



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

FILED

Sep 13, 2023, 11:14 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1248

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 13, 2023, at 1:00 p.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 deny Petitioner’s request for fifteen (15) additional hours of personal care services, weekly, was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [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, Inc. (“Humana”). The following attended as a witness 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.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a five (5)-page evidence packet. The five (5)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title: “Fair Hearing Request [E.D]. pdf”. Absent any objection, the five (5)-page evidence packet was admitted 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 two hundred and eighty-six (286)-page evidence packet. The two hundred and eighty-six (286)-page packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH1248_Part1.pdf,” and “Evidence Packet 23-FH1248_Part2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and eighty-six (286)-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 96.

2. [REDACTED]
[REDACTED]

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 43, 47, 49.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment dated February 23, 2023, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED], Petitioner needs assistance but not total help; and for [REDACTED], Petitioner needs supervision or prompt. *Id.* at 45.

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED]
[REDACTED] Petitioner needs assistance but not total help. *Id.* at 46.

6. Petitioner requested an additional (15) hours of personal care, weekly. In a Notice of Adverse Benefit Determination (“NABD”), dated March 15, 2023, Respondent denied the request for fifteen additional hours of personal care services. The NABD explained the basis of the determination 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 seat checked box 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 15 hours weekly of PDO (direct service worker) Personal Care Services. You currently receive 13 hours weekly of personal care services and 12 hours weekly of PDO homemaker services. The reason for your request to increase hours is that you are a [REDACTED] with a history of [REDACTED]. You live at [REDACTED]. You need some help with [REDACTED]. You are [REDACTED]. We have reviewed your current medical conditions and health care needs. Based on your current medical needs we have to deny the addition of 15 hours weekly of PDO personal care services as we feel your current hours can meet your medical needs

Id. at 17.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated May 8, 2023, denying the appeal. *Id.* at 29. The NPAR explained as follows:

On May 5, 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.

The reason for the decision was based on the information received. You are appealing the denial of the request for an additional 15 hours of personal care (PC) PDO direct service worker service weekly. Member currently receives 13 hours of (PC) PDO and 12 hours of homemaker PDO services weekly. We have reviewed [redacted] documents and reassessed [redacted] needs. Member lives with [redacted], who owns a business and works from home. Member needs some (not total) assistance with [redacted]. The currently approved 25 hours of PDO care should be sufficient to meet [redacted] needs. We are upholding the decision of the medical director and denying your appeal for additional PC PDO hours weekly.

Id. at 29.

8. On May 22, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On June 13, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 13, 2023, at 1:00 p.m. EST.

9. [redacted], Designated Authorized Representative and daughter of Petitioner testified to the following at the Fair Hearing:

- a. [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted].

10. Dr. Brady is a Medical Director for Humana. Dr. Brady testified to the following:

- a. Petitioner has care during the day for all of the hours [redacted] awake.

- b. Nighttime care is reserved for members who wander from the home, are bedbound, need ventilator care or need special medical care in the night.
- c. Family is expected to supply care in addition to what is provided by Humana.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.)

14. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy ("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 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

4.2.1.1 Personal 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.

15. 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 choice.

RCE 1 at 119-135.

16. The Florida Medicaid Definitions Policy (“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 7.

17. In this case, Petitioner requested an additional fifteen (15) hours, weekly, of personal care services. *See* ¶ 6. In an NABD dated March 15, 2023, Respondent denied Petitioners request *Id.* Respondent indicated in 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.

18. In the NPAR dated May 3, 2023, Respondent denied Petitioners appeal, explaining that the requested personal care hours were in excess of Petitioner’s needs. See ¶7. Respondent stated that the hours currently in place were sufficient for Petitioner’s needs. See ¶7.

19. During testimony, [REDACTED] stated that hours were not needed for nighttime care and established that Petitioner is never alone. See ¶9.

20. Dr. Brady provided uncontroverted testimony that Petitioner had at least 10 hours of care for the time during the day that Petitioner is awake. See ¶10.

21. In all, Petitioner did not show that [REDACTED] request for fifteen (15) hours of personal 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.”

22. Petitioner did not demonstrate which ADLs and IADLs were not met with the services currently in place. As such, the record does not demonstrate by a preponderance of the evidence that the requested additional services are not in excess of Petitioner’s needs. Therefore, Petitioner did not meet [REDACTED] burden of proving that the requested additional services are medically necessary.

23. 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 fifteen (15) personal care hours, weekly, was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 13th day of September 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
23-FH1248
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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

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