

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



FILED

Sep 28, 2023, 2:05 pm
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1506

[Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above styled case on July 19, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco
Senior Director of Quality Improvement
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services from twenty (20) hours per week to thirteen (13) hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner represented [REDACTED] at the Fair Hearing. [REDACTED] appeared at the Fair Hearing and provided testimony on Petitioner's behalf.

Christian Pacheco, Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine" or "Respondent"), represented Respondent at the hearing. Dr. Emil Burreau ("Dr. Burreau"), Long Term Care ("LTC") Medical Director for Sunshine appeared as a witness for Respondent. The following individuals appeared on behalf of Respondent but did not testify: Lauren Greenwald, utilization management for Sunshine; Alsheneetha Williams-Jamerson, care coordinator supervisor for Sunshine; Ms. Debbie Bland, care coordinator for Sunshine; and Dr. William Campbell, Medical Director for Sunshine.

Diana Hearod, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a nine (9)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH1506 Supporting Documents.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packets into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a two (2)-page evidence packet consisting of a letter dated July 6, 2023, from [REDACTED]. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH1506 Evidence.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Exhibit 2.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a two (2)-page evidence packet consisting of a letter dated July 12, 2023, from Monica Craig. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH1506 Additional Evidence.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Exhibit 3.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-eight (128)-page evidence packet. The packet appears in the Office of Fair Hearings' case management system as "MFH packet [Petitioner].pdf." Absent an objection from Petitioner, the undersigned admitted Respondent's evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's LTC plan. See Respondent's Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is a [REDACTED] who lives [REDACTED]. *Id.* at 63 - 64. Petitioner is [REDACTED]. *Id.* at 64.

3. Petitioner has the following health conditions: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 69-70. Petitioner is easily [REDACTED]; but, Petitioner does not require supervision. *Id.* at 69.

4. Petitioner receives [REDACTED] 3 - 4 times per week. *Id.* at 70. Petitioner uses an [REDACTED] several times per day. *Id.*

5. Regarding Petitioner's Activities of Daily Living ("ADLs"), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 67. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* Petitioner uses an assistive device for walking/mobility. *Id.* Petitioner has assistance most of the time with ADLs. *Id.*

6. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores. *Id.* at 68. Petitioner needs assistance (but not total help), with [REDACTED]. *Id.* Petitioner uses an assistive device for using the telephone. *Id.* Petitioner needs no assistance with managing money. *Id.* Petitioner never has assistance [REDACTED]. *Id.* Petitioner always has assistance with [REDACTED]. *Id.* at 68.

7. Petitioner is currently authorized to receive the following home and community-based services (excluding the services that are at issue in this case): forty-three (43) hours of personal care services, twenty (20) hours weekly of homemaker services, Personal Emergency Response ("PERS") service, and incontinence supplies. *Id.* at 41.

8. On May 22, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") reducing homemaker services by seven (7) hours per week. *Id.* at 4 - 8. The NABD explains the reason for the reduction as follows, in pertinent part:

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes 20 hours per week of homemaker services. Based on the assessment of the member's care needs and household and caregiver status,

Sunshine Health will reduce the homemaker services from 20 hours per week to 13 hours per week, which is a reduction of 7 hours per week of homemaker services. The member's updated care plan includes personal care 43 hours per week and homemaker 13 hours per week. The decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 5-6.

9. Petitioner requested a plan appeal. On June 9, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR"), denying Petitioner's plan appeal. *Id.* at 84 - 86. The NPAR stated as follows, in pertinent part:

The reason for our decision was the reconsideration request is denied and the original reduction of homemaker services is upheld. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. Member receives Personal Care 43 hours weekly, which can also be used for some light Homemaking tasks. With the reduction, member would still receive a total of 56 hours weekly (8 hours daily) of formal support from his DSMs. This 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 Board Certified in Family Medicine. 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 who is Board Certified Physician in Internal Medicine.

Id. at 114.

10. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09, which states in pertinent part, as follows:

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

Id. at 103-127.

11. On June 19, 2023, Petitioner requested a Fair Hearing due to the reduction of homemaker services. The undersigned scheduled the Fair Hearing for July 19, 2023, at 9:00 a.m. EST, and all parties were duly notified.

12. Dr. Burreau is a Medical Director for Sunshine. Dr. Burreau testified that there is some overlap in the type of care provided with personal care services and homemaker services. After a review of Petitioner's medical status, the plan reduced Petitioner's homemaker services from twenty (20) to thirteen (13) hours per week (or one hour per day). Dr. Burreau asserted that, although personal care and homemaker services are two distinct services, the forty-three (43) hours of personal care services Petitioner currently receives will encompass some of the services that can be provided with homemaker services. Dr. Burreau testified that the homemaker services were reduced as duplicative, and not needed to for Petitioner to maintain functional ability.

13. [REDACTED] testified that [REDACTED] previously authorized twenty (20) hours per week of homemaker services were already insufficient to meet [REDACTED] needs. [REDACTED] is a handyman who Petitioner calls for assistance when needed because Petitioner [REDACTED] and does not have enough services. [REDACTED] provides personal care services to Petitioner. [REDACTED] asserted that homemaker hours are currently being used to cover Petitioner's ADLs such as [REDACTED]

[REDACTED]

CONCLUSIONS OF LAW

14. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes. This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

16. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

17. Because Respondent reduced existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. 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 Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("SMMC LTC Policy"). The Agency's SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

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 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

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.

...

1.3.16 Natural Supports

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care

- Intended to enable the enrollee to reside in the most appropriate and least.

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

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.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

19. In the instant case, Respondent reduced Petitioner’s homemaker services by seven (7) hours per week. *See supra* ¶ 8, 9. As established on the record by the evidence and testimony, Respondent took these actions because the services were no longer medically necessary. *See supra* ¶ 8, 9. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 23.

20. Section 4.2.1.9 of the SMMC LTC Policy defines homemaker services as 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 supra* ¶ 23.

21. The evidence presented in this case reflects that Respondent’s reduction of homemaker services is not warranted under the circumstances of this case. Specifically, the record does not demonstrate that Petitioner’s needs will be met with the reduced level of services. Petitioner is a [REDACTED] who [REDACTED], and does not have a primary caregiver, so there is no “individual regularly responsible for these activities.” Regarding IADLs, which most closely align with homemaker service tasks, Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED]. *See supra* ¶ 6. Petitioner needs assistance (but not total help), with [REDACTED] [REDACTED] *Id.* Petitioner uses an assistive device for using the [REDACTED] *Id.* *See supra* ¶ 6. With regard to Petitioner’s currently identified need for assistance with IADLs, the 701B Assessment states: Petitioner never has assistance with [REDACTED]: Petitioner always has assistance with [REDACTED]

supra ¶ 6.


22. Section 1.3.14 of the LTC Policy requires that “LTC supportive services must . . . [b]e 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 supra ¶ 23. Petitioner is currently authorized to receive 43 hours per week of personal care services and 20 hours of homemaker services. See supra ¶ 7. The personal care services are “[t]o 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 supra ¶ 23. Homemaker services are “[t]he provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker.” See supra ¶ 23. Although Respondent argues that the current level of personal care and homemaker services are adequate to meet Petitioner’s homemaker needs, the record demonstrates that some of Petitioner’s ADL and IADL needs are not met even before the proposed reduction in homemaker services. See supra ¶ 5, 6, 13. Based on Petitioner’s living situation, medical condition, and current level of need for assistance with ADLs and IADLs, *supra* ¶ 2 – 6 and 13, the record does not demonstrate that Petitioner’s aforementioned homemaker needs would be sufficiently met by the currently authorized personal care services and reduced level of homemaker services. Thus, Respondent did not establish by a preponderance of the evidence that the reduction of homemaker services is warranted in this matter and that Petitioner’s previously authorized amount of homemaker services are “in excess of [Petitioner’s]

needs.” Therefore, Respondent did not prove by a preponderance of the evidence that Respondent’s reduction in homemaker services was correct.

DECISION

Respondent’s reduction of homemaker services is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction of homemaker services in this matter is **GRANTED**.

DONE AND ORDERED this 28th day of September 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH1506
 2023.09.28
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LAURA GALLAGHER, 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.

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