



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

FILED

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OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1297

Plan ID No [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 August 8, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Shantelle Pierre

Clinical 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 homemaker services from (thirty-two) 32 hours to eighteen (18) hours, weekly, was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and father,

[REDACTED] appeared on behalf of the Petitioner.

Shantalle Pierre (“Ms. Pierre”) Grievance and Appeals, Clinical Coordinator appeared for Sunshine State Health Plan, Inc. (“Sunshine”). The following attended as witnesses for Respondent: Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine; Roberta Joseph, Care Coordinator for Sunshine; Casey Narine (“Ms. Narine”) Utilization Management; and Lauren Greenwald (“Ms. Greenwald”) Utilization Management.

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

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred twenty-six (126)-page evidence packet. The one hundred twenty-six (126)-page packet appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner Surname].pdf”. Absent an objection from the Petitioner, the undersigned admitted the one hundred twenty-six (126)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See p. 1 RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id* at 106.

2. Petitioner is [REDACTED]. *Id.* at 45. Petitioner lives with [REDACTED]. *Id.* at 46.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]. *Id* at 47, 50,51 – 52, 69-70, 72.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated April 25, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED], Petitioner needs supervision or prompt; for [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs no assistance *Id.* at 67.

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all). *Id.* at 68.

6. The 701B dated April 25, 2023, indicated that [REDACTED] are Petitioner’s direct service workers; [REDACTED] is DSW for personal care and [REDACTED] is DSW for homemaker services. *Id.* at 64.

7. Respondent reduced Petitioner’s homemaker hours from thirty-two (32) to eighteen (18). In a Notice of Adverse Benefit Determination (“NABD”), dated May 5, 2023, 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 receiving 32 hours per week of homemaker services. This request was denied because the information provided does not support that it is required to manage your medical condition(s). Homemaking services are for hands on help with your personal needs for light [REDACTED] and other instrumental activities of daily living. The plan understands that, because of your medical conditions, there are some light housekeeping tasks that are specifically required for you. However, you do not live alone, rather you live with [REDACTED] who does not work outside the home, most of the tasks are done for all in the household. 18 hours per week of homemaking services along with your personal care services is appropriate to meet your needs. Your homemaking services have been reduced to 18 hours per week. This decision was made with Sunshine Health Policy LT.UM 0.09 Long Term Care Ancillary Service Criteria.

Id at page 5.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated May 18, 2023, denying the appeal. *Id.* at 86-87. The NPAR explained as follows:

On 05/16/ 2023 we received your timely plan appeal request about Sunshine Health's Notice Of Adverse Benefit Determination dated 05/05/2023, Notice of Adverse Benefit Determination number OPC 30001405, reducing the service to be provided to [Recipient].

On 05/17/2023 after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Recipient] will not receive the request for 32 hours per week of homemaker services, effective 05/17/2023.

The reason for our decision was: On appeal the request to continue receiving 32 hours per week of homemaker services is denied as not medically needed. This

request was denied because the information provided does not support that it is required to manage your medical condition(s). Homemaking services are for hands-on help with your personal needs for [REDACTED] and other instrumental activities of daily living. The plan understands that, because of your medical conditions, there are some light housekeeping tasks that are specifically required for you. However, you do not live alone, rather you [REDACTED], and most of the tasks are done for all in the household. 18 hours per week of homemaking services along with your personal care services is appropriate to meet your needs. Your home making services have been reduced to 18 hours per week. The prior decision is upheld. The 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 a Board-Certified Physician in Internal Medicine.

...

Pages 86-87 of RCE 1.

9. On May 30, 2023, Petitioner requested a Fair Hearing to challenge the reduction of homemaker services. On July 10, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 8, 2023, at 10:00 a.m. EST.

10. [REDACTED] testified to the following at the Fair Hearing:

- a. There have been no changes in [REDACTED] household that [REDACTED] believes would justify a change in hours.
- b. [REDACTED] is taking care of [REDACTED] all day and if hours are reduced, [REDACTED] believes [REDACTED] may have to get a job outside of the home.
- c. It is hard for [REDACTED] to deal with [REDACTED]
[REDACTED]
- d. If hours are reduced, [REDACTED] does not believe that it will be sustainable.

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

- a. In reviewing the 701B, Petitioner needs total assistance only with bathing.
- b. Pursuant to the yearly assessment, it was determined that 32 hours were excessive for Petitioner's medical needs.
- c. According to p108 of RCE 1, the plan conducts an annual assessment to determine whether changes should be made in the services provided.
- d. After the reduction of homemaker hours, Petitioner will receive 58 hours of combined services or about 8-8.5 hours per day.

12. Respondent's coverage policy, LT.UM.09.00 provides the following regarding homemaker services:

Homemaker the provision of general household activities ([REDACTED] [REDACTED] and routine household care [REDACTED] by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Chore services, including heavy chore services and pest control may be included in this service. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Covered Homemaker service may include:

a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Criteria to consider for Housekeeping may include but are not limited to:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.

- For members sharing a residence, housekeeping applies only to the areas used by the member.

b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Criteria to consider for Shopping may include but are not limited to:

- Member's ability to obtain and put away groceries, household goods, and medications on their own
- Member lives with family or has other supports who do the shopping for the member and puts away groceries, household goods and medications

c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Criteria to include for Meal Preparation may include but are not limited to:

- Number of meals per days eaten by member or number of meals the member should eat per day
- Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:

o Meal planning

o Meal preparation

o Special diets

o Special food preparation

o Assembling food on plates

o Getting food to the table

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all laundromat and/or cleaning fees.

Criteria to include for Laundry Considerations may include but are not limited to:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads

- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member’s clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time may be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

Id at 113-114.

CONCLUSIONS OF LAW

13. 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).

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

15. 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.)

16. 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 personal care and homemaker 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.

17. 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  or her choice.

18. 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.

19. In this case, Respondent reduced Petitioner's homemaker services from 32 to 18 hours.

The NABD stated, in pertinent part:

Homemaking services are for hands on help with your personal needs for light housekeeping, shopping, preparing meals and other instrumental activities of daily living. The plan understands that, because of your medical conditions, there are some light housekeeping tasks that are specifically required for you. However, you do not live alone, rather you live with a family member who does not work outside the home, most of the tasks are done for all in the household.

See ¶9.

20. 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."

21. Petitioner lives with [REDACTED] in the same household and [REDACTED] parents are [REDACTED] caretakers.

See ¶12,8. The 701B dated April 25, 2023, indicated that both parents are Petitioner's direct service workers (DSW); father is DSW for personal care and mother is DSW for homemaker services. See ¶8.

22. Pursuant to an annual review of services, it was determined that the hours provided for homemaker services were excessive. Dr. Carter testified that the resulting hours, 58 hours weekly or 8-8.5 per day, would be sufficient to meet the Recipient's needs.

23. Dr. Carter is an experienced medical professional, and the undersigned accepts [REDACTED] testimony as credible. Here, the individual regularly responsible for homemaker activities is

available and in the home, and able to manage homemaker activities for Petitioner and the entire family. After the reduction, Petitioner receives remaining 8-8.5 hours of services per day See ¶13, 14. Petitioner lives with [redacted] caretakers (parents) and they do not work outside the home.

24. 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 homemaker hours was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 10th day of October 2023, in Tallahassee, Leon County, Florida.



Lynne Ringers
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LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
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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]
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