



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

FILED

Aug 08, 2023, 10:05 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1135

Plan ID No.: [REDACTED]

vs.

SIMPLY HEALTH CARE PLANS, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 19, 2023, at 9:02 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner

For the Respondent:

Marc Kaprow  
Medical Director  
Simply Healthcare

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner appeared on [REDACTED] own behalf. Petitioner’s

[REDACTED] attended as a witness for Petitioner.

Marc Kaprow (“Dr. Kaprow”), Medical Director for Simply Healthcare (“Simply”) appeared on behalf of Respondent. Shelley Leachmen, Registered Nurse, attended as witnesses for the Respondent.

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

Petitioner did not submit any documents to be considered as evidence.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-eight (88)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “FL Simply Packet [Petitioner].pdf”. Absent an objection from the Petitioner, the undersigned admitted the eighty-eight (88)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a thirteen (13)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH1135 Supporting Documents.pdf”. Absent an objection from the Petitioner, the undersigned admitted the thirteen (13)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Simply. *See* page 1 of RCE 1. Simply is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.* at 16. Petitioner [REDACTED]. *Id.* Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 24 – 25.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED] Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help); and Petitioner needs no assistance with [REDACTED] [REDACTED], Petitioner uses an assistive device; [REDACTED] *Id.* at 22. Regarding how much assistance Petitioner has with [REDACTED] ADLs, Petitioner always has assistance with [REDACTED] and Petitioner does not need assistance with [REDACTED]. *Id.* Petitioner does not need any supervision. *Id.*

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED] [REDACTED] Petitioner needs total assistance (cannot do at all); for using the [REDACTED], Petitioner needs no assistance. *Id.* at 23. Regarding how much assistance Petitioner has with [REDACTED] IADLs, Petitioner always has assistance with [REDACTED] [REDACTED]. *Id.* Petitioner does not need assistance with using the [REDACTED]. *Id.* Petitioner does not need any supervision. *Id.*

5. The notes and summary of the 701B Assessment observe:

Member resides in a [REDACTED]. [REDACTED] resides out of state and allows the member to live in the home. Member has [REDACTED] friends that come in and help as needed and available. Member is [REDACTED], and very limited English speaking. Member has a friend/[REDACTED] that helps with the translation as needed. [REDACTED] reside outside of Florida.

The member showed some difficulties with [REDACTED] [REDACTED]. Member did however respond to [REDACTED] in [REDACTED] Native Language.

Member receives assistance from friends in the [REDACTED] community as needed for [REDACTED] [REDACTED] Member is mostly in "bd". Member does not [REDACTED]. Member uses the walls to get around the home. Member can [REDACTED] [REDACTED].

The member receive[s] some assistance from friends in the community as needed.

Member is not receiving any services or treatment in the home at this time.

Member shows some difficulties with recall of information in responding [to] questions.

The members home is safe and appropriate for the member.

Member eats all meals via home delivered meals.

Member medications are managed by the member [REDACTED] daily.

RCE 1 at 18 – 34.

6. According to the 701B, section K, Social Resources Section, Petitioner talks to friends, relatives, or others (by phone, computer, or other means) at least once a day. *Id.* at 32. This section also states that Petitioner never spends time with someone who does not live with [REDACTED] and never participates in activities outside the home that interest [REDACTED] *Id.*

7. According to the 701B, section G, Mental Health Section, Petitioner has been diagnosed [REDACTED]. *Id.* at 26. This section states that Petitioner has the following problem behaviors or recurring problems nearly every day: [REDACTED] [REDACTED] *Id.* at 27. This section also states that Petitioner does not have the following problem behaviors or recurring problems: [REDACTED] [REDACTED]

[REDACTED]. *Id.* According to question 83 Petitioner needs supervision.

8. Petitioner requested seventy-four (74) hours of adult companion care services. In the Notice of Adverse Benefit Determination (“NABD”), dated February 15, 2023, Respondent denied Petitioner’s request. 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: We will not cover the extra care you asked for (DENY - COMPANION - 74 HOURS PER WEEK). We know you have health problems ([REDACTED]). We know you are getting care hours to help you. We looked at your records. Your needs have not changed very much. Your needs do not require the help you are asking for. This is why the extra hours are denied. This was based on the Florida Medicaid Statewide Managed Care Long Term Care Plan Policy, 6.2. We will not cover the extra care you asked for (DENY - COMPANION - 74 HOURS PER WEEK). We know you have health problems ([REDACTED]). We know you are getting care hours to help you. We looked at your records. Your needs have not changed very much. Your needs do not require the help you are asking for. This is why the extra hours are denied.

This was based on the Florida Medicaid Statewide Managed Care Long Term Care Plan Policy, 6.2.

RCE 1 at 51 – 52.

9. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated March 29, 2023, upholding the denial. *Id.* at 63 – 64.

10. On May 10, 2023, Petitioner requested a Fair Hearing to challenge the denial of adult companion care services. On May 23, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 19, 2023, at 9:00 a.m. EST.

11. After the hearing was scheduled but prior to the start of the hearing, Respondent issued a Notice of Fair Hearing Resolution (“NFHR”), dated June 12, 2023, stating in pertinent part:

On 06/09/2023, after consideration of the information you provided to Simply in support of your fair hearing, Simply hereby PARTIALLY APPROVES your fair hearing. As a result, [Petitioner] will receive companion care (OVERTURN/APPROVE – S5135: Companion Care, 46 hours weekly), effective 06/09/2023. We looked at your case. These hours were approved at first (in November 2022) without being reviewed because of a storm (Hurricane Ian). We approved them without reviewing to make sure you had what you needed for the storm. We looked at these hours to review them. We know you [REDACTED]. We know you [REDACTED]. We looked at your state forms (701B). You told us you get help from friends. You told us that your needs were being met. We do not see that your needs have changed. Companion care is to keep you company. All the care you get helps with that. We will approve some of the care you were getting (OVERTURN/APPROVE – S5135: Companion Care, 46 hours weekly). We will not approve all of the care you have been getting (UPHOLD/DENY – S5135: Companion Care, 28 more hours weekly). You can schedule this care as you wish to meet your needs. Based on your records we know this is enough care to meet your needs. This is based on the Florida Medicaid Statewide Managed Care Long Term Care Plan Policy, 6.2. Your case was looked at by a specialist in Internal Medicine & Endocrinology for Simply.

RCE 2 at 1 – 2.

12. Petitioner’s [REDACTED], testified as follows:

- a. Petitioner needs help but has no one to help [REDACTED] because everyone is busy and everyone works.
- b. Petitioner has [REDACTED].
- c. Petitioner [REDACTED].

13. Dr. Kaprow, Medical Direct for Simply, testified as follows:

- a. Petitioner receives seven (7) hours per week of personal care services, three (3) hours per week of homemaker services, and seventy-four (74) hours per week of companion care services. These services were put in place during the Hurricane Ian waiver. Simply was not issuing denials during this time for any home-based services. The original request of seventy-four (74) hours per week of companion care services was not initially reviewed for medical necessity.
- b. The purpose of companion care is not to provide hands on care, not transferring and not feeding. Companion care is strictly supervision or social enrichment.
- c. According to the 701B, there has been no significant changes in Petitioner's needs.
- d. Petitioner lives in [REDACTED] home, has friends, and there are natural supports available.
- e. Petitioner has difficult with [REDACTED] but is better able to perform in [REDACTED] native language.
- f. Petitioner has not had any [REDACTED].

14. As of the date of this hearing, Petitioner receives seven (7) hours per week of personal care services, three (3) hours per week of homemaker services, and forty-six (46) hours per week of companion care services.

## CONCLUSIONS OF LAW

15. 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).

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

17. At the hearing the undersigned stated Respondent had the burden of proof because of the partial fair hearing resolution. However, Petitioner is requesting a new service, thus 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.)

18. 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.

...

RCE 1 at 69 – 72.

19. 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.

RCE 1 at 70 – 71.

20. 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.

Definitions Policy at page 7.

21. Petitioner requested seventy-four (74) hours weekly of adult companion care services. *See* ¶ 8. In the NABD, dated February 15, 2023, Respondent denied Petitioner’s request. *Id.* Respondent indicated that the requested services were not medically necessary but did not identify which component of medical necessity the denial of medically was based on. *Id.* In the NFHR, dated June 12, 2023, Respondent approved forty-six (46) hours weekly of adult companion care services. *See* ¶ 11. Therefore, the issue becomes the remaining twenty-eight (28) hours requested of adult companion care services.

22. Petitioner’s ██████████ testified that Petitioner has no one to help ██████ because everyone is busy and everyone works. *See* ¶ 12. However, the 701B contradicts, stating Petitioner has ██████ friends that come in and help as needed and available and that ██████ talks to friends, relatives, or others (by phone, computer, or other means) at least once a day. *See* ¶ 5 and 6. Further, the 701B, Section K, states Petitioner never spends time with someone who does not live with ██████ and never participates in activities outside the home that interest ██████. *Id.* at 6. However, Petitioner was not alone during the hearing, testified to having friends in the community who assist with transportation, at receives fifty-six (56) hours of care each week where ██████ is not alone.

23. As provided in the LTC Policy, adult companion care services are intended to provide for the “health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee.” *See supra* ¶ 18. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee. *Id.* As Petitioner bears the burden of proof, Petitioner must show that that the requested services are medically necessary. A component of medical necessity is that 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.” See ¶ 19. As shown by the record, Petitioner lives alone, see ¶ 2, but gets help from friends. See ¶ 5 and 11. Also, Petitioner talks to friends, relatives, or others (by phone, computer, or other means) at least once a day. See ¶ 6. Moreover, Petitioner has fifty-six (56) hours of combined services, which will allow [redacted] the opportunity to visit with [redacted] home health aide as well as [redacted] friends in the community. See ¶ 10, 12, and 13. In all, as testified to by Dr. Kaprow, Petitioner is not at risk for social isolation. See ¶ 10. As shown by the record, Petitioner does not have an unmet need for supervision with [redacted] ADLs or IADLs as [redacted] always has assistance with the ADLs or IALDs [redacted] needs total assistance with. See ¶ 3 and 4. Also, Petitioner does not have the problem behavior or recurring problem of [redacted] [redacted]. See ¶ 7. Question 83 of section G, Mental Health Section, of the 701B states that Petitioner needs [redacted]. *Id.* However, the same section states that that Petitioner does not have the following problem behaviors or recurring problems: [redacted] [redacted] [redacted]

*Id.* Moreover, Petitioner did not provide testimony or evidence concerning the specific tasks Petitioner requires supervision to complete or the amount of time needed. Therefore, Petitioner does not have a medical need for the requested adult companion care service hours for supervision. Accordingly, Petitioner has not shown that the requested adult companion care services are “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.”

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that the requested adult companion care services are medically necessary. Accordingly, Petitioner did not demonstrate that Respondent's decision to deny Petitioner's remaining twenty-eight (28) hours requested of adult companion care services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's denial of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE** and **ORDERED** this 8th day of August, 2023, in Tallahassee, Leon County, Florida.



Kameisha Presley  
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**KAMEISHA PRESLEY, 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:**



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