



FILED

Sep 18, 2023, 9:22 am
OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1398

[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 15, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Chantal Pierre
Clinical Appeal Coordinator
Sunshine State Health Plan, Inc.

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 personal care 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 homemaker services was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] appeared on behalf of the Petitioner.

Chantal Pierre, Clinical Appeal Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter, Long Term Care Medical Director for Sunshine; Lakeisha Hughes, Care Coordinator Supervisor for Sunshine; Katie Maldonado, Sunshine Health Long Term Care Utilization Management for Sunshine; Suzanne Arzuaga, Care Coordinator for Sunshine; and Andrea Hoffman, Long Term Care Coordinator II for Sunshine.

Diana Hearod, 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 and forty-two (142)-page evidence packet. The one hundred and forty-two (142)-page evidence 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 undersigned admitted the one hundred and forty-two (142)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

At the Fair Hearing, the record was held open until August 22, 2023, to allow Petitioner to submit documents. Petitioner did not submit any documents to the Office of Fair Hearings.

FINDINGS OF FACT

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

2. Petitioner is [REDACTED] *Id.* Petitioner lives with [REDACTED]. *Id.* at 64. Petitioner is diagnosed with the following: [REDACTED]

[REDACTED] *Id.* at 69 – 70.

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

67. Regarding eating,

Member is currently also losing taste and have been having issues with [REDACTED] meals. Member needs to be taken to the table to eat and sat [REDACTED] down. [REDACTED] cut [REDACTED] food in small pieces and put in [REDACTED] hand the utensils and assist [REDACTED] in eating. Sometimes [REDACTED] needs to feed [REDACTED]

...

Page 67 of RCE 1.

Petitioner always has assistance with [REDACTED] ADLs. *Id.*

4. Petitioner’s needs for assistance with [REDACTED] instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all); and for

[REDACTED], Petitioner needs assistance (but not total help).

Id. at 68. Petitioner always has assistance with her IADLs. *Id.*

5. Petitioner requested fourteen (14) hours of personal care services and five (5) hours of homemaker services. Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”), dated April 4, 2023. 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: The request for an extra 14 hours per week of Personal Care Services and an extra 5 hours per week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 16 hours per week of Personal Care Services and 4 hours of per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 4 – 5 of RCE 1.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated April 29, 2023, upholding the denial of personal care services and homemaker services. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the denial of an extra 14 hours per week of Personal Care Services and an extra 5 hours per week of Homemaker Services is denied for lack of medical necessity. The currently approved 16 hours per week of Personal Care Services and 4 hours per week of Homemaker Services should be adequate to meet the member's care needs. The

member requires some, not total assistance with [REDACTED] ADLs (Activities of Daily Living) which includes [REDACTED] and 16 hours per week of Personal Care Services should suffice. The member does not live alone. The member is not reported to be on a specialized diet such as pureed food. The member's family can assist with shared household tasks as informal support. Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria was used to make this decision. This decision was made by a Medical Director Board Certified in Internal Medicine.

...

Pages 99 – 101 of RCE 1.

7. On June 8, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care and homemaker services. On July 21, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 15, 2023, at 1:00 p.m. EST.

8. [REDACTED] testified to the following:

- a. Petitioner has [REDACTED]
- b. Petitioner is [REDACTED]
- c. [REDACTED] provides care for Petitioner through the PDO program.

9. Dr. Carter is the Long Term Care Medical Director at Sunshine. Dr. Carter testified to the following:

- a. Petitioner is approved for 16 hours per week of PCS and 4 hours per week of HMK.
- b. Petitioner is [REDACTED]
[REDACTED]
- c. The Petitioner's 701B was used to make the plan's decision, including the ADLs, IADLs, the member's living situation, and the availability of informal supports, as well as the currently approved services.

- d. Dr. Carter believes that the approved services are sufficient in light of the fact that

Petitioner lives with an adult family member that does not work outside of the

home.

10. LT.UM.09 provides as follows in regards personal care and homemaker services:

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's 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. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

...

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders
The Personal Care Provider cannot administer any medications, but may bring medications to the member and remind the member to take the medications at specific times

- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

Exclusions and Limitations for Personal Care services include but are not limited to:

- 1. Service must be provided at member's residence.
- 2. Member must reside in a non-facility based setting.
- 3. The provider must be awake during the provision of personal care services.
- 4. If services are required overnight, member must live alone and one of the following conditions must apply:
- 5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
- 6. Escort services

...

Pages x – x of RCE 1.

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 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.

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 her choice.

16. 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. Personal Care Services

17. Petitioner requested an additional fourteen (14) hours of personal care services, weekly. See ¶ 5. In the NABD, dated April 4, 2023, Respondent denied Petitioner's request. *Id.* Respondent explained that the request for additional units of personal care services was not medically necessary, but it did not specify which prong of medical necessity was the basis for its denial. *Id.* Respondent further explained that "the member's currently approved services are adequate to meet the member's care needs." *Id.*

18. 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 ¶ 14.

As provided in the record, Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 3. Petitioner needs supervisor or prompting with [REDACTED], and some assistance with [REDACTED]. *Id.* Regarding [REDACTED] IADLs, Petitioner needs

total assistance (cannot do at all) with [REDACTED] and needs assistance (but not total help) with [REDACTED]. See ¶ 4. Petitioner is currently approved to receive sixteen (16) hours of personal care services, weekly. See ¶ 5.

19. As Petitioner bears the burden of proof, Petitioner must show that Respondent's denial of personal care services was incorrect. Here, [REDACTED] explained the medical conditions Petitioner has that would necessitate personal care services, in general, but [REDACTED] did not provide an explanation as to why the currently approved services were insufficient to meet [REDACTED] needs. For example, no evidence was given as to how long it takes to assist Petitioner with [REDACTED] ADLs and IADLs, nor which needs were not met with the services already in place. Moreover, the record shows that Petitioner always has assistance with [REDACTED] ADLs and IADLs. See ¶¶ 3 – 4. As such, the record shows that the an additional fourteen (14) hours of personal care services are "in excess of the patient's needs".

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of fourteen (14) hours, weekly, of personal care services was incorrect.

B. Homemaker Services

21. Petitioner requested an additional five (5) hours of homemaker services, weekly. See ¶ 5. In the NABD, dated April 4, 2023, Respondent denied Petitioner's request. *Id.* Respondent explained that the request for additional units of homemaker services was not medically necessary, but it did not specify which prong of medical necessity was the basis for its denial. *Id.*

Respondent further explained that “the member’s currently approved services are adequate to meet the member’s care needs.” *Id.*

22. 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 ¶ 14. As shown by the record, Petitioner needs total assistance (cannot do at all) with [REDACTED]. Petitioner is currently approved to receive four (4) hours of homemaker services, weekly. See ¶ 5.

23. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary to receive an additional five (5) hours of homemaker services, weekly. Here, there is little evidence to show that Petitioner’s homemaker tasks are not completed with the services already in place. In fact, the record shows that Petitioner always has assistance with [REDACTED] IADLs. See ¶ 4. Although it is clear that Petitioner cannot complete the majority of [REDACTED] IADLs on her own, it was not shown that the approved services are inadequate to meet [REDACTED] needs. As such, based on the record, and additional five (5) hours of homemaker services are in “excess of the patient’s needs”.

24. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of five (5) hours, weekly, of homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:


Respondent's denial of Petitioner's request for personal care services is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of Petitioner's request for homemaker services is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 18th day of September 2023, in Tallahassee, Leon County, Florida.

 Joseph Mabry
23-FH1398
2023.09.18
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JOSEPH MABRY, 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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