



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

FILED

Sep 11, 2023, 11:19 am
OFFICE OF FAIR HEARINGS



PETITIONER,

AHCA Case No.: 23-FH1551



vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.



FINAL ORDER

Pursuant to notice, the Office of Fair Hearings (“OFH”) convened a telephonic Medicaid Fair Hearing in the above styled case on July 26, 2023, at 10:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:



Petitioner

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional twenty-nine (29) hours per week plus three (3) hours of additional homemaker services every other week for a fifteen (15) week period of homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. The Petitioner appeared at the hearing and provided testimony on [REDACTED] own behalf. The Petitioner's primary caregiver [REDACTED] [REDACTED] also appeared and testified on the Petitioner's behalf at the Fair Hearing.

Kimberly Bouchette ("Ms. Bouchette"), Clinical Appeals Coordinator Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared for the hearing and represented Respondent. Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine, provided testimony on behalf of the Respondent. The following individuals also appeared on behalf of Respondent but did not provide testimony: Ms. Marianna Thomas, Case Manager Supervisor; Catie Maldonado, Long Term Care Utilization Manager; Arlene Clark, Care Coordinator, Andrea Hoffman, Long Term Care Coordinator 2; Tammy Swann, Senior Director of Case Management; and Alshenetha Williams-Jamerson, Case Manager Supervisor.

Diana Hearod, Medical Healthcare Program Analyst & Fair Hearing Liaison, ("Ms. Hearod") for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, the Petitioner submitted a seven (7) page submission that was admitted into evidence without objection, is identified as the "Petitioner's Exhibit 1" and is recorded in the Office of Fair Hearings document management system as "23-FH1551 Faxed Correspondence.pdf".

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-three (133)-page evidence packet that was admitted into evidence without objection, identified herein as "Respondent's Composite Exhibit 1", and is recorded in the Office

of Fair Hearings document management system and designated as file “MFH Packet [Petitioner’s last name].pdf.”

FINDINGS OF FACT

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

2. As of the time of the hearing, Petitioner was an [REDACTED] who lives alone in a private residence. See Respondent’s Composite Exhibit 1, page 31.

3. The Petitioner herein [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] See Respondent’s Composite Exhibit 1, page 70. In addition, the Petitioner has had [REDACTED], and [REDACTED], has not been diagnosed with cognitive issues. See Respondent’s Composite Exhibit 1, pages 65, 66, and 70.

4. The most recent Florida Department of Elder Affairs 701B Comprehensive Assessment dated June 28, 2023, (the “June 23, 2023, 701B”), reflects the Petitioner needs no assistance with [REDACTED]

See Respondent's Composite Exhibit 1, page 67. The June 23, 2023, 701B also reflects the Petitioner has no unmet needs for ADL assistive devices and always has [REDACTED].
[REDACTED] *Id.*

5. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the June 28, 2023, 701B, reflects that Petitioner requires total assistance (cannot do at all) with [REDACTED] and requires some assistance (but not total help) with [REDACTED]. See Respondent's Composite Exhibit 1, page 68. In addition, the Petitioner needs no assistance with using the [REDACTED], and has no unmet need for IADL assistive devices. *Id.* Finally, the June 28, 2023, 701B reflects the Petitioner never has assistance with [REDACTED]. *Id.*

6. Petitioner is currently authorized to receive the following home and community-based services: seventeen (17) hours per week of personal care services; eleven (11) hours per week of homemaker services; twelve (12) hours per week of adult companion care; five (5) home delivered meals per week; and a Personal Emergency Response System (PERS). See Respondent's Composite Exhibit 1, page 40.

7. On March 1, 2023, the Petitioner requested an additional twenty-nine (29) hours of homemaker services per week, plus an additional three (3) hours of homemaker services every other week for a fifteen (15) week period. See Respondent's Composite Exhibit 1, pages 4-12. On March 8, 2023, the Respondent issued a NABD denying an additional twenty-nine (29) hours of homemaker services per week, plus an additional three (3) hours of homemaker services every

other week for a fifteen (15) week period. *Id.* The NABD stated the reason for Respondent's determination as follows:

*We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) 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.

- 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; and
- 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 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 29 hours per week of Homemaker Services and 3 hours every other week for 15 week span of Chore Services is denied as not medically needed. Based on the assessment the currently approved amount of in-home service hours remain adequate to meet member needs. No significant changes or decline in member functional status. Requests must be individualized, specific and consistent with symptoms or diagnosis of illness or injury and not be in excess of patient's needs. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. And services must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id.

8. On April 18, 2023, the Petitioner requested an appeal of Respondent’s March 8, 2023, denial. See Respondent’s Composite Exhibit 1, page 87. On May 10, 2023, the Respondent sent Petitioner a Notice of Plan Appeal Resolution(“NPAR”), denying Petitioner’s plan appeal. See Respondent’s Composite Exhibit 1, pages 87-93. The NPAR stated as follows:

The reason for our decision was based on the assessment of the members care needs and household and caregiver status, the denial of the request for an extra 29 hours per week of Homemaker Services is upheld, and the denial of the one-time addition of 3 hours every other week for a 15 week span of Chore Services is upheld. The presently approved services are enough to meet the member's care needs. This decision was made with Sunshine Health Polic LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine .

Id.

9. Respondent relied upon the Sunshine Policy and Procedure, Long Term Care Ancillary Service Criteria, LT.UM.09 to make its determination in this case, which states in pertinent part, as follows:

PURPOSE:

To establish clinical criteria on which to review Sunshine Health Long Term Care (LTC) line of business ancillary services for members residing in a home and community-based environment. The goal of the ancillary services is to provide these supportive services in the home to address the member’s cognitive and functional deficits, which may be a result of their medical conditions. The services will assist in maintaining the members in their home and community environment, in a safe manner, to avoid the risk for nursing home placement.

...

5b. Chore Services

Those services needed to maintain the member in a home that is clean and sanitary and provides a safe environment. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Chore services performed on the exterior of the member’s home are limited to those promoting safe access and egress to the home.

...

Respondent’s Composite Exhibit 1, pages 113 and 123.

10. The Petitioner requested a Fair Hearing due to the denial of an additional twenty-nine (29) hours of homemaker services per week plus three (3) hours of additional homemaker services every other week for a fifteen (15) week period. The undersigned scheduled the Fair Hearing that was convened on July 26, 2023, at 10:00 a.m. EST.

11. The Petitioner provided extensive testimony at the Fair Hearing to explain exactly why [REDACTED] requested the additional hours of homemaker chore services. The Petitioner testified that [REDACTED] home was damaged during Hurricane Irma in 2017 and as a result, the personal contents inside [REDACTED] home had to be removed and placed in storage while repairs were performed by Rebuild Florida. A portion of those contents are now contained in [REDACTED]-standing garage, and [REDACTED] wants to remove those contents from the garage, apply pest control measures to remove any bugs, then place those contents back into [REDACTED] home during October and November to avoid the summer heat. The Petitioner further testified [REDACTED] mental health is adversely affected because [REDACTED] family photos, albums, and personal property is in [REDACTED] garage and not in [REDACTED] home.

12. Dr. Carter testified for the Respondent that the chore services requested by the Chore Services is denied as not medically necessary, that there has been no significant change or decline in the Petitioner's functional status, and that the currently approved amount of in-home service hours remain adequate to meet member needs. Dr. Carter further testified cleaning out the Petitioner's garage is not related to medical needs and the requested services are primarily intended for the convenience of the Petitioner.

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). 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. 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.

16. Because Petitioner is requesting additional services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.).

17. 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.

...

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:

...

4.2.1.9 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.

...

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.

...

SMMC LTC Policy, pages 1-8.

18. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “medical necessity” as follows:

2.83 Medically Necessary or Medical Necessity

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 severe 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

19. In the instant case, Respondent denied an additional twenty-nine (29) hours of homemaker services per week plus an additional three (3) hours of homemaker services every

other week for a fifteen (15) week period. *See supra* ¶¶ 7 and 8. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, stating the additional homemaker hours were not medically necessary, that the currently approved in-home service hours were adequate, and the chore services were intended for the convenience of the Petitioner. *See supra* ¶¶ 7, 8, and 9.

20. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 18. The evidence presented in this case does not reflect that Petitioner needs an additional twenty-nine (29) additional hours of homemaker services per week plus an additional three (3) hours of homemaker services every other week for fifteen (15) weeks to meet ■ ADLs, IADLs, and ■ medical needs. *See supra* ¶¶ 3, 4 and 5.

21. Section 1.3.14 of the SMMC LTC Policy mandates that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, not in excess of the patient’s needs, and be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.” *See supra* ¶ 17. Here, Petitioner is currently authorized to receive the following home and community-based services: seventeen (17) hours per week of personal care services; eleven (11) hours per week of homemaker services; twelve (12) hours per week of adult companion care; five (5) home delivered meals per week; and a Personal Emergency Response System (PERS). *See supra* ¶ 6. Petitioner’s currently authorized home healthcare 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 ¶ 17. Given the fact that Petitioner already has homemaker services to assist with [REDACTED] IADLs, the Petitioner has failed to prove by a preponderance of the evidence that [REDACTED] currently authorized in-home services are insufficient to meet [REDACTED] medically necessary needs. See supra ¶ ¶ 9 and 17.

22. In light of the testimony and evidence, the SMMC LTC Policy, the Respondent’s Long Term Care Ancillary Services Criteria, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that that the requested twenty-nine (29) additional hours per week of homemaker services plus three (3) additional hours of homemaker services every other week for fifteen (15) weeks are medically necessary and not intended for the convenience of the Petitioner. See supra ¶ ¶ 9, 17 and 18. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent’s denial of the requested additional personal care services was incorrect.

DECISION

Respondent’s denial of the requested the requested twenty-nine (29) additional hours per week of homemaker services plus three (3) additional hours of homemaker services every other week for fifteen (15) weeks is **AFFIRMED**.

Petitioner’s appeal based on Respondent’s denial in this matter is **DENIED**.

DONE AND ORDERED this 11th day of September, 2023, in Tallahassee, Leon County,
Florida.

Alan J. Leifer

23-FH1551

Alan J. Leifer 2023.09.11

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ALAN LEIFER, 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]

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