of the denial 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 request for Homemaker Services (CPT S5130), Frequency: 7 Days/Week - 30 hours a week is partially approved and partially denied. After a complete review of your plan of care and all documents in our possession justifying Homemaker service hours, I find that you do not require as many Homemaker services as requested. There is no medical necessity to attribute to 30 hours of Homemaker service at this time.

We can approve 13 hours a week of Homemaker hours based on a calculation of need. Therefore, 13 hours are approved and 17 hours are denied based on medical necessity requirements.

Please work with your case manager to best distribute these hours through the days and week to meet your needs.

...

Pages 54 and 55 of RCE 1.

6. Petitioner requested forty-seven (47)-hours per week of Personal Care services. *Id.* at 64.

Respondent approved twenty-three (23) hours per week and denied the balance of the request in the NABD dated March 21, 2023. *Id.* The NABD explained the basis of the denial 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:

Partial Approval- Personal Care

This request for Personal Care, CPT Code: T1019 (Personal Care), Frequency: 7 Days/Week 47 hours a week is partially approved and partially denied. After a complete review of your plan of care and all documents in our possession justifying personal care service hours, I find that you do not require as many personal care services as requested. There is no medical necessity to attribute to 47 hours of personal care service at this time.

We can approve 23 hours a week of Personal Care hours based on a calculation of need. Therefore 23 hours are approved and 24 hours are denied, based on medical necessity requirements.

Please work with your case manager to best distribute these hours through the days and week to meet your needs.

...

Pages 64 and 65 of RCE 1.

7. Petitioner requested a plan appeal regarding the denial of additional Homemaker services. Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) dated April 24, 2023, approving one additional hour per week of Homemaker services, for a total of fourteen (14) hours per week, and denying the balance of Petitioner’s request. . *Id.* at 99. The NPAR explained as follows:

On 03/28/2023 we received your timely plan appeal request regarding Florida Community Care’s Notice of Adverse Benefit Determination dated 3/21/2023, NABD Number ACME-16-000156, PARTIALLY DENYING the Homemaker: Total hours per week: 30 requested for [Petitioner]. 13 hours per week were approved and 17 hours were denied.

On 04/22/2023, after consideration of the information you provided to Florida Community Care in support of your plan appeal, Florida Community Care hereby PARTIALLY DENIES your plan appeal. As a result, [Petitioner] will receive Homemaker total hours per week 14 from the 30 requested effective 4/22/2023.

...

Page 99 of RCE 1.

8. Petitioner requested a plan appeal regarding the denial of additional Personal Care services. Respondent issued an NPAR dated April 24, 2023, upholding the denial. *Id.* at 105. The NPAR explained as follows:

On 03/28/2023 we received your timely plan appeal request regarding Florida Community Care's Notice of Adverse Benefit Determination dated 3/21/2023, NABD Number ACME-16-000156, PARTIALLY DENYING the Personal Care: Total hours per week: 47 requested for [Petitioner]. 23 hours per week were approved and 24 hours per week were denied.

On 04/22/2023, after consideration of the information you provided to Florida Community Care in support of your plan appeal, Florida Community Care hereby UPHELD your plan appeal. As a result, [Petitioner] will not receive Personal Care: Total hours per week: 47, effective 03/21/2023 but will continue to receive 23 hours per week.

...

Page 105 of RCE 1.

9. On May 4, 2023, Petitioner requested a Fair Hearing to challenge the denials of additional Homemaker and Personal Care services. *Id.* at 4. On June 21, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions ("Scheduling Order"), scheduling the hearing for July 7, 2023, at 10:30 a.m. EST. On July 12, 2023, the undersigned issued a second Scheduling Order, scheduling the hearing for August 2, 2023, at 10:30 a.m. EST. *Id.*

10. Petitioner's current plan of care includes twenty-three (23)-hours per week of Personal Care services and fourteen (14)-hours per week of Homemaker services. *Id.* at 51.

11. [REDACTED] of the Petitioner. [REDACTED] testified to the following at the Fair Hearing:

- a. Petitioner suffered a stroke in February of 2023 and now requires much more service than [REDACTED] did previously. Petitioner has suffered [REDACTED] since being home, resulting in [REDACTED]. [REDACTED] is concerned for Petitioner's safety.
- b. [REDACTED] believes the current distribution of hours does not provide enough care each month.

12. [REDACTED] is the Petitioner. [REDACTED] testified to the following at the Fair Hearing:

- a. Petitioner's condition drastically deteriorated following [REDACTED]. Petitioner is by [REDACTED] most of the time when [REDACTED] is not present.

13. [REDACTED] of the Petitioner. [REDACTED] testified to the following at the Fair Hearing:

- a. [REDACTED] worries [REDACTED] will lose his job because [REDACTED] must travel to care for Petitioner.

14. Ms. Ingeno is a Clinical Appeals Specialist for FCC. Ms. Ingeno testified to the following at the Fair Hearing:

- a. Florida Medicaid requires managed care plans to use the Personal Care Services Coverage Policy Appendix 9.1 Review Criteria for Personal Care Services to determine whether Personal Care services will be approved. These Review Criteria were used in the instant case to evaluate the requested Personal Care services.
- b. The 701B is used to determine the level of care and services the enrollee requires. The most recent 701B was completed on May 24, 2023. It was calculated on the

HCBS Assessment that Petitioner does not have any assistance with most IADLs and all ADLs, as [REDACTED] lives alone. The HCBS is dated May 31, 2023.

- c. The Home and Community Based Services Assessment Tool establishes the enrollee's need using information regarding ADLs and IADLs taken from the 701B. The Florida Medicaid Coverage Policy is used to calculate the time allowances for services based on the assistance already present and the assistance needed.
 - d. The NABDs and NPARs on which the instant hearing is focused were issued prior to the date of the most recent 701B Assessment.
 - e. As of the date of the Fair Hearing, Petitioner is receiving fourteen (14)-hours per week of Homemaker services and twenty-three (23)-hours per week of Personal Care services.
15. Dr. Astor is a Medical Director for FCC. Dr. Astor testified to the following at the Fair Hearing:
- a. Dr. Astor is the Interim Chief Medical Officer at FCC.
 - b. According to the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy, medically necessary services must 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; 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 furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. Medically necessary

services must 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.

- c. Petitioner's request for additional Homemaker services was determined to not be medically necessary because the request did not satisfy the medical necessity criterion that services be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.
- d. Petitioner's request for additional Personal Care services was determined to not be medically necessary because the request did not satisfy the medical necessity criteria, that services 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, as well as that services be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.
- e. The testimony presented during the Petitioner's case would not change Dr. Astor's assessment.

CONCLUSIONS OF LAW

16. 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).

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

18. 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.)

19. The Florida Medicaid Statewide 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 Homemaker and 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

...

4.2.1.9 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.

20. 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.

21. 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. Homemaker Services

22. Petitioner requested thirty (30)-hours per week of Homemaker services. *See supra* ¶ 5. In the NABD dated March 21, 2023, Respondent approved thirteen (13)-hours per week of Homemaker services and denied the remaining seventeen (17)-hours of Petitioner’s request. *Id.* The NABD asserted the partial denial was based on medical necessity requirements but did not identify the component of medical necessity on which the denial was based. *Id.* In the NPAR dated

April 24, 2023, Respondent approved one (1)-hour per week of additional Homemaker services and denied the remaining sixteen (16)-hours of Petitioner’s request. See supra ¶ 7.

23. As provided in the LTC policy, Homemaker services are “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.” See supra ¶ 19. Homemaker services most closely align with IADL tasks. According to the 701B, for [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED],
Petitioner needs no assistance. See supra ¶ 4. However, the 701B also states that Petitioner always has assistance with the IADLs of [REDACTED]

[REDACTED]. See supra ¶ 4. Dr. Astor testified that Petitioner’s request for Homemaker services was determined to not be medically necessary because the request did not satisfy the medical necessity criterion, that services be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider. See supra ¶ 15. In the instant case, Petitioner did not offer any evidence to show how long it takes to complete IADL tasks, what IADL tasks are not currently met, or what IADL tasks would no longer be completed if the requested services are not authorized. Therefore, Petitioner did not show that the additional Homemaker services at issue are not in excess of Petitioner’s needs and that the request for services satisfied the medical necessity criterion.

24. 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 additional Homemaker services was incorrect.

B. Personal Care Services

25. Petitioner requested forty-seven (47)-hours per week of Personal Care services. *See supra* ¶ 6. In the NABD dated March 21, 2023, Respondent approved twenty-three (23)-hours per week of Personal Care services and denied the remaining twenty-four (24)-hours of Petitioner's request. *Id.* The NABD asserted the denial was based on medical necessity requirements but did not identify the component of medical necessity on which the denial was based. *Id.* In the NPAR dated April 24, 2023, Respondent upheld the denial of additional Personal Care services. *See supra* ¶ 8.

26. As provided in the LTC policy, Personal Care services are "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* ¶ 19. According to the 701B, Petitioner always has assistance with the IADLs of [REDACTED]. *See supra* ¶ 4. However, Petitioner rarely has assistance with the ADLs of [REDACTED]. *See supra* ¶ 3. Dr. Astor testified that Petitioner's request for Personal Care services was determined to not be medically necessary because the request did not satisfy the medical necessity criteria, that services 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, as well as that services be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. See supra ¶ 15. Petitioner did not offer any evidence of the time it takes to complete ADL tasks, a schedule ADL tasks that are currently not met, or any evidence of what ADL needs would go unmet if the requested services are not authorized. Therefore, Petitioner did not demonstrate that the additional services at issue are not in excess of Petitioner's needs or show that the request for Personal Care services satisfied the medical necessity criterion.

27. 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 additional Personal Care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of additional Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of additional Homemaker services is **DENIED**.

Respondent's denial of additional Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of additional Personal Care services is **DENIED**.

DONE and **ORDERED** this 15th day of September, 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
23-FH1074 23-FH1076
2023.09.15 09:10:18
-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**

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]
[REDACTED]

**Jill Bennett
Counsel for Respondent
jbenett@ilshealth.com**

**Florida Community Care, LLC
FairHearing@fcchealthplan.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**