



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

FILED

Aug 15, 2023, 10:42 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1208

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 11, 2023, at 10:30 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell
Grievance and Appeals
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to partially deny Petitioner's request for ten (10) hours of adult companion care services, weekly, was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

The following attended on behalf of Respondent: Joshua Mitchell, (“Mr. Mitchell”), Grievance and Appeals Coordinator, Humana Medical Plan (“Humana”) The following attended as witnesses for Respondent: Dr. Anne Brady (“Dr. Brady”), Medical Director for Humana.

Chrissie Simmons (“Ms. Simmons”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of the Agency.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and nine (309)-page evidence packet. The three hundred and nine (309)-page packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH1208_Part1.pdf” “Evidence Packet 23-FH1208_Part2.pdf” Absent an objection from the Petitioner, the undersigned admitted the three hundred and nine (309)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. *See* p. 1 RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id* at 121.

2. Petitioner was [REDACTED]. *Id.* at 1. Petitioner lives alone. *Id.* at 63.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment dated March 9, 2023, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED], dressing Petitioner needs assistance but not total help; for [REDACTED], no assistance is needed; for [REDACTED]
[REDACTED]
[REDACTED].

5. [REDACTED]
[REDACTED]
[REDACTED]

6. 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]
[REDACTED], Petitioner needs no assistance; for [REDACTED]
[REDACTED], Petitioner needs assistance but not total help; for [REDACTED]
[REDACTED], Petitioner needs supervision or prompt; for [REDACTED]
[REDACTED]

7. Petitioner requested (10) hours of adult companion care, weekly. In a Notice of Adverse Benefit Determination ("NABD"), dated March 15, 2023, Respondent partially denied the request for ten hours of adult companion care services. The NABD explained the basis of the partial 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 determination of the Medical Director has been made based on medical necessity (as defined by Florida law-specifically above) and reflects the application of the plans approved review criteria and guidelines.

You have made a request for an increase in Home Health Care. This request includes 10 hours weekly of Adult Companion Services. You currently receive 11 hours weekly of personal care services and 10 hours weekly of homemaker services. The reason for your request to increase hours is that [REDACTED]. You are [REDACTED]. You need some help with [REDACTED]. We have reviewed your current medical conditions and health care needs. Based on your current medical needs we have decided to approve 7 hours weekly of adult companion services to assist with errands and socialization.

Id. at page 8.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated May 3, 2023, denying the appeal. *Id.* at 19. The NPAR explained as follows:

On April 27, 2023, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Internal Medicine hereby denies your plan appeal.

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 new services, 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.)

15. 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 and safety, and well-being of the enrollee, or social impairment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, 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.

16. 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 119-135

17. 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.

18. In this case, Petitioner requested an additional ten (10) hours, weekly, of adult companion care services. See ¶ 6. In an NABD dated March 15, 2023, Respondent denied Petitioners request *Id.* Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, specifically, the:

Requested services did not meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home 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.

Id.

19. In the NPAR dated May 3, 2023, Respondent denied Petitioners appeal, explaining that the requested adult companion care hours were in excess of Petitioner's needs. See ¶7. As provided in the LTC policy, adult companion care services are to provide:

.....non-medical care, supervision when necessary to protect the health and safety, and well-being of the enrollee, or social impairment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, light housekeeping tasks incidental to the care and supervision of the enrollee.

See ¶ 15

20. As shown by the record, Petitioner has combined twenty-seven (27) hours of services.

Further, [REDACTED]. See ¶ 5. Thus, it appears that Petitioner has ample opportunity to socialize with [REDACTED] caregivers. In all, Petitioner did not show that [REDACTED] request for ten (10) hours of adult companion care, was “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.”

21. 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 partial denial of ten (10) adult companion care hours, weekly, 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 15th day of August 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
23-FH1208
2023.08.15 08:00:02
-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]

Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com