



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

FILED

Sep 19, 2023, 11:22 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1582

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 10, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Joshua Mitchell

Grievance and Appeals Fair Hearing Specialist

Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s adult companion care services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner’s authorized representative and [REDACTED] appeared on behalf of Petitioner.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana or Respondent”), appeared as a representative for Humana. Dr. Avra Bowers, (“Dr. Bowers”), Long Term Care Medical Director for Humana, attended as a witness for Respondent. Carlos Amenos, Grievance and Appeals Fair Hearing Specialist for Humana, attended the hearing as an observer.

Lee Ann Williams, 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 Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-seven (277)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH1582_Part1.pdf,” and “Evidence Packet 23-FH1582_Part2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-seven (277) pages of evidence as Respondent’s Composite Exhibit 1 (“RCE-1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana Long Term Care plan. See page 1 of RCE-1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED] *Id.* at 24. Petitioner lives with [REDACTED] primary caregiver and [REDACTED]. *Id.* at 25.
3. Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 30 - 31. Petitioner is [REDACTED] needs supervision. *Id.* at 33.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), which was taken on May 8, 2023, Petitioner needs assistance for the following activities of daily living (“ADLs”): needs assistance (but not total help) for [REDACTED]; and supervision or prompt for [REDACTED] *Id.* at 28. Petitioner uses assistive devices for [REDACTED] *Id.* Petitioner rarely has assistance with [REDACTED] ADLs of [REDACTED]; Petitioner has assistance most of the time with [REDACTED] ADLs of [REDACTED]. *Id.*

5. As provided in the 701B, Petitioner needs total assistance (cannot do at all) for the instrumental activities of daily living (“IADLs”) of [REDACTED]; and [REDACTED] needs assistance (but not total help with using the [REDACTED]). *Id.* at 29. Petitioner always has assistance with [REDACTED] IADLs of [REDACTED]; Petitioner has assistance most of the time with [REDACTED] IADLs of [REDACTED]. *Id.*

6. Petitioner’s primary caregiver is [REDACTED]. *Id.* at 38. [REDACTED] is the approved direct service worker (“DSW”) under the participant direct option (“PDO”) program. *Id.* at 40. Petitioner was not present during the 701B assessment, with [REDACTED] answering

all the questions on [REDACTED] behalf. *Id.* at 25. As provided in the 701B, [REDACTED] works full-time outside the home, and there is no one else to assist with Petitioner's care. *Id.* at 38, 40. According to the Supplemental Assessment dated May 1, 2023, [REDACTED] works eight hours per day, Monday through Friday, and [REDACTED] can provide care, assistance, supervision or companionship for Petitioner for five (5) hours on Monday, six (6) hours a day Tuesday through Friday, and eight (8) hours a day Saturday and Sunday. *Id.* at 81 -82.

7. Aside from the companion are services at issue in this case, according to the 701B, Petitioner receives four (4) hours each weekday of PDO personal care services (twenty (20) hours per week) to assist with [REDACTED]. *Id.* at 28, 58 – 59, 69. [REDACTED] assists Petitioner after [REDACTED] returns from work. *Id.* at 28. [REDACTED] is available to provide assistance with [REDACTED]. *Id.* at 29. Petitioner also receives two (2) hours of PDO homemaker services each weekday (ten (10) hours per week) to help with meal preparation, light housekeeping and shopping as needed. *Id.* at 29, 59, 60, 69.

8. A Plan of Care for Petitioner was reviewed on June 2, 2022, and signed on February 7, 2023, by the Care Coordinator. *Id.* at 64. In the Plan of Care, Petitioner's personal goals are to keep in communication with [REDACTED] over the phone at least once a week; and to attend religious services via the television. The Plan of Care indicates that [REDACTED] will help member with the phone calls and turning on the television, accordingly. *Id.* at 51. Petitioner was receiving ten (10) hours per week of adult companion care to provide [REDACTED] with companionship as needed for moral support and motivation in completing tasks with assistance. *Id.* at 61.

9. In the Notice of Adverse Benefit Determination (“NABD”), dated May 5, 2023, Humana terminated Petitioner’s ten (10) hours of weekly of PDO adult companion care services as of May 12, 2023. The NABD explained the reason for the termination, 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.

.....

- Other authority

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You currently receive 10 hours of direct service worker (DSW) Adult Companion Care (non-medical care for supervision and socialization) each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status.

You live [REDACTED] helps to care for you and is your direct service worker (DSW). [REDACTED] works full-time outside the home. You

sometimes have [REDACTED]. You do not leave [REDACTED]. The service of 10 hours of direct service worker (DSW) Adult Companion Care each week is being terminated. You live with others who should be able to meet your companionship needs.

....

Page 8 - 9 of RCE-1.

10. On May 19, 2023, Petitioner requested a plan appeal. *Id.* at 20. Subsequently, Petitioner received a Notice of Plan Appeal Resolution (“NPAR”), dated June 15, 2023, upholding the termination. *Id.* at 24 - 26. The NPAR explained the reason for the decision as follows:

The reason for the decision was based on the information received. You have requested that the termination of 10 hours of direct service worker (DSW) Adult Companion Care service each week be reconsidered (appeal) on behalf of [Petitioner].

[Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble making [REDACTED] needs known. [REDACTED] sometimes has [REDACTED]

[Petitioner] lives with [REDACTED] caregiver. [REDACTED]

The termination of 10 hours of Direct Service Worker (DW) Adult Companion Care service each week is being upheld. The hours [REDACTED] is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity and reflects the application of the Plan’s approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Page 20 of RCE-1.

11. On June 28, 2023, Petitioner requested a Fair Hearing to challenge the termination of companion care services. On July 20, 2023, the undersigned issued an Order Scheduling Fair

Hearing by Telephone and Prehearing Instructions, setting the hearing for August 10, 2023, at 9:00 a.m. EST.

12. Dr. Bowers is a Long-Term Care Manager and Medical Director for Humana. Dr. Bowers's testimony established that Respondent's decision was based on the 701B assessment. Based on the assessment, a Plan of Care was made to ensure that Petitioner has adequate weekly home health care service hours, including twenty (20) hours each week of personal care services, and ten (10) hours each week of homemaker services. Dr. Bowers explained that that 701B shows that Petitioner does not have Alzheimer's or dementia, although [REDACTED]. Further, Petitioner is not [REDACTED]. Dr. Bowers noted that based on the Supplemental Assessment, [REDACTED] works outside the home, full-time during the week. *Id.* at 81 – 81. Dr. Bowers further testified that Petitioner's personal care and homemaker services are being provided by an outside person who is not an aide from a provider agency. Yet, [REDACTED] signs the timesheets for the PDO care services while [REDACTED] works outside the home, instead of allowing [REDACTED] care to revert to traditional care. Dr. Bower's concluded that while the thirty (30) hours per week of personal care and homemaker services for Petitioner are medically necessary, the ten (10) hours per week of adult companion care services exceed the needs of Petitioner since [REDACTED] resides with [REDACTED] and provides that service after work as a natural support.

13. [REDACTED] testified that Petitioner is [REDACTED], being unable to [REDACTED]. [REDACTED] contends that [REDACTED] would like to take care of [REDACTED] as much as [REDACTED], and that [REDACTED] will be retiring from working outside the home in November of 2023. [REDACTED] testified that [REDACTED] presently works thirty (30) hours per week, sometimes more, approximately five (5)

hours on Monday, Tuesday, Wednesday, Saturday (sometimes shift rotations to Sunday), from 4:00 p.m. to 9:00 p.m. [REDACTED] denied working forty (40) hours per week, Monday, Tuesday, Wednesday, Thursday and Friday, for eight (8) hours per day, despite what the Supplemental Assessment reflects. *Id.* at 81 – 82. [REDACTED] testified that [REDACTED] was unclear on what [REDACTED] choices were with being [REDACTED] DSW under the PDO program regarding how many hours [REDACTED] may work, and also on whether [REDACTED] could hire someone else to care for [REDACTED] with the PDO pay provided for the services by Respondent. [REDACTED] contends that since [REDACTED] retiring from work outside the home in November of 2023, [REDACTED] like to continue to be [REDACTED] DSW with the ten (10) hours of adult companion care services intact, together with the twenty (20) hours per week of personal care and 10 (ten) hours per week of homemaker services.

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 Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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. Because Respondent terminated the adult companion care services, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to 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.)

17. 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 adult companion care services:

4.1 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:

...

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

...

4.2.1.1 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.

...

Pages 1 – 4, LTC Policy.

18. 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.

Pages 2 – 3, LTC Policy.

19. 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.

....

Page 7, Definitions Policy.

20. Respondent terminated Petitioner's ten (10) hours per week of adult companion services, as of May 12, 2023. *See supra* ¶ 9. In the NABD, Respondent indicated that Petitioner did not meet all the criteria of medical necessity but did not specify which prong of medical necessity was used to make its decision. *See supra* ¶ 9. In the NPAR, Respondent upheld the termination of the ten (10) hours of adult companion care services for Petitioner by determining that "the member's currently approved services are adequate to meet the member's care needs." *See supra* ¶ 10.

21. As provided in the LTC policy, adult companion care services are intended to provide "supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." *See supra* ¶ 17.

22. Respondent terminated Petitioner's adult companion care services for the reason that "[y]ou live with [REDACTED] helps to care for you and is your direct service worker (DSW). [REDACTED] works full time outside the home. You sometimes have trouble [REDACTED]. You do not leave [REDACTED]. ... You live with others who should be able to meet your companionship needs." *See supra* ¶ 9. Respondent's assertion is reasonable in regards to whether Petitioner's socialization needs are met. *See supra* ¶ 13.

23. Adult companion care services are also to provide supervision to protect the safety of the enrollee. In this case, according to the 701B assessment and the Plan of Care relied upon by the

Respondent in reaching its decision to terminate Petitioner's adult companion care services, Petitioner needs supervision and assistance only for [REDACTED] ADLs and IADLs, which is accomplished by providing twenty (20) hours a week of personal care services and ten (10) hours a week of homemaker services. *See supra* ¶¶ 7, 8. In the Plan of Care, Petitioner's personal goals are to keep in communication with [REDACTED] by telephone and to watch religious services on television, which goals are assisted by [REDACTED] by helping [REDACTED] use the telephone and turning on the television each morning. *See supra* ¶ 8. Further, testimony was given by both parties that [REDACTED] works outside the home, either thirty (30) hours per week or forty (40) hours per week, and that another person has been providing Petitioner with assistance and supervision for [REDACTED] ADL and IADL tasks during the week. *See supra* ¶¶ 12, 13. With the company of that aide during the day, socialization is also being provided to Petitioner. Accordingly, Respondent has shown that Petitioner's request to continue adult companion care services is "in excess of the patient's needs," and that termination of the adult companion care services is "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 is not "intended for the convenience of the recipient, the recipient's caretaker, or the provider." *See supra* ¶ 18.

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has proven by a preponderance of the evidence that the ten (10) hours of weekly of adult companion care services at issue are no longer medically necessary. *See supra* ¶ 18.

25. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has proven by a preponderance of the evidence that Respondent's termination of ten (10) hours of adult companion care services per week is correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of Petitioner's adult companion care services is **AFFIRMED**.
Petitioner's appeal based on Respondent's termination of adult companion care services is **DENIED**.

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



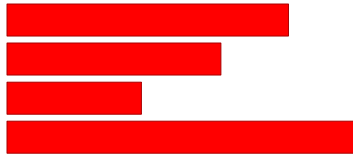
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DEBBIE WINICKI, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
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Tallahassee, FL 32308-5407

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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