



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

FILED

Sep 19, 2023, 2:24 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH1545

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 26, 2023, at 1:55 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that the Respondent's denial of Petitioner's For Cause disenrollment request was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] [REDACTED]), appeared on behalf of the Petitioner.

Lee Ann Williams (“Ms. Williams”), Medical/Health Care Program Analyst and Fair Hearing Liaison with the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a sixteen (16)-page evidence packet. The sixteen (16)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH1545 [REDACTED].pdf”. Absent an objection from Petitioner, the undersigned admitted the sixteen (16)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Liberty Dental Plan, Inc. (“Liberty”). See page 13 of RCE 1. Liberty is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. On May 1, 2023, Liberty issued to [REDACTED] a Grievance Response Notice. *Id.* at 13.

The notice reads as follows in pertinent part:

The records show that [Petitioner’s] assigned office is [REDACTED] located at [REDACTED]. Their phone number is [REDACTED]. You can also call LIBERTY at 1-833-276-0850, to help with finding a new office or to make an appointment. Below are offices in your area to choose from. If you would like to change [Petitioner’s] assigned office, please give the Plan a call.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Page 13 of RCE 1.

3. On June 12, 2023, [REDACTED] requested to change Petitioner’s Medicaid plan from Liberty to MCNA Dental (“MCNA”). *Id.* at 1. Petitioner requested the change due to the lack of access to services covered under contract with AHCA. *Id.* The Agency denied the request upon review of Liberty’s Grievance Response Notice. *Id.* The request was denied because the Grievance process is complete and the action taken by the plan is deemed appropriate. *Id.*

4. On June 20, 2023, the Agency issued to [REDACTED] a letter of Denial of For Cause Plan Change. *Id.* at 2. The letter reads as follows in pertinent part:

The reason given for the requested For Cause plan change, outside of your Open Enrollment period, was lack of access to services covered under the managed care plan’s contract with AHCA, including lack of access to medically-necessary specialty services. The Agency has considered your request and denied it as it does not meet the requirements for a For Cause plan change as outlined in Rule 59G-8.600. The request was denied because the Grievance process is complete and the action taken by the plan is deemed appropriate – as outlined in your Plan’s Grievance resolution letter.

Once per year, members may change their SMMC plans during Open Enrollment if they do not otherwise qualify for a For Cause plan change. The Enrollee’s next Open Enrollment period will begin on **11/01/2023**.

...

Page 2 of RCE 1.

5. On June 27, 2023, [REDACTED] requested a Fair Hearing regarding the denial of a For Cause disenrollment request. *Id.* at 1. On July 12, 2023, the undersigned issued an Order

Scheduling Fair Hearing by Telephone and Prehearing Instructions, scheduling the hearing for July 26, 2023, at 2:00 p.m. EST.

6. [REDACTED] is the [REDACTED] of the Petitioner. [REDACTED] testified to the following at the Fair Hearing:

- a. [REDACTED] stated that the orthodontist at Petitioner's current dentist office does not take Petitioner's current insurance plan. The provider suggested a plan change to MCNA.
- b. Petitioner's dentist is waiting to proceed with dental treatment until after orthodontic treatment is provided. This is why Petitioner cannot wait until Open Enrollment.
- c. In response to Respondent's question, [REDACTED] answered that [REDACTED] did not contact the providers on Liberty's Grievance Response Notice to determine whether they are in-network and offering orthodontic services. [REDACTED] believed a plan change to be the more expedient direction to take.

7. Ms. Williams is a Medical/Health Care Program Analyst with the Agency. Ms. Williams testified to the following at the Fair Hearing:

- a. On June 12, 2023, [REDACTED] requested a plan change from Liberty to MCNA. The request was denied, upon review of Liberty's resolution letter, because the Grievance process is complete and the action taken by the plan is deemed appropriate.
- b. On June 20, 2023, the Agency issued to [REDACTED] the For Cause denial letter.
- c. On June 27, 2023, [REDACTED] requested a Fair Hearing.

- d. Liberty listed three providers for Petitioner. Ms. Williams asked [REDACTED] if she had called the providers listed by the Plan.

CONCLUSIONS OF LAW

8. 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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

10. Because Petitioner is requesting a change of managed medical care plans outside of their enrollment period, 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.).

11. Fla. Admin. Code R. 59G-8.600 governs Disenrollment from Managed Care Plans. It states the following:

(1) Purpose. A Florida Medicaid recipient (herein referred to as an enrollee) who is required to enroll in the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) or Long-term Care (LTC) program, may request to change managed care plans. Requests must be submitted via telephone to the Agency for Health Care Administration (AHCA) or its enrollment broker. Enrollees required to enroll in SMMC programs should not interpret this rule as an exemption from participation in Florida Medicaid's SMMC program. This rule applies to the process and reasons that SMMC managed care plan enrollees may change plans.

(2) Requests for disenrollment must be completed in accordance with sections 409.969, Florida Statutes (F.S.), and Title 42, Code of Federal Regulations (CFR), section 438.56 (42 CFR 438.56).

(3) For Cause Reasons.

(a) Reasons outlined in 42 CFR 438.569(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment at any time from a managed care plan:

1. The managed care plan does not cover the service the enrollee seeks because of moral or religious objections.
2. The enrollee would have to change his or her residential or institutional provider based on the provider's change in status from an in-network to an out-of-network provider with the managed care plan.

3. Fraudulent enrollment.

(b) Reasons outlined in 42 CFR 438.56(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment from a managed care plan when the enrollee first seeks resolution through the managed care plan's grievance process, as confirmed by AHCA, in accordance with 42 CFR 438.56(d)(5), except when there is an allegation of immediate risk of permanent damage to the enrollee's health:

1. The enrollee needs related services to be performed concurrently, but not all related services are available within the managed care plan's network, and the enrollee's primary care provider or another provider has determined that receiving the services separately would subject the enrollee to unnecessary risk.

2. Poor quality of care.

3. Lack of access to services covered under the managed care plan's contract with AHCA, including lack of access to medically-necessary specialty services.

4. There is a lack of access to managed care plan providers experienced in dealing with the enrollee's health care needs.

5. The enrollee experienced an unreasonable delay or denial of service pursuant to section 409.969(2), F.S.

12. In this case, the evidence admitted and testimony presented is insufficient to support a *de novo* reversal of the Agency's decision, and establishes that the Petitioner's request cannot be granted. Here, Petitioner bears the burden of proof. As provided by statute, a For Cause plan change is permissible when the enrollee experiences a "lack of access to services covered under the managed care plan's contract with AHCA, including lack of access to medically-necessary

specialty services” (Rule 59G-8.600(3)(b)3). However, the enrollee must “first [seek] resolution through the managed care plan’s grievance process” (Rule 59G-8.600(3)b). In the instant case, [REDACTED] received a Grievance Response Notice from Liberty dated May 1, 2023. See supra ¶ 2. This response listed three (3) providers for [REDACTED]. *Id.* [REDACTED] answered in response to Respondent’s question that [REDACTED] has not contacted these providers to inquire as to whether they are in-network and offering orthodontic services. See supra ¶ 6. As [REDACTED] has not explored the solutions Liberty provided in its Grievance resolution, [REDACTED] has not eliminated the possibility that one of these providers offers in-network orthodontic services. As such, [REDACTED] has not demonstrated a lack of access to services. Accordingly, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of Petitioner’s For Cause disenrollment request was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent’s denial of Petitioner’s For Cause disenrollment request is **AFFIRMED**.
Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE and ORDERED this 19th day of September, 2023, in Tallahassee, Leon County, Florida.



Alani Day
23-FH1545
2023.09.19 10:22:14 -04'00'

ALANI DAY, 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:



**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**